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Cooperative Farm Bargaining and Price Negotiations

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PREFACE

A few years after my retirement as president of the California Canning Peach Association, I was asked to give a talk at the annual meeting of the Pacific Coast Cooperative Marketing Association. The topic was, "The Book On Bargaining That I Was Going to Write." The talk was well received, and I was asked to give the same talk at the 22nd National Conference of Bargaining and Marketing Cooperatives that was held in San Francisco in January 1978. Later that year, I received a request from the cooperatives unit of the Economics, Statistics, and Cooperatives Service (USDA) that I write such 'a book, and this is the result.

Farm bargaining has been around for a longer time than most people realize. The method of bargaining has changed over the years as the marketing system has changed. The business of farm bargaining and price negotiation has now matured in many commodities. The idea of farm bargaining attracts farmers because it seems to offer a rapid and simple answer to complex marketing problems. Farm bargaining is often born out of the frustration of farmers who feel defeated by the marketing system for their commodity. There have been many failures associated with the idea of farm bargaining over the 100 years that the idea has been worked on. There have also been many successes. It is those successes that this book is about.

I became involved with farm bargaining in January 1950 when I was named the general manager of the California Canning Peach Association, one of the Nation's oldest bargaining associations still in business. The peach-canning business in California was the backbone of the canning industry at the time. The peach pack was the largest fruit pack in the world and the price of the raw product had an influence on the price of every canned fruit that was marketed. The California Canning Peach Association was in a dominant position playing an important role in the industry.

The industry faced all of the problems associated with commodity pricing: Large crops, low prices, cutthroat competition, and loss of markets. Prior to World War II, the industry was in desperate straits as a result of oversupplies, despite efforts to deal with the problem of large crops and big packs in excess of the market requirements. The industry made its first efforts toward supply control in 1927 when an industry-wide voluntary program was attempted. In 1933 and 1934, the industry operated under a Federal marketing agreement and licensing program. In 1936, the California Canning Peach Association sponsored State legislation to permit marketing orders to be used for supply control, grading, advertising, and promotion.

Supply control programs brought on some new problems for the growers. Cannery wanted a larger share of the supply. Growers, not averse to exploiting the cannery's interest in gaining a greater share of the available supply, thus defeated in part the efforts toward stabilization. By 1950, the industry had a problem of expanded facilities, greater acreage, and a diminished market. In the years that followed, supplies were tightly controlled through the use of a marketing order that equalized the burden of surplussing large crops among all producers by requiring the elimination of all the fruit from a percentage of the trees in each orchard.

The industry has used cannery diversion, crop surplussing, and tree removal programs in its efforts to bring order. In recent years, the industry's processing capacity has been scaled down to market requirements, and the growers have turned to export markets to deal with excessive supplies.

The significance of these experiences is that the growers learned to work together to deal with industry problems. Although many of the efforts proved to be flawed, the industry remained flexible and was prepared to try new approaches to deal with the marketing problems that affected the prices that the producer received.

During my 25 years as president and manager of CCPA, a good many ideas were tested, rejected, tried, and implemented in efforts to improve the grower's market position and net returns. Some worked; others failed; some were improved upon. The CCPA was favored with good and experienced grower leadership. Our activities drew a great deal of attention from other commodity groups interested in bargaining and price negotiations. I frequently found myself involved with the organizing efforts of many bargaining associations that are operating in the United States today. A few have failed, but most have grown, providing services to their members and to the industry.

I have written this book with the idea that it serve as a guide to growers who want to organize a bargaining association, or who serve in a leadership role with an organization already in existence. The book can help to show them how to use bargaining to improve their returns from farming. Success does not come easily; considerable skill and understanding of the marketing system are needed. These pages contain the basic information that I have shared with many of my colleagues.

Ralph B. Bunje
July, 1980

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I appreciate the encouragement that I received from my colleagues who shared with me the pleasure of seeing the idea of bargaining cooperatives grow and mature into an instrument of great value to the agricultural community. I extend my thanks to all those who carefully read and commented on the early drafts. They include: Jack Pickett, publisher of the California Farmer, Loyd McCormick of the law firm of McCutchen, Doyle, Brown, and Enersen in San Francisco, Ron Schuler, president of the California Canning Peach Association, Dick Owens and his associates of the American Farm Bureau Federation, Dorothy Mortensen with Ross Wurm and Associates, and the late Dr. Sidney Hoos, Professor Emeritus at the University of California. Finally, I thank my wife, Elizabeth, for her patience and help both in writing the book and in sharing the 25 years of farm bargaining experience that allowed me to write the book. The book is written with all of the biases and impressions that I gained during those years. The errors in fact and judgment are, of course, all my own.

SUMMARY

The concept of farm bargaining is not new. Agricultural producers have long been concerned with developing legal foundations, organizations, and processes for more effectively influencing price and other terms of trade in their dealings with the handlers and processors of their products. The Capper-Volstead Act of 1922, the Agricultural Marketing Agreement Act of 1937, and the Agricultural Fair Practices Act of 1967 are the major Federal laws related to farm bargaining. All allow producers, within certain constraints, to seek equity in the marketplace and protect themselves from specified unfair practices. A number of States have also passed bargaining legislation to further facilitate collective bargaining within their boundaries.

Most of the growth in agricultural bargaining took place after World War II in response to the dramatic changes that occurred in the food distribution system. Economic integration, mergers, and acquisitions in the food industry stimulated renewed interest in the idea of farm bargaining. In relation to their buyers, farmers are small in size and large in number. Consequently, there is a significant disparity in economic power between the two groups.

The bargaining association is one way that farmers tried to adapt to the requirements of mass marketing without sacrificing their own needs. Strong associations can serve as effective price discovery vehicles. They can also promote uniform terms of trade to the benefit of both the producer and the marketplace. Today, bargaining is well established in the dairy, processed fruit

and vegetable, and sugarbeet industries.

Associations operate in diverse ways. Marketing-type cooperatives usually take title to and pool the commodities they represent. Most bargaining groups, however, do not take title but do require their members to sign exclusive marketing agreements designating the association as sole sales agent. Some associations merely provide market supply and demand information to members. Such associations do not engage in contract negotiations with buyers but may eventually evolve into full-fledged bargaining associations.

Farm bargaining works best when dealing with a single commodity. Bargaining associations often come into existence whenever growers of a commodity receive prices that are below their costs of production, are forced to accept adverse terms of trade, or must deal with arrogant buyers of food companies.

Successful bargaining associations have come into existence where four essentials were met before any attempts to organize.

Need. - There must be widespread need for a bargaining association and a genuine interest by the producers of the commodity.

Understanding. - Growers need to understand what bargaining can and cannot accomplish. Each grower must make a commitment to the association and must understand that bargaining may mean giving up certain freedoms in marketing. An economic analysis should be made to determine what advantages can be expected to accrue to the growers who join the association.

Leadership. - The quality of the leadership is a central factor in successfully organizing an association. The leaders must include most of the recognized and respected leaders in the area.

Allies. - Organizing a new association requires the assistance and good will of many allies. Support of existing farm organizations can be valuable. Particularly if prices are poor, suppliers, financial institutions, implement dealers, and others doing business with the growers may be enlisted for support. Controversial organizations should be avoided.

When an association negotiates price and terms of trade with buyers and handlers, the association's initial preparation and fact finding are often as important as the negotiation process itself. Without good preparation and reliable information, even a skilled negotiator cannot perform satisfactorily. Some associations use a "price book" that contains all the pertinent data that impinge on price negotiations; yields, production, records, projection of acreage, wholesale and retail sales data, price data, production and processing cost data, and other data that might be brought up in price negotiations. Once the data in the price book are accepted as reliable by the buyer, the book can be updated from year to year.

A skilled and knowledgeable negotiator is an important asset for any association. Having an intimate knowledge of the marketing profile of the commodity and an almost daily contact with the market is an essential asset of a good negotiator. Farm bargaining associations use a number of different approaches to negotiation that range from an individual negotiating committee for each processor to the single negotiator. Most associations use modifications of the team approach where a certain number of association directors participate in the negotiations.

The strategy of negotiations must take account of the needs of the other side and how such needs can be met. The common denominator of negotiation is dealing with the needs of people and their organizations.

The timing of negotiations can have a significant impact on the results, particularly when perishable commodities are involved. Planting time, for example, puts pressure on both the buyer and the association. The buyer wants assured supplies and producers want to make their farming plans.

Establishing a priority is a vital part of strategy planning. Good strategy is to negotiate the nonprice terms before getting into price. Having reached agreement on the nonprice terms, their value can then be incorporated into the final price negotiations.

There is no one perfect way for price negotiations to take place. Some associations negotiate in a very formal manner; others bargain in an informal way. Some involve many people, others just a few. The negotiating procedure in each case seems to have a pattern that is influenced by the market for the commodity, the relative strength of the buyer and the seller, the personalities of the people in the industry, and the experience of the association.

If the negotiating process cannot reach an agreement, the parties may resort to mediation. Under mediation, a third party is brought in to identify potential areas of compromise. A skilled mediator will have the ability to suggest compromises not previously considered, provide moral suasion, and reduce tensions. Some associations provide for mediation in their contracts. The problem is to find mediators who are both knowledgeable and unbiased. Most associations see mediation as a failure of the negotiating process rather than as a part of the bargaining effort.

Final approval of the association's price position is made by the board of directors, which may often consist of a large number of farmers. This decision-making process involves considerable bargaining among the members of the board of directors. The manager of the association frequently finds himself in the role of mediator among members of his own board.

Bargaining associations of the future must fulfill a marketing service and be able to demand and receive a price for such services that the market can afford. The bargaining association of the future must perform the same functions of mass assembly and coordination that a large corporation performs. If bargaining associations can reduce inefficiencies, promote more stable raw product supplies, and provide services that will complement the operations of the firms they deal with, the food industry will give support and recognition to the bargaining endeavor.

I. THE NEED FOR FARM BARGAINING

Farm bargaining is a form of cooperative marketing, usually concerned with marketing and establishing a price for a farm commodity. Prices and terms of trade are negotiated with handlers and processors. The members of the cooperative use a bargaining organization as a means to represent their collective views and accomplish their collective aims concerning prices and terms of trade. The cooperative may also provide the leadership, carry out the planning, and implement a program of market development for the commodity.

A farm bargaining association has some of the same weaknesses of other organizations that undertake to arrive at and carry out the collective judgment of their members. Not all members have the same needs. Not all members perceive the marketing and pricing problems from the same point of view. Some members are cooperative, while others are less so. Not all members have the same knowledge of the market. Some members may have a sophisticated knowledge of business practices and procedures and others very little, if any, knowledge. There is often a lack of knowledge and experience about the principles of bargaining. Some members see bargaining as a means of cornering a market or achieving control of a commodity, while others see bargaining as a rational means of marketing, price discovery, and protection from exploitation by powerful buyers.

Farm bargaining, despite weaknesses and some failures, has grown in importance. A number of bargaining associations have demonstrated their value, their importance, and their staying power. The successful associations have a number of characteristics in common.

- **Market orientation.** Prices and terms of sale objectives are based on the market for the raw product as well as for the finished product. The aim, both short term and long term, is to maximize the members' returns consistent with market opportunities.
- Good leadership. Leaders of the organization, both elected leaders and the professional staff, understand the total agribusiness complex. They recognize domestic and international nutritional needs, and marketing potentials and problems for their products.
- **An enlightened membership.** Modern farming requires sophisticated technology unheard of a few years ago. Not only have the production techniques changed, but so too have the marketing factors. Marketing is an off-farm activity, and farmers will employ a bargaining association to aid them in this effort if they believe it capable of producing results. They need and demand good market information to guide their farming operations. The capital requirements of modern farming are such that farmers must relate their operations to their commodity marketing systems if they are to be successful.

Overcoming Weaknesses

Many bargaining associations have successfully overcome some major obstacles. These include:

- **Recognition.** Refusal by the buyer to recognize or bargain with a farm bargaining association has been largely overcome. Some of the Nation's largest food companies have negotiated prices and terms of sale with such associations. Among those companies are: Del Monte Corporation; Libby, McNeill and Libby; Hunt Foods and Industries; J.R. Simplot Company; Birdseye Frozen Foods; the Carnation Company; Duffy-Mott; the Ogden Corporation; Borden's; H.J. Heinz; and Consolidated Foods.
- **Unfair Practices.** Early efforts at farm bargaining were often met with strenuous objections from the buyers of the commodities. Members were often boycotted by buyers. Discrimination in the form of methods of payment, terms of sale, and time of delivery was not unusual. Buyers used many tactics to discourage membership in a bargaining association, such as offering "sweetheart deals" and giving false information concerning the association and its officers. Unscrupulous buyers would often threaten to terminate a contract or to close a receiving facility in order to discourage membership in a bargaining association. Today, many such unfair

The Need for Farm Bargaining

practices have disappeared. Federal and State laws prohibiting such practices have helped. The buying policies and practices of many companies have also changed. Farm bargaining is an accepted means of price discovery in a growing number of commodities. A few years ago, it was not unusual to find contracts offered to producers that provided for automatic termination should the farmer join a bargaining association. Today, few, if any, such contracts exist.

- ***Overlapping Jurisdictions.*** Occasionally, two farm cooperatives find themselves operating in the same marketing or production area. Producers occasionally find themselves the victims of cut-throat competition from their own organizations. Agencies in common, frequently used in the dairy industry, have successfully dealt with this problem. In the case of potatoes for processing, cooperatives are moving to develop institutional arrangements for industry-wide bargaining.
- ***Good Faith Bargaining.*** Both parties to a transaction must be willing to reach a mutual agreement. When one party merely goes through the motions with no intent to reach an agreement, costly delays and confusion can result. Producers of perishable crops can be highly vulnerable if the buyer does not bargain in good faith. Real progress has been made on this issue by some of the associations. Where recognition exists and where the association has clearly demonstrated its market orientation, good faith bargaining is becoming less of a problem.

The requirement to bargain in good faith was not included in the Agricultural Fair Practices Act of 1967. Notwithstanding the fact that an increasing number of bargaining associations no longer suffer from bad faith bargaining on the part of the buyers, many leaders experience a continuing need for such legislation. Raw materials, a major cost component of the food and fiber industry, provide handlers one of their few opportunities to control costs. Other major cost items, like labor, transportation, and packaging, afford few opportunities for gaining a competitive advantage by paying less than a competitor. In the absence of a law that requires good faith bargaining and establishes fair rules for bargaining, food handlers or processors are strongly tempted to seek and gain a competitive cost advantage at the expense of farmers and their bargaining associations.

Farm Bargaining and Changes in the Market Structure

During the past 20 years, the firms in the food and fiber business in the United States have become fewer in number and larger, chiefly because of new technologies in production and management which enable them to reduce costs by increasing the scale of the operation. The total number of food-processing plants, for example, has been reduced by almost one-half. Improvements in transportation, made possible by better highways and better and larger trucks, have extended the areas served by many firms, enabling them to acquire a greater volume and thus use larger facilities effectively. This is particularly true for poultry and milk.

Many of these changes were brought about by the consolidations in the food-retailing and wholesale food businesses. The emphasis is on mass distribution and consumer orientation. This mass distribution system has to satisfy concentrated urban markets. The supply lines are longer and the integration of the system is complicated. Sophisticated technology like larger railcars, unit trains, bulk shipments, computerized formulations, and computerized inventory control and purchasing procedures, is involved at all stages. To make the system work, mass communications is needed. Advertising, promotion, and displays are used to communicate with the consumer and to move the goods. New packaging, built-in conveniences, and improvements to make shopping for the consumer easier are all parts of the marketing complex that influence the prices and terms of trade that farmers are going to receive. The retailer, the distributor, and the manufacturer are becoming more computerized to serve the consumer more effectively. The growth in the institutional market has brought new requirements into play. New packages, better delivery systems, and a stable cost system are important considerations in the institutional market, which comprises an increasing share of the food market today.

The changes in the market system have been met in part by changes on the farm. The production unit has become larger. Farmers use new equipment; farming has become more capital intensive. As capital needs have increased, so has the vulnerability of producers. They are no longer able to "go broke cheap." Prices for their production and the terms of sale have become the focal point of concern for more farmers. More operating cooperatives have been formed. Those who market through an operating co-op are concerned over the transfer price that is linked to their production.

The concerns of farmers are also the concerns of consumers. An adequate supply of good quality food at reasonable prices is an important factor in keeping a stable government. Many believe that the most efficient farming is done by the individual entrepreneur. Corporation farming on a large scale, collective farming, or farming with government as a customer, are often regarded as the least efficient means of meeting the needs of the consumer. The profit system as it has been used in farming in the United States since its beginnings is efficient. Under this system the prices from a large volume of transactions are used as signals to coordinate production, distribution, and consumption. Prices so arrived at also provide the basis for farmer incentives and distribution of income. A part of this system has undergone radical change. The signals are coming from fewer and fewer operators, and they are often driven by competition to give out signals designed to protect their own investments. Government has also tended to alter the role of the market system, with its price regulatory and production control programs. None of these changes has really altered the basic need for a profit-oriented, competitive market system, but there are some new rules to the game.

Food and fiber marketing is concentrated in fewer and larger entities. When a large organization makes a policy change, it can have an immediate effect on a great many producers. Diversified food companies no longer are dependent upon a few commodities for their profit. If a division or a plant is not earning a profit, it may be closed or sold to another company.

Changes in market behavior used to be cushioned by the many small operators who depended on a particular commodity. They could not make rapid changes in their marketing patterns or the products that they dealt with, and so the signals to the producer came over a longer period of time and in a more gradual manner. Today these signals come more abruptly, and there is a premium placed on good market intelligence, so necessary for producers to make the needed adjustments to the new realities of the marketplace.

Today's market system calls for greater coordination in order to carry out the task of mass distribution. The milk industry provides a good example of bargaining's filling a needed role. Today, the bargaining association provides procurement services, transportation, quality control, coordination of supplies, and payment to the producer. The bottler and distributor now have a system which provides their plants with the exact quantity of milk of the quality required at the time needed to make the

operation fully effective. The bargaining association deals with the problem of surplus milk and diverts the unneeded fluid milk to alternative markets so that the optimum use of the product is achieved. All of this is done at prices which recognize the needs of the consumer, the distributor, and the costs of the farmer.

Market-oriented bargaining associations are in a position to fill a vital need for coordination in the complex world of food marketing today. The needs of the processor and the distributor can be met by a bargaining association that has been organized with a market orientation. There is no place for an organization that is dedicated to changing the system for special advantage. The market system today needs, and will reward, the bargaining association organized to serve its members' market requirements.

Farmers will continue to try to measure the results of their bargaining associations. This is difficult to do in specific terms. Farmers are often left with trying to imagine what the situation would be if the bargaining association did not exist. It requires a degree of sophistication and knowledge of the market in order to fairly judge the performance of the association. The measurement needs to be made on the basis of whether or not the association is serving the needs not only of the farmer but also of the marketplace and society as a whole. If it does not serve these needs, then the association will, in the long run, fail.

The changes that have taken place in the food and fiber marketing system created the need for farmer-owned and operated bargaining associations. Bargaining associations can fill the needs of the market as well as the needs of the individual producer. They can serve a supply coordinating function for the market and furnish market intelligence for the producer. They can operate as a price discovery vehicle, establish market prices, and establish uniform terms of trade that serve both the producer and the marketplace.

II. THE LEGAL BACKGROUND FOR COOPERATIVE FARM BARGAINING

The Sherman Act (1890)

During the 19th century, farmers, laborers, and consumers were faced with the growing power of large and powerful corporations whose control of the markets and the manufacturing facilities of many of the basic industries enabled frequent exploitation. In 1890, Congress passed the Sherman Act to curb the powers of the corporations. Meanwhile, farmers were turning to cooperative associations and labor was turning to unions in an effort to offset the power of the corporations. Farmers were particularly vulnerable. Individual farmers had little or no bargaining power. They frequently found themselves at the mercy of buyers who were able to purchase their production at depressed prices that the buyers were able to establish, and then to go on to process, store, distribute, and sell the products at the most advantageous market at the most advantageous times for high prices.

Following passage of the Sherman Act, organized labor and the young cooperative movement found themselves imperiled by the anti-trust legislation that was intended to combat the excesses of large and powerful corporations that had victimized the farmer. The sponsors of the Sherman Act had not intended to include agricultural cooperatives and labor unions as unlawful combinations in restraint of trade. Indeed, Senator Sherman had proposed an amendment to the Act which provided, among other things, that it should not be construed to prohibit "any arrangements, agreements, associations, or combinations among persons engaged in horticulture or agriculture made with the view of enhancing the price of their agricultural or horticultural products" [21 Cong. Rec. 2726 (1890)]. Sherman felt that the language was not necessary and it was omitted from the final bill.

Farmer cooperatives and labor found themselves the targets of anti-trust suits by private parties as well as by State and Federal authorities.

Cooperative Farm Bargaining

To prevent such lawsuits from thwarting the development of cooperatives and unions, Congress in 1914 passed Section 6 of the Clayton Act which states:

the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and the operation of **labor, agricultural, or horticultural organizations**, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof: nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws. [15 U.S.C. §17(1976)]

The Capper-Volstead Act (1922)

It soon became apparent that in spite of the language of Section 6, the threat of prosecution remained especially for cooperatives organized on a capital stock basis. The express right to carry out the actions necessary to enable agricultural cooperatives to function effectively for their members was more fully set forth in the Capper-Volstead Act, which was enacted in 1922. Section 1 of that Act provides:

Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, **corporate** or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes. [7 U.S.C. §291(1976)]

Section 2 of the Act empowers the Secretary of Agriculture to proceed against any cooperative which he has reason to believe monopolizes or restrains trade "to such an extent that the price of any agricultural product is unduly enhanced." If he finds that such undue price enhancement has occurred, the Secretary may issue an order to cease and desist from monopolization or restraint of trade.

Under the protection of these statutes, producers have been able to organize themselves in an effort to influence the market in which they sell or distribute their products, thereby combating the handicap of unstable market conditions and a price system determined by the weakest producer.

Farm Bargaining Compared to Labor Unions

While both labor and agricultural and horticultural organizations were mentioned in Section 6 of the Clayton Act, their operations are dissimilar. Labor is paid a wage or a salary and unions are made up of

wage and salary workers. Farmers are paid on the profits from their enterprise, and farm bargaining associations are made up of individual farmers who are entrepreneurs. Labor organizations have the benefits of laws that make monopolies legal through a closed shop. Farm bargaining associations are voluntary and must operate within the undue price enhancement provisions of Section 2 of the Capper-Volstead Act. Labor organizations can impose sanctions on employers through the use of a strike or a slowdown. Farm bargaining associations cannot stop production once it has started. Labor unions tend to be centrally controlled while farm bargaining associations tend to be democratic. Labor organizations may have strike funds and benefit from unemployment insurance programs which soften the burden of work stoppage for the wage earner. Farm bargaining associations must deal with the supply-demand character of the marketplace and their members always face the problems of oversupply and unsold products that hang over the market. Since the Clayton Act was adopted in 1914, legislative actions and court decisions have enabled organized labor to become a major force in the U.S. economy. Agricultural organizations have not fared as well.

Court Actions

The legal history of the Clayton and Capper-Volstead Acts and the decisions of the courts make it quite clear that farmers and producers may form cooperatives without violating the antitrust laws. However, the Capper-Volstead Act and its companion statutes do not give agricultural cooperatives *carte blanche* to evade the intent of the antitrust laws. On several occasions the Supreme Court has outlined the boundary between permissible cooperative activity under the Capper-Volstead Act and conduct that violates the antitrust laws.

In 1939, the case of *United States v. Borden Co.* [308 U.S. 188 (1939)], brought before the court an alleged conspiracy between the Pure Milk Association, a cooperative, and noncooperative entities, including distributors, labor officials, and municipal officials. The conspiracy was alleged to be in violation of Section 1 of the Sherman Act by attempting to fix and maintain artificial and noncompetitive prices for milk. Reversing the lower court, the Supreme Court held that the Capper-Volstead exemption did not insulate all activities of agricultural cooperatives from the Sherman Act. The alleged conspiracy with **non-cooperatives** removed the cooperative's conduct from the protection of the exemption. In the words of Chief Justice Charles E. Hughes:

The right of those agricultural producers thus to unite in preparing for market and in marketing their products, and to make the contracts which are necessary for that collaboration, cannot be deemed to authorize any combination or conspiracy with other persons in restraint of trade that these producers may see fit to devise. [308 U.S. at 204-205]

Nearly a generation later, the Supreme Court again had occasion to elucidate the limits of the exemption for farmer cooperatives. In *Maryland and Virginia Milk Producers Association, Inc. v. United States* [362 U.S. 458 (1959)], the defendant milk-marketing cooperative had been charged with violations of: Section 2 of the Sherman Act by attempting to monopolize and monopolizing the fluid milk market; Section 3 of the Sherman Act by conspiring to eliminate competition in the same market; and Section 7 of the Clayton Act for acquiring the assets of its largest competitor. The Court, citing *Borden*, held that the alleged conduct deprived the cooperative of the immunity provided by Section 6 of the Clayton Act and the Capper-Volstead Act. It stated:

(T)he full effect of §6 (of the Clayton Act) is that a group of farmers acting together as a single entity in an association cannot be restrained 'from lawfully carrying out the legitimate objects thereof (emphasis supplied), but the section cannot support the contention that it gives such an entity full freedom to engage in predatory practices at will. [362 U.S. at 465-466]

The Court defined a further limit to the exemptions in *Case-Swayne Co., Inc. v. Sunkist Growers, Inc.* [389 U.S. 384 (1967)]. In that case, it held that membership of persons and entities who were not themselves producers of agricultural products would nullify the Clayton Section 6 and Capper-Volstead exemptions for the cooperative.

While the foregoing Supreme Court decisions leave no doubt that the statutory immunity enjoyed by agricultural cooperatives is a limited one, both the Supreme Court and appellate courts in more recent decisions have continued to affirm the rights of cooperatives to join in combined action under the Capper-Volstead Act. Thus, in *Sunkist v. Winckler & Smith Co.* [370 U.S. 19 (1962)], the Supreme Court held that cooperatives, which were technically separate entities, could join together into one organization for collective processing and marketing of their fruit and fruit products without violating the antitrust laws. Sunkist was alleged to have conspired with two citrus fruit exchanges, Exchange Orange and Exchange Lemon, to commit various acts and violations of Sections 1 and 2 of the Sherman Act. The court was willing to look beyond the technical separateness of the three groups and held that:

(T)he 12,000 growers here involved are in practical effect and in the contemplation of the statutes one 'organization' or 'association' even though they have formally organized themselves into three separate legal entities. [370 U.S. at 29]

The Capper-Volstead Act also specifically states that cooperatives may have agencies in common. A common marketing agency by a competing group of manufacturers, on the other hand, would be found to be illegal.

The ability to form a cooperative association permits farmers, by combination, to obtain some degree of market power. This can be done in two ways. First, to the extent the cooperative gains some control over the supply of the product, it can bargain with the buyer in order to achieve a higher price than the buyer would have to pay individual farmers selling separately. Second, farmers may form their own cooperative marketing agencies, thus bypassing the powerful marketer who would otherwise be able to achieve an unduly high profit at the expense of the farmer. However, this ability to overcome the power of large buyers must be considered in the light of overcoming exploitation and achieving a reasonably competitive profit, but not a monopoly profit.

The U.S. Department of Justice and the Federal Trade Commission (FTC) are constantly monitoring the activities of cooperative associations, particularly in those cases where a marketing order is also in operation. It is for this reason that many of the well-established bargaining associations work closely with their legal counsel. As bargaining associations become more successful in achieving their objectives, they will come under greater scrutiny. The cost of food is a sensitive political issue. With the decline in the political power of farmers, more and more attacks can be expected on the efforts of farmers to improve their prices through collective actions.

An example of some of the current thrust of the Department of Justice and the FTC is the contention made in the Treasure Valley case [Treasure Valley Potato Bargaining Assn. v. Ore-Ida Foods, Inc., 497 F.2d 203 (9th Cir. 1974), cert. denied, 419 U.S. 999 (1974)]. Here it was argued that only associations that actively perform all of the processing, handling, and marketing functions are Capper-Volstead associations. In addition, it was argued that negotiating for price did not constitute marketing as that term was used in the act.

The court rejected both of these contentions and, with reference to the latter, said particularly:

The associations here were engaged in bargaining for the sales to be made by their individual members. This necessarily requires supporting marketing information and performing other acts that are part of the aggregate of functions involved in the transferring of title to the potatoes. The associations were thus clearly performing “marketing” functions within the plain meaning of the term. We see no reason to give that word a special meaning within the context of the Capper-Volstead Act. [497 F.2d at 215]

The ninth circuit has relied upon the rationale in *Sunkist* in finding the exemption applicable to two entirely separate potato bargaining associations charged with violations of the Sherman Act based upon their agreement with each other to sell their potatoes for a common price. In concluding that the associations were acting within the exemptions, the ninth circuit drew the principle from *Sunkist*, that, in the absence of predatory conduct and where the two bargaining associations could have formed a single association to market the product, mere organizational distinctions should be ignored. The court relied most heavily, however, on the language in Section 1 of the Capper-Volstead Act permitting associations to have marketing agencies in common. The court held that this provision exempted activities such as agreements as to pricing between two cooperatives on the grounds that the term “marketing” was broad enough to encompass such activity. The court also concluded that the actual form which the common marketing agency took was irrelevant and should not eliminate its legality.

Despite the denial of certiorari by the Supreme Court in *Treasure Valley*, the FTC announced that it would not consider itself bound by the *circuit court’s* decision. In the summer of 1974, the FTC filed a complaint against the Central California Lettuce Producers Cooperative alleging in substance that the cooperative and its members were in violation of Section 5 of the Federal Trade Commission Act (in essence by violating Section 1 of the Sherman Act) by “illegally agreeing among themselves on the prices at which Central’s members would sell the lettuce they produced.” The administrative law judge’s decision against the cooperative was reversed by the full Federal Trade Commission on appeal. The Commission may have heeded a decision of the U.S. District Court in San Francisco which had ruled, in a private suit against the same cooperative, that the same activities were exempt [*Northern California Supermarkets, Inc. v. Central California Lettuce Producers Cooperative*, 413 F.Supp. 984 (N.D. Cal. 1976) *aff’d*, 580 F.2d 369 (9th Cir. 1978)]. The district court stated:

I am of the opinion that even if Central engaged in no other collective marketing activities, mere price-fixing is clearly within the ambit of the statutory protection. It would be ironic and anomalous to expose producers, who meet in a cooperative to set prices, to antitrust liability, knowing full well that if the same producers engage in even more anticompetitive practices, such as collective marketing or bargaining, they would clearly be entitled to an exemption. 413 F. Supp. at 992.

The Agricultural Fair Practices Act (1967)

Prior to the 1967 passage of S-109, the Agricultural Fair Practices Act, the efforts of many farm groups to bargain collectively were met with opposition from handlers and processors.¹ The tactics on the part of some major buyers had more in common with the early history of unionization in the United States than in marketing farm products. For example, the Federal Trade Commission found that three major tomato-canning companies in Ohio engaged in a common boycott of the members of Cannery Growers, Inc., a growers' cooperative bargaining association. Cannery refused to contract with members of the association and offered "sweetheart deals" to members who withdrew from the association. In one instance, field buyers contracted with growers provided the growers signed a form letter of resignation to withdraw from the association. One company, according to the testimony of a field buyer, proposed spending up to \$100,000 to discourage the efforts of farmers to organize for bargaining purposes.

Growers in Pennsylvania and New Jersey who were identified with the bargaining associations found that their contracts were not renewed, or that they were discriminated against at the receiving docks of the canneries. Blacklisting of growers was also carried out in the broiler industry. In one area in Mississippi, organizers had to visit growers in the night, and not give receipts of dues payments. When growers attended meetings, their car license numbers were taken down by field staff and the growers were called on the next day and warned not to join the association. Growers in other States found their contracts terminated if they joined a bargaining association.

In 1968, the Packers and Stockyards Division of USDA issued a decision known as P&S Docket No. 3497; It ordered Arkansas Valley Industries, Inc., Ralston Purina Company, and Tyson's Foods, Inc., to cease and desist from:

¹For a history of the legislative life of this bill, see Randall E. Torgerson, *Producer Power at the Bargaining Table* (Columbia: University of Missouri Press, 1970)

- 1. Refusing to deal with a poultry farmer because of the farmer's affiliation with any association or organization formed to further the mutual interests of poultry producers;**
- 2. Harassing, intimidating, coercing or threatening to refuse to enter into contracts or agreements with poultry farmers because of their affiliation with any association;**
- 3. Refusing to reinstate upon the basis of current terms, any poultry producer whose contracts or agreements were terminated for reasons of the producer's association;**
- 4. Entering into, continuing, or cooperating in carrying out any agreement or combination to boycott, blacklist, harass, intimidate, or coerce any poultry producer or farmer for any reason whatsoever.**

The Agricultural Fair Practices Act of 1967 (S-109) was a landmark piece of legislation. It was the first reaffirmation by the Congress in many years of the policy of support of group action by farmers. It was stoutly resisted by many of the Nation's processors and handlers. While the final law is a far cry from the original draft, the very fact that it survived the opposition of the major factors in the food manufacturing and processing industry is evidence that the Congress will support farmers in their quest to achieve some equity with the concentrated power of the food industry.

S-109 recognized the need for farmers to be free to join together voluntarily in cooperative organizations and declared that interference with this right was contrary to the public interest. The act establishes standards of fair practices that would be required of handlers in their dealings in agricultural products. The law deals primarily with six practices that were declared to be unlawful for any handlers, employees, or agents:

- (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 any producer because of the exercise of his right to join and belong to such an association: or**
- (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; 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**
- (d) To pay or loan money, give anything of value, or offer any other inducement or reward to a producer for refusing to or ceasing to belong to an association of producers: or**

(e) To make false reports about the finances, management, or activities of associations of producers or handlers; or

(f) To conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by this chapter. [7 U.S.C. §2301(1976)]

There will be moves to change the legislation to require good faith bargaining on the part of handlers and processors. The problems with the existing legislation are in its narrow scope and inadequate enforcement machinery. Evidence of violations is very difficult to obtain. According to the Department of Agriculture, 27 complaints have been received since the fall of 1968, when administration of the Act was transferred to the Fruit and Vegetable Division, Agricultural Marketing Service, of the Department. Seven of the 27 complaints were settled in favor of the producers or the association; one case was settled without any action; and one was closed when the growers decided not to pursue the complaint. All of the other cases were closed after investigation, on the basis of insufficient grounds for action. Securing good evidence is a problem, particularly from farmers who have been induced to withdraw from a bargaining association in return for some special treatment. Fear of future retaliation is also a factor that influences the availability of good evidence.

State Legislation

Legislation supporting farm bargaining has been adopted in a number of States. The most far-reaching is the Michigan Agricultural Marketing and Bargaining Act. In effect since January 1973, this legislation: permits producers of agricultural commodities in Michigan to be represented by associations; creates an agricultural marketing and bargaining board; provides for the accreditation of associations; establishes obligations on the part of handlers and associations; provides for arbitration; defines unfair practices; and describes penalties.

California legislation declares it to be the public policy of the State of California to establish and support the right of any farmer to join voluntarily and belong to a cooperative bargaining association. In addition, it defines unfair trade practices, including the refusal 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.

Most of the legislation in the other States prohibits certain unfair trade practices and discrimination against producers who have voluntarily joined a bargaining association. In 1975, Wisconsin enacted a

statute that is unique in that it prohibits vegetable processors who "grow more than 10 percent of a species of vegetable processed at a single plant, from paying growers who sell vegetable crops to the processor an amount per ton less than the amount per ton incurred by the processor in growing the vegetable himself."

The States of Maine and Minnesota have adopted legislation that compares with the Michigan statute. Extensive bargaining has not yet been carried out under these State laws, but they are an indication of the desire and need for such an approach in the absence of strong Federal legislation.

Future Legislation

The major Federal legislative acts related to farm bargaining are the Capper-Volstead Act of 1922, the Agricultural Marketing Agreement Act of 1937, and the Agricultural Fair Practices Act of 1967. All of these laws are basically permissive and protective in that they permit producers to act together to obtain equity in the marketplace and protect them from certain unfair practices. The major piece of State legislation that departs from the permissive and protective character is the Michigan Act, which promotes and implements the idea of collective bargaining for agriculture.

The next several years will probably see continued efforts being made to improve the legislative climate for farm bargaining. These efforts will be directed toward causing the government to assume a more active role. Included will be legislation that will legally limit the alternative actions of handlers. This might include provisions whereby exclusive agency bargaining is authorized along the lines of the Michigan Act, perhaps the most comprehensive type of bargaining legislation with explicitly defined rules. Federal legislation could substantially improve the climate for bargaining in a number of specific areas:

- Provisions for marketing fee deductions;
- Requirements for negotiators to bargain in good faith;
- Provisions for mediation or arbitration;
- Provisions for qualifying or otherwise accrediting a bargaining association;
- Provisions for defining a bargaining unit; and providing for the designation or selection of an exclusive agent for the bargaining unit;
- Protective rules and a means for promulgating and administering them.

Most of the provisions suggested above involve a basic decision by the Congress as to whether as a matter of public policy the idea of farm bargaining should be actively supported and promoted. The legislative history at the Federal level is largely permissive and protective. Some of the States have gone beyond the Federal action and have declared that, as a matter of public policy, farm bargaining should be supported and promoted.

III. THE HISTORY OF FARM BARGAINING

Farm bargaining, as it is practiced today, achieved its major growth following World War II. However, efforts were made by producers starting as early as 1867, when The Fruit Growers Union was formed in Hammonton, N.J. In 1887, the Milk Shipper's Union of the Northwest was formed to serve dairy farmers in the Chicago market. One organization, the Milk Shippers' Association, was declared illegal under the Illinois Antitrust Law in 1895. A Milk Bargaining Association was organized in Virginia in 1916. Many of the early efforts at bargaining were involved with securing information and improving market conditions for dairy farmers. There were difficulties in obtaining the loyal support of enough producers for effective bargaining. Many milk producers who had enjoyed a continuing relationship with handlers for years feared that active participation in a bargaining association might result in their losing their market, particularly during the flush milk production season. Even efforts to own and operate manufacturing plants for distress milk failed due to a lack of support.

The 1920's

The 1920's marked a period of growth for agricultural cooperatives. With the passage of the Capper-Volstead Act, some of the fears over antitrust action against marketing cooperatives were set aside. During the early part of 1920, Aaron Sapiro, described as the cooperative evangelist of his day, began his crusade to gain effective bargaining power for American farmers by encouraging the formation of centralized commodity marketing organizations. These were in the form of

pools with 'ironclad' membership contracts to gain control over supply and thus monopolistic power. Sapiro advocated strong business organizations which could control and merchandise agricultural crops. Sapiro helped to establish the wheat pool movement in Canada and organized over 66 associations in the United States. Rapid growth of commodity associations was spearheaded by Sapiro's efforts, but in a few years most of them were dissolved. It is interesting to note the reasons behind the failure of this popular movement. The lack of skilled management was one of the major reasons. Sapiro tended to underestimate the complexities of administering large-scale cooperatives and oversimplified the job of marketing regional supplies of an agricultural product. The problems with membership and placing too much confidence in the contract as a guarantee of grower loyalty doomed the effort to failure. However, some of Sapiro's concepts make good reading even in today's environment:

Price value is determined not by supply and demand but by supply where, and supply when, and the men who can control the flow of a commodity so that it moves into the markets of the world in given quantities at such a time and such a place, these men determine the price value of any commodity under the sun.²

Sapiro's views concerning overproduction are also applicable to today's situation:

Every merchant in the world has learned the fact that it is not what is produced that makes the selling value. It is what is moved into the markets where he can get it and under conditions fixed by him; in short, that it is not the supply that fixes the price. it is the control of the movement of the article.'

The early 1920's marked the beginning of the first bargaining associations in canning crops. The California Canning Peach Growers were organized in 1921 and conducted their first marketing efforts for the 1922 crop. Seven hundred and sixty peach growers agreed to market their crops cooperatively and opened offices in San Francisco. Low prices, unfair grade standards, and delay in payments for fruit were the principal reasons behind the growers' decision to organize. The fruit-canning industry was expanding rapidly after the war. Pricing the crop fairly was a problem for growers. Cannerymen in California used open-price contracts to purchase their supplies. Contracts were both seasonal and for a term of years. The practice was to delay fixing the price on the

²Knapp, Joseph G., *Farmers In Business* (Studies in Cooperative Enterprise), American Institute of Cooperation, Washington, D.C. 1963, pages 292-293.

³Knapp, Joseph G., *Farmers In Business* (Studies in Cooperative Enterprise), American Institute of Cooperation, Washington, D.C. 1963, page 293.

contract until the pack had been completed and a market firmly established for the canned goods. This often meant a delay of many months before growers were paid. Some canning companies were in a weak financial condition and growers often found themselves with no payment for the crop at all.

The first years were difficult years for the peach growers, but their membership continued to grow, reaching 1,612 members in 1930. This was despite prices that varied from \$20 per ton to \$80. Alternate years of high and low production resulted in price-depressing surpluses of canned peaches that influenced the bargaining process. In 1933, the industry operated under a Federal Agreement and License signed by Secretary of Agriculture Henry A. Wallace. The canning industry proposed a "Code of Fair Competition," and an ill-fated canner allocation program was put into effect. The Association had also gone into the business of processing its members' fruit. The combination of low prices, poor returns, and an unworkable marketing agreement brought dissension and led to a reorganization of the Association under the name of the California Canning Peach Association. Many of the problems in the industry during the twenties came about as a result of distress selling by some of the canners who were in a weak financial condition.

In Utah, the State Farm Bureau named a committee of vegetable growers to meet with the State's vegetable canners to discuss prices and terms of trade. Canners were not receptive to the idea. The informal approach had negative results, and following the passage of the Capper-Volstead Act and similar legislation in the State of Utah, a formal association was established. The first one was in the Cache Valley of Utah when the Cache Valley Pea Growers Association was formed. The first formal negotiations took place in the spring of 1924. Later, the Association was broadened to include growers in Idaho and the Utah-Idaho Canning Crops Association became a unit of the Utah State Canning Crops Association.

Many attempts were made to organize producers to bargain with handlers and processors during the twenties and the thirties. Those that succeeded were fortunate in having dedicated leaders who devoted a great deal of time to the idea that farmers had a right to organize and deal with their customers on a collective basis. Those that failed either lacked good leadership or were unable to attract the type of skilled management that such an organization required. When growers were desperate, they would embrace the idea of collective action, but when

things got a little better, they tended to lose interest and find fault with the operation of the association.

The 1920's were a period of experimentation in the entire cooperative movement. There was substantial growth in cooperative enterprise. Operating cooperatives engaged in marketing, purchasing, and supply were organized and continued to grow. The legislative climate for growth was good. By 1930, 12,000 marketing and purchasing cooperatives had been organized and over 3.1 million members enrolled.

During the depression years of the thirties, the number of cooperatives decreased, but the membership increased. Many of the cooperatives became federated. Beet sugar growers organized bargaining associations in the 1930's. All during the 1920's and the 1930's, dairy farmers continued to participate in bargaining organizations. Many of the bargaining associations in the dairy business later became operating cooperatives.

There was little new activity in bargaining during the war years of the 1940's. Those associations that had weathered the formative years of the 1920's and the depression found themselves fairly well established by the early 1950's. Organized bargaining and price negotiation activity at that time was fairly well confined to dairy, sugarbeets, cling peaches in California, and vegetables in Utah and Idaho.

After World War II

The postwar period saw dramatic changes taking place in the food industry. During the war, with no restraints on production, assured markets, and firm prices, production had soared and profit margins were satisfactory. When the war demands ended, and the domestic pipelines were filled, a period of uncertainty dominated the food industry. Prewar export markets were not easily restored and many painful adjustments were taking place. Farmers were replacing equipment and modernizing their operations. Food processors were doing the same, and the productive capacity of producers for many commodities soon exceeded the domestic demand. During the war, and immediately after, many food-processing companies were merged and combined as the benefits of large volume operations became apparent. Profit margins were based on maintenance of volume, and competition between food manufacturers was often based on the need to maintain large volume operations.

Food distribution in the United States was also undergoing a dramatic change. During the 1950's and early 1960's, food retailers

were merging at an unprecedented rate. Regional chains became affiliated with national chains. Wholesale grocery companies were merging or going out of business. Regional brand names known to consumers for a generation were closed out and replaced with national brands and private-label brands owned by the chain stores. Many of the independent retailers became members of cooperative buying organizations. In a relatively few years, the retail food business became a large volume operation. Profits were dependent on volume, and the pressure to expand through merger and acquisition became an established trend. The Federal Trade Commission received many complaints that, in the evolution of food distribution, tendencies had developed to concentration of economic power, to collusive price action, and to unfair competitive methods. Several Commission studies, undertaken in response, revealed that there had been a significant increase in concentration in the purchase of grocery products, and an accelerated pace of merger activity among food processors. Farmers who analyzed the FTC Study, *Economic Inquiry into Food Marketing*, were suddenly made aware of the fact that as individual farmers they could no longer match the strength and power of the buyers of their production.

The mergers and acquisitions in the retail field had an important impact on the processors and handlers of agricultural commodities. The smaller independent processors and handlers soon found themselves with fewer and larger customers. It was not unusual for independent food processors to find that some of their largest accounts had been absorbed or merged with another retailer or wholesaler. Frequently, the new organization dropped the independent as a supplier. The loss of a major customer often threatened the very existence of the company, which needed volume to be able to remain competitive. In addition, the independent processor-handlers were often faced with the loss of their own brand business. The larger retailers, having to make a choice of the number of brands they would carry, dropped some of the brands that had been acquired in the merger and stocked their shelves with one or two nationally advertised brands, a house brand, and perhaps one other.

There were a few large acquisitions in the canning business during the early 1950's, but the pace stepped up considerably in the following years as more of the independents became available for purchase. A Federal Trade Commission inquiry reported:

'Economic *Inquiry Into Food Marketing*, Federal Trade Commission, Part 3, June 1965.

During the period 1960 through 1963, 42 firms covered by this report were acquired. Many of the acquisitions involved large canners. Almost 20 percent of the 39 firms with 1959 canning sales in excess of \$10 million each were acquired during 1960-63. Twenty-seven of the 42 acquisitions made during this period were made by 23 canners; nearly one-half (11) of these 23 canners were firms with canning sales in excess of \$10 million in 1959. Twenty of the 27 acquisitions of canners by canning firms were horizontal in nature the remaining 15 (of 42) acquisitions in the period 1960 to 1963 were made by noncanning firms, increasing the number of diversified firms in the canned fruit and vegetable industry. As a result of recent acquisitions, such large and diversified firms as Reynolds Tobacco, Nestle, R.T. French and Coca Cola became fruit and vegetable processors. Three large dairy firms, Pet Milk Co. ., Carnation Co., and Borden Co. acquired large canning firms between 1960 and 1963. (By the end of 1963 the five largest dairy firms also ranked among the 20 largest canners of fruits and vegetables.) pp. 12 and 13.

Milk Bargaining

Dairy producers found themselves in a similar situation. Before the war, fluid milk was distributed to consumers in large part by home deliveries. Major markets were controlled by bottling firms who purchased milk from country suppliers and local cooperatives. With the merger activity among the retailers, there began a trend toward backward integration by the chainstores. Suddenly independent bottlers and distributors found themselves faced with the loss of an important customer in a local market. In addition, the new bottling plants were modern and efficient and often situated in better locations. The loss of volume and the need to modernize placed a great strain on the remaining bottlers who attempted to remain in business by seeking lower prices for milk. This served to stimulate the need for price bargaining by the producers. At the same time, many of the smaller co-ops, finding their markets threatened and prices depressed by events, were also faced with the need to modernize. Better storage facilities and bulk handling operations served to stimulate drastic changes for the dairy co-ops.

Many dairy farmers were not satisfied with their returns. A new national organization, The National Farmers Organization (NFO), appealed to many of the producers who saw the need for making the changes dictated by the change in the market structure. Actually, many things came together for the dairy farmer at this time. There was an increase in the use of Federal milk marketing orders. The declining milk prices during the mid- 1950's had created a wave of producer unrest. The introduction of farm tanks for bulk milk assembly launched a whole new marketing system. Milk could be transported long distances. For years the associations had struggled with ways of gaining control of

their milk supplies to strengthen their bargaining position. The new system, if organized on a regional basis, offered this control, along with considerable flexibility in moving milk directly from the farms to the various market outlets. Producers were anxious to obtain some of the cost savings that plants gained by shifting from can to bulk milk assembly. A move toward federated organizations to obtain a premium for the market's tank-assembled milk began.

The low prices during the 1960's, combined with the increased inter-market shipments of milk, led to the formation of two large regional bargaining federations. These organizations were successful in obtaining over-order prices in most fluid milk markets in the central part of the Nation. Today's dairy bargaining associations provide a unique and valuable service to producers, distributors, and the general public. Producers are assured of a home for their production at a reasonable price, distributors can maximize their plant operations by being able to acquire the exact volume of milk of the quality desired and at the time needed, to maintain the efficiency of their plants. The public is served by being able to buy this food at reasonable prices. All of this is a result of a very efficient system of producing, handling, and distributing milk. The flexibility of being able to divert surplus milk to manufacturing outlets at certain times of the year, and from time to time, as a particular market may become overloaded, also adds to the efficiency of the system.

Fruit and Vegetable Bargaining

The 1950's and 1960's also saw a growth in bargaining for other commodities. In 1954, *Farm Journal* carried a series of articles about farm bargaining. The experience of the California Canning Peach Association was described in one of the articles and produced a host of inquiries to the Association from all parts of the country. Secretary of Agriculture Ezra Benson was asked to respond to the inquiries which reflected the keen interest farmers had in farm bargaining. This resulted in the USDA's Farmer Cooperative Service (FCS) being charged with the responsibility of broadening the understanding of cooperative bargaining in agriculture. Joseph Knapp, the administrator of the FCS, held a meeting in Chicago in 1956 which was attended by representatives of bargaining associations from the West and the Midwest and officials from The American Farm Bureau Federation. There it was decided to sponsor annually a series of conferences on fruit and vegetable bargaining. The first conference was held in Chicago just before the annual

meeting of the National Council of Farmer Cooperatives in 1957. Most of the fruit and vegetable bargaining associations then in operation attended the first conference. These included:

From the West:

- The California Canning Peach Association**
- The California Canning Pear Association**
- The California Freestone Peach Association**
- The California Tomato Growers Association**
- The Oregon Washington Pea Growers Association**
- The Washington Oregon Canning Pear Association**
- The Washington Freestone Peach Association**
- The Utah State Canning Crop Association**

From the Midwest:

- South Cook County Tomato Growers (Ill.)**
- Great Lakes Cherry Producers Marketing Co-op**
- Cannery Growers, Inc. (Ohio)**
- Shiocton Bargaining Co-op (Wis.)**

From the East:

- N.Y. Canning Crop Growers Co-op**
- Western N.Y. Apple Growers Association**

From Canada:

- The Ontario Vegetable Growers Marketing Board**

Most of the associations represented at the conference had come into existence after the war. Two of the associations had been in business since the 1920's.

Sugarbeet growers in the United States have been involved in bargaining for terms since the passage of the sugar act in 1934. Their activities have, over the years, had a profound impact on the sugar industry. Beet sugar associations not only bargain with refiners, but provide a full line of services to their members.

National Farmers Organization

In 1955, a meeting of a group of Coming, Iowa, farmers in a local livestock auction barn to protest low prices led to the formation of the National Farmers Organization. NFO started out as a militant and aggressive farm organization. It rapidly established units in the States from Ohio to Idaho. The members signed 3-year contracts which provided that: Until such time as a contract was consummated with the processor for a commodity owned or controlled by the member under the terms of the agreement; or until a marketing procedure was

established for a commodity and ratified in accordance with the terms of the agreement, the members would be free to market their commodities as they chose. Ratification required a two-thirds vote of the members in a marketing area.

The rapid acceptance of NFO by many farmers was an indication of the keen interest that midwestern farmers had in improving their position. The start of the movement also concerned many of the older and well-established farm organizations. Their members wanted similar action. "Why," they would ask, "can't Farm Bureau, for example, do the same thing?" It was also quite evident from the beginning that many of the NFO members were producers who were not satisfied with the activities of existing organizations. When NFO moved into the milk-bargaining field, it served to stimulate action on the part of many dairy cooperatives whose members had signed NFO contracts. A signup involved paying dues, but the procedure for ratification and approval was such that a signup was, in effect a protest without necessarily being a commitment. A 1-year commodity participation agreement was offered to producers that left them free to market their production until such time as they voluntarily completed a supplemental agreement covering their production. Supplemental agreements were then made available to members for several commodities.

The withholding action on livestock in the fall of 1962 attracted much attention and shocked many people both in and out of agriculture. It served to disrupt for a short time the receipts of livestock at major centers. NFO executives described the action as a tactic to get attention, which it did. It was also designed to show the buyers of livestock that NFO had considerable strength and was an organization to be reckoned with. Whether or not the action had the long-term results hoped for, it did bring the movement to the forefront of national attention. A similar tactic was also employed by NFO members' dumping milk. Picket lines around processing plants and blockades were tactics frequently used by NFO to draw attention to its objectives. There were some in NFO who believed the tactics used in holding actions, strikes, milk dumping, and so forth, would cause the buyers to conclude that it would be cheaper to deal with NFO than to fight.

When NFO was organized, its principal purpose was to develop collective bargaining for all of American agriculture. Early appeals pointed out the dwindling political power of agriculture. NFO's operating structure was organized by congressional districts. At the outset, processors and handlers refused even to talk to the NFO repre-

sentatives. NFO believed that bargaining had to be carried out industrywide, and that all of the major commodities had to be worked on at the same time. It was necessary, they pointed out, to bring them into relative balance. Clearly, **NFO's** objectives were to build an organization representing farmers that would have real economic power. The words "power" and "force" were often used to describe their objectives. **Oren Lee Staley** in an address before the National Conference of Bargaining Cooperatives had this to say: "When you are talking about bargaining in American agriculture, you are talking about collective bargaining. You're talking about a strong economic force or forces that exist against a counteracting force that is being built to compete with the existing economic force."⁵

One of the strategies used by NFO was to move grain and livestock into new marketing patterns, and away from traditional markets. The theory is that when a large movement takes place, it leaves a vacuum and the existing buyers then compete more vigorously for the remaining supplies. This, NFO believes, moves the general level of prices up.

Despite the dedicated efforts of a good many farmers, NFO has not accomplished what it originally set out to do. It has gained recognition from some of the leading meatpackers, and it sells members' grain to major grain buyers, but the economic power and the successful use of force to deal on an industrywide basis has so far eluded its efforts. More and more, the pattern of conduct is along traditional lines.

One of the early supporters of the NFO movement was the United Automobile Workers, which provided much of the early orientation of the **NFO's** leaders. Many believe this reflected the lack of knowledge and understanding of the operation of the marketing system for agricultural commodities. Had NFO been successful in achieving its goal of economic power to bargain for the Nation's basic commodities on an industrywide basis it would have indeed become one of the most powerful forces in the United States. Its power over the Nation's food supplies would rival that of the Government.

NFO not only found itself operating in a hostile environment as far as buyers were concerned, but also it grew very rapidly. Trained personnel experienced in the business of marketing commodities were hard to find. The logistics of operating a multi-State bargaining association dealing in a number of crops were complex and demanding. The prob-

⁵12th National Conference of Bargaining Cooperatives, Los Angeles January 7-8, 1968.

lem was to get enough farmers to stand together for a long enough time to accomplish permanent gains.

There had been previous attempts to persuade farmers that if they could corner the market, they could demand a price. The Grange tried it in the 1890's; Aaron Sapiro and his associates tried it in the 1920's; NFO made a similar attempt. NFO is making a valiant effort, but so far it has not developed the power that its organizers had hoped for.

American Farm Bureau

The voting delegates at the 1958 annual meeting of the American Farm Bureau Federation (AFBF) adopted a policy resolution supporting the need for strengthening the bargaining position of producers of certain commodities. As a result, in 1960, AFBF established a marketing affiliate, The American Agricultural Marketing Association (AAMA). This meant that AFBF was going to give major emphasis to the business of bargaining. The commodities getting top attention were to be fruits and vegetables for processing, broilers, and livestock. This was a major move. Those familiar with Farm Bureau operations will appreciate the difficulty of bringing this action program into being. For a good many years, AFBF philosophy consisted of rigid support to the free market and the belief that market power for farmers could best be achieved by the use of the market price system. AFBF often found itself opposing prospective farm legislation, arguing that there should be less government involvement in handling farm surpluses, regulating the market and disposing of food and fiber through domestic and foreign programs. The market system was changing. The relative marketing strength of the American farmer compared to the buyers, processors, and handlers was heavily weighted toward the buyers. The farmer's marketing weakness was being exploited by some buyers. Tomato growers and their associations in Ohio and New Jersey were the victims of unfair and discriminatory practices by processors. Broiler operators in Southern States were frustrated in their efforts to negotiate prices and terms of sale with integrators. There was an inadequate legal base for farm bargaining. The bargaining efforts of the newly formed NFO, a potential competitor for the AFBF, provided a stimulus for action.

This major shift in AFBF policy made some compromises necessary. One of these was that membership in AAMA would be limited to those approved by State farm bureaus and AAMA. This meant that farm bureau bargaining would be fairly well restricted by State boundaries and to farm bureau members. Growers producing commodities in one

State and marketing their production to a company located in another State would have to form a separate organization in that State. This was bound to produce problems for such commodities as tomatoes, apples, and broilers. But, problems aside, it was a major and significant move by the Nation's largest farm organization. (Farm Bureau has since made some adjustments to enable inter-State commodities to deal through a single agency.) With Farm Bureau's backing, national legislation was passed in the form of the Agricultural Fair Practices Act (S-109) in 1967. A number of States then adopted legislation designed to help the producers bargain. The entry of AFBF and the newly formed NFO brought a great deal of attention to the need for, and the interest by, farmers to achieve some type of bargaining power.

AFBF sought advice from established organizations. Their approach was based on the experience of those organizations that had been in the business for a long period of time, and experience gained by Farm Bureau during efforts in the 1920's. It was a different approach than that undertaken by the NFO. Some excerpts from AFBF policy resolutions:

Farmers through their own organizations must develop the capacity to understand the market system and manage their production to gain the highest return from the market. Farm bureau seeks only equity in bargaining-not politically imposed compulsion. Reasonable people should be able to negotiate and come to terms without compulsion- provided there are reasonable rules to be followed. The essential requirement is good faith bargaining on the part of both producers and handlers.

Farm Bureau's new position came as a surprise to many of the Nation's leading food companies. The president of AFBF, Charles Shuman, visited many of the largest food companies to explain Farm Bureau's position and to assure them that this was not some wild idea sponsored by radicals. He explained that Farm Bureau wanted fair and honest treatment and hoped to be accepted by industry as a business partner. He pointed out that processors had much to gain from such a relationship and nothing to lose. His appearance before the National Canners Association met with a cool, almost hostile, reception, but the pleas were in vain. He was told over and over again that the companies would not recognize any association that undertook to come between the processor and its growers. Dr. Kenneth Hood, who headed the AAMA, told the National Conference of Bargaining Cooperatives meeting in Phoenix in January 1972:

When farmers have sought to organize bargaining associations or sought much needed bargaining legislation, they have often encountered fierce, unreasonable, and often high handed opposition from handlers, chambers of commerce. com-

modity interest organizations in which growers have membership, and even some of our college educators who are more in sympathy with handlers than farmers.

We recognize that farmers have products to sell that handlers need and under many circumstances cordial business-like dealings are possible. In other cases, however, especially where efforts are made to organize growers who have individual contracts with handlers, all hell breaks loose. When this happens, farmers often say, 'Agribusiness be damned.'

Farm Bureau finally found out who its friends weren't.

Hood told the conference that after a number of years of experience they had concluded that bargaining could do three things:

1. Get the full market price based on economic conditions which include supply, demand, carryover, production of competing products, availability of synthetics, business conditions, and other factors.
2. Earn more by supplying products that are worth more to buyers. This involves quality improvement, volume adjustment, time of delivery, production of grades and sizes, and other considerations that make the products worth more to the buyers.
3. Provide special services such as labor procurement, group purchasing of supplies, record keeping, mechanical harvesting, development of full supply premium markets, and the like.

The Michigan Farm Bureau was one of the strongest supporters of the new AFBF program. Michigan had a number of fruit and vegetable processing companies operating in the State. Growers' bargaining efforts had been resisted by the individual companies and their trade associations. Notwithstanding the passage of S-109, the efforts of the Michigan Agricultural Cooperative Marketing Association (**MACMA**-the Michigan Farm Bureau affiliate) met resistance at every turn. Many processors simply refused to recognize or to deal with the grower associations. In those cases where negotiations were carried out, processors saw to it that nonmembers benefited without having to pay any of the costs. MACMA had 10 years of experience in developing effective bargaining in Michigan. During that time, the attitudes of Michigan farmers were changing. They came to understand the problems of bargaining.

Delegates at the Michigan Farm Bureau Annual meeting in November 1971 adopted a statement of policy that placed the organization in full support of a comprehensive agricultural marketing and bargaining act at the State level. The significant part of the new policy was the majority rule concept. The statement said: "Based on the concept of majority rule, associations that demonstrate that they are supported by

fifty-one percent of the producers with fifty-one percent or more of a commodity grown in a production area should be authorized to represent and to be supported by all producers in the area in the pricing and marketing of the commodity.” This action led to the adoption of the Michigan Agricultural Marketing and Bargaining Act (P.A. 344), a new and advanced approach for farm bargaining. The following associations have been accredited under the Michigan State Statute: Michigan Asparagus Growers, Kraut Cabbage Growers, Michigan Potato Growers, Michigan Red Tart Cherry Growers, and Michigan Processing Apple Growers.

The processors, however, have not given up. The Michigan Act is being challenged in the courts. The Michigan Cannery and Freezers Association has brought suit against the Agricultural Marketing and Bargaining Board and Michigan Agricultural Cooperative Marketing Association, as have Ore-Ida Foods, Inc., and several others. The case brought by the Michigan Cannery and Freezers Association, filed in March 1974, deals with asparagus, and the focal point of the litigation is whether or not P.A. 344 is within the scope of the constitution of the State of Michigan. A final verdict is yet to be rendered.

Broilers and the AAMA

During the late 1950's and early 1960's, many broiler growers found themselves entirely dependent on commercial firms for contracts under which they could raise broilers. Many were attracted to the possibilities that existed for AAMA to support their interest in bargaining for prices and terms of sale. The broiler industry was continuing to go through a series of changes that altered the traditional market system for broilers. There was keen competition between the integrated broiler firms. This competition led to lower payments to producers, who in turn tried to offset the lower unit payments by expanding their production capacity. Producer profit margins continued to fall and the contract provisions became increasingly onerous. AAMA responded to the calls for help and in 1966 started its organizational activities. The effort resulted in widespread opposition from the integrators and their trade associations. The opposition arose despite the AAMA policy of not going into a new area until a grower survey was completed and a definite request from area growers had been received and a real need existed. AAMA officials also met with integrators to explain why the program was being initiated and what the objectives were. The organization effort met with practically no support from the integrators, and more open hostility

than neutrality. Even the Extension Service personnel in some States were reported to have made it clear that they were not on the side of the organizing efforts. AAMA's early efforts were devoted principally to education and information sessions. One of the objectives was to develop a model contract that could be adapted to individual company operations.

Despite the opposition and hostility, AAMA did meet and discuss its objectives with most of the integrators whose growers were organized. However, a pattern of contracting and being recognized as the bargaining agent for the producer continued to elude the organizers. The discussions and negotiations did, however, lead to many improvements in the contract terms being offered to growers. The threat of organization had a significant effect on the broiler industry. Perhaps the most important achievement was getting the USDA, through the Packers and Stockyards Administration, to issue regulations that required that all grow-out contracts be in writing and meet minimum standards. The National Broiler Council that fought the AAMA efforts adopted a code of ethics designed to eliminate a number of practices that were objectionable to growers. Many other notable advances and changes were brought about as a result of the efforts of AAMA. However, after 6 years of effort, the program was terminated. The reasons given were lack of grower support and too many free riders, insufficient support from some of the industry's leaders, lack of adequate financing, refusal on the part of leading integrators to bargain in good faith, and the continued hostility on the part of major factors in the industry.

The failure by AAMA to achieve its basic objective of organizing the broiler growers is understandable for, besides the reasons given, it involved a multi-State effort on a major agricultural commodity controlled by large processing and marketing firms. These firms had developed a system of grow-out contracts that had reduced the farmer's independence and control to a minimum. Bargaining was a threat to the system and induced maximum resistance. AAMA's efforts also commenced at a time when commodity bargaining on a widespread scale was just getting underway.

A Half Century of Progress

By the end of 1970, a great deal of progress had been made in agricultural bargaining. Since the end of World War I, the successes have far outweighed the failures. Most of the growth has taken place since 1950. The mergers and acquisitions in the food industry were a power-

ful stimulus in developing interest in the idea of farm bargaining. Further interest was stimulated because of the instability associated with Government price support programs. Farmers are becoming increasingly aware that they alone must deal with their economic problems through their own organizations. Most of the Nation's canning crops are subject to price negotiations between producers and processors. In some areas of the country, the practice has become institutionalized, particularly on the west coast. Much of the Nation's milk is subject to price negotiations carried out between co-ops and the bottlers and retailers. Most of the sugarbeets produced in the United States are subject to terms arrived at by negotiation between beet grower associations and the sugar companies. Most of the Nation's dried fruits are subject to negotiation concerning prices and terms of sale. Some fresh fruits and vegetables are influenced by the action of service associations. Participation contracts in which producers, through their own organizations, negotiate the **nonprice** terms of the contract are used in Florida for citrus. There are instances of some local success in the case of livestock and grains.

Those trends will not abate. As more of the Nation's food industries come into contact with constructive bargaining, the resistance will become less and perhaps the legitimate objectives of the American farmer will be realized. Legislative proposals designed to require good faith bargaining between the farmers and their customers will become law some day, and the inevitable growth of the concept of bargaining will include more commodities and more situations, each tailored to meet the special needs of a particular market.

Some measure of the growth of farm bargaining can be gained from the following table. What is significant is the volume of agricultural commodities affected by the bargaining effort. It is evidence of the fact that farmers are achieving a measure of influence in the pricing of their production. This table deals only with fruits and vegetables. There are many other activities both direct and indirect in which associations of farmers are influencing the prices and terms of sale for which no data are currently available.

The share of milk delivered by cooperatives to plants and dealers in 1973 amounted to 76 percent in the United States; this was up from 67 percent in 1964.⁶ The figures include milk handled through bargaining

⁶George C. Tucker, William J. Monroe, and James B. Roof. Marketing *Operations* of *Dairy Cooperatives*, FCS Research Report 38, U.S. Dept. Agr., Farmer Coop. Serv., 1977.

transactions, but no precise data are available to identify that amount. The growth that has taken place particularly in connection with regional bargaining associations would indicate that bargaining affects a major share of the milk handled by cooperatives in the United States.

Table 1 Selected cooperative statistics, noncitrus fruits and vegetables and sugarbeets, 1978

	Fruits ¹ and vegetables ²	Sugarbeets
Number of associations	30	4 ³
Number of members	15,723	11,625
Total dollar volume subject to negotiation	858,787,902	487,610,250 ⁴
Total dollar volume processed	2,888,770,362	669,981,200
Percentage of processed volume negotiated	29.73	72.78

¹Does not include cranberries, strawberries, and citrus fruits

²Includes 13 major vegetables for processing and potatoes

³Includes the American Sugarbeet Growers Association, a trade association having nine affiliated bargaining associations and three independent associations

⁴Dollar volume represents value of sugarbeets negotiated by members of sugarbeet bargaining associations

IV. HOW FARM BARGAINING WORKS

Opportunities and Limitations

Farm bargaining can best be described as a rational means of determining price and nonprice terms of sale of a farm commodity. Farm bargaining is an orderly process and procedure for determining terms of trade; it is not a game. It is a means whereby farmers can achieve equity. Farm bargaining works. It has a proven record of performance, particularly in processing crops and for fluid milk.

Farm bargaining is a viable alternative to the so-called free market. There is an inequity in today's market brought on by the existence of very few buyers, who frequently do not compete for supplies in certain production areas, and many sellers, some of whom are locked into production of certain commodities because of capital investment, poor alternative uses for the land, or inability to enter into the production of other crops or commodities.

Farm bargaining has not been successful as a device to achieve prices for commodities that are greater than may be justified by economic and supply conditions. Many failures in bargaining efforts can be traced to heightened expectations by farmers for unreasonable prices or terms of sale. Bargaining cannot overcome the law of supply and demand, nor can it maintain profitable production for a commodity that has lost favor with consumers, is produced in oversupply, or is no longer able to compete on economic terms with other areas or other commodities. Bargaining can and does achieve the highest prices that can be justified by economic and market conditions.

Farm bargaining seems to work best when dealing with a single commodity. Even when such an integrated organization as the Michigan Agricultural Cooperative Marketing Association Inc. carries on the bargaining process, it is along commodity lines. Each of the commodity committees and each division negotiates and bargains independently of the other divisions in MACMA. NFO also breaks down its pricing activities by commodity.

Farm bargaining has definite limitations. The constraints on price include the need to negotiate prices and terms that will continue to maintain the interest and profit of the handler or processor. Large integrated companies often operate with big-volume, low-cost plants. If bargaining results in lost profit opportunities that cannot be recaptured from the marketplace, such companies will close a plant or terminate an operation, causing growers in the area to lose a market. The handler/processor's economic situation must be understood for bargaining to be successful.

Prices must be maintained at a level that will continue to move production to the trade and to the consumer. Low prices can often be overcome in a gradual manner, increasing the price year after year; sudden price changes often meet resistance with the trade, and valuable time can be lost. This kind of price strategy, however, is not easy to put into effect. Excessive supplies in any one year can frustrate such plans as can a shortage of supplies, when handlers and processors bid prices up in order to maintain market shares or brand position. Experience and knowledge of the market must be relied upon to make good judgments concerning the maintenance of prices that will keep the product moving to the market.

The relationships between competing commodities are important. At the Peach Association we learned that if canned peaches were consistently more costly than canned pineapple, for example, buyers would switch to pineapple.

When pricing a commodity it is well to keep in mind that all that anyone concerned with the commodity wants, is a fair advantage. This is true of the retailer, the distributor, the processor, and the grower. A fair advantage can be a larger share of the market, better quality, lower costs, or lower or better prices, as the case may be. Everyone concerned will press to obtain that fair advantage. That is why it is so important for the bargaining association to have superior knowledge of the market and the needs of those who are involved with the commodity.

There are also legal constraints that a bargaining association faces. The principal one is the obligation on the part of the Secretary of Agri-

culture to prevent undue price enhancement under the terms of the Capper-Volstead act. Buyers and others will seek to have this restraint applied if they believe that a bargaining association has unduly enhanced the price.

Common Characteristics

Farm bargaining associations have a number of common characteristics.

1. Their primary purpose is to achieve fair and reasonable prices and terms of sale for their members' production.
2. They have a few highly skilled employees whose entire attention is focused on developing market intelligence, communicating with members and other growers, maintaining ongoing relations with the buyers and the trade, and taking whatever actions are necessary to improve the market for the commodity.
3. Capital investment in buildings, equipment, or storage facilities, except in the case of milk bargaining, is at a minimum. The need for providing transport and diversion facilities has caused some of the milk bargaining associations to make capital investments in transport and manufacturing facilities.

Philosophy

The philosophy of a typical farm bargaining association is rather simply stated: To achieve the highest prices and terms of sale that can be justified by the economics of supply, demand, and market conditions. Such a philosophy requires a certain degree of sophistication. However, if the goal of a new association is to "get even for past actions," or to impose unreasonable and unfair sanctions on an industry, the effort is bound to fail. Successful farm bargaining is based on an association's realistic appraisal of its power, its opportunities, and its limitations.

Bargaining Power

The term "bargaining power" is a relative term. Buyers of farm commodities are in a position to maximize power when they buy from many different sources. The buyer can play one seller off against another. The buyer who is large and dominant can control market intelligence and knowledge to gain an advantage over a competitor. Buyers can cover up inefficiencies in manufacturing and marketing by the manner in which they buy raw material. A farm bargaining association can severely

restrict such buying and bargaining power on the part of the buyer; the principal gain that has been made as a result of farm bargaining has been to deny such bargaining power to the buyer and bring some equity to the transaction. A farm bargaining association tends to equalize bargaining power by denying to buyers the natural advantages that have been theirs by default. This can best be done when the association is able to get a firm grasp on market intelligence and information. "Bargaining power" can often be equated with superior knowledge of the market.

The Individual Farmer's Weaknesses

An individual farmer's principal weakness in bargaining falls into five categories:

Relative Size and Assets. Few farmers who market their production to a commercial processor or handler can match the buyer's economic power and size. Despite the growth in the size of individual farms, few can match the power of the buyer except when joining with others to achieve a measure of equity. The capital investment per unit of production is often greater for farmers than for buyers. The risks of loss from weather and pests are much greater for the farmers than for the buyers. Today's farmers do not have the flexibility to shift from crop to crop. They often have sizable investments in machinery and equipment designed to handle the crops they grow. Farmers who produce perennial crops have no flexibility. They are price takers, not price makers. They are often in a position of having but one or two buyers for their production; rarely do several buyers compete for what they produce.

On the other hand, buyers of farm commodities are larger and fewer in number than a few years ago. Large national and international food companies tend to dominate prices and terms of sale for the commodities they buy. Today, company representatives work "by the book." The close working relationship that used to exist between the owner of a food company and the grower-supplier has almost disappeared. Company buyers don't want to "make waves" and internal operations are often defensive in character. It is a system with which an individual grower is not prepared to deal except through membership in a bargaining association or an operating cooperative.

Control of Timing. When to name or offer a price is always of great importance. On annual crops, for example, a grower eager to **make** plans is easy prey for a buyer who makes an offer at the last moment. A grower who speculates on a sale after planting is often at the buyer's

mercy at harvesttime. A skillful buyer has good knowledge as to alternative crop values and the total supply of uncontracted tonnage. Occasionally, weather damage can change the supply situation, giving the grower an advantage. When that happens, it is the competition between buyers that jacks up the price, not the bargaining power of the individual farmer.

A bargaining association can influence the timing for price negotiations. When buyers negotiate prices with an association, the need to play games with timing in order to gain an advantage or reduce costs by exploiting their buying power is no longer as important. The association cannot only influence the timing of price negotiations for the mutual advantage of both buyer and seller, but can also negotiate terms that will take into account the added value of the commodity if supplies are short. Several west coast associations have negotiated sliding scale prices that provide for various prices adjusted to final volume of a commodity produced.

Market Intelligence. Few individual farmers have the time to analyze the market for their production. Generally, they rely on the buyer for their market intelligence. Those farmers who do have the time to study their market find that the basic information they need to make rational marketing decisions is either not available, incomplete, or inaccurate. A major function of a bargaining association is to furnish its members with timely, accurate market intelligence. Skillful buyers base their buying decisions on superior market information. Most large companies operate with profit centers and budget their purchases to accommodate their profit objectives. These profit projections are often arrived at months before a crop is planted or even before the preceding harvest is over. Working against a profit plan often puts a grower in an impossible position. A bargaining association can undertake the negotiations at a time that coincides with the time that purchase plans are made in the corporation.

Having a Home. Farmers' need for a home for their production puts them at a disadvantage in bargaining. As the competition among buyers decreases because of fewer and fewer buyers, the farmers' disadvantage increases. The volume that farmers produce, the terms of sale, the quality of the seed, the method of delivery, the means for determining quality, delivery quotas, time of delivery, and method of harvest are all significant factors, in addition to price, that influence the farmers' net return. If farmers must have a market for their production, particularly if there are but one or two buyers, they are forced to

compromise either on terms of sale, or price, or both. Ideally, farmers would like to operate like buyers, and make a marketing plan that would maximize the use of their land, their skills, and their investments.

A farm bargaining association can help farmers to collectively make a market plan to move the right volume to the market, thus improving efficiency and preventing waste.

Finalizing a Sale. Buyers often buy in such a manner as to make maximum use of the grower's resources in financing the crop. Stories abound about delays in settling prices with growers. California growers of wine grapes, for example, once had to wait 6 months for a final settlement. Citrus producers often find themselves receiving final payments after the crop has been sold in the retail stores. A bargaining association can conserve and protect the farmers' resources.

Growth in Spite of Fears

Farm bargaining has grown in spite of the fears and inherent disadvantages of farmers. It was farmers' fear of discrimination that caused the Congress to pass the Agricultural Fair Practices Act of 1967 against the powerful opposition of processors and handlers. It is significant that there was a major growth of farm bargaining associations before the act was passed. Processors and handlers, fearful of losing a fair advantage, employed a number of tactics to discourage further growth. A major tactic was to discriminate against those producers who joined an association. Discrimination took place in the form of terminating contracts, offering less favorable terms to association members, blacklisting association members, refusing to deal with association members, and offering financial incentives to nonmembers.

The fears and apprehensions of farmers contemplating joining a farm bargaining association are very real. Buyers, even with the Agricultural Fair Practices Act in effect, continue to exploit these fears. The farmers' principal fear is that of losing a market for their production, particularly when the market is limited to a few large buyers. Buyers can impose disciplines in very subtle ways without refusing to deal with a farmer who is thinking of joining a bargaining association. Such tactics as reducing acreage, imposing more restrictive grade standards, bypassing acreage, delaying decisions, holding up payments, bringing in products from other areas, and starting rumors are all calculated to send signals to farmers that they should refrain from joining a bargaining association.

For those who have had the courage to make the break, the rewards have been worthwhile. Farmers have learned that the threats and intimidation tactics of the buyer were part of a game and when the bargaining association was formed, the buyer continued to do business. The most difficult decision is the one faced by a farmer who has enjoyed special treatment in the form of bonuses or special handling concessions. Such advantages are hard to give up unless there is a strong conviction that the bargaining association can bring about better terms and prices. The fears and apprehensions of farmers who are thinking of joining an association can only be overcome when they believe in and understand the goals and the philosophy of the association.

Association Goals

Most associations are concerned with five basic goals.

Price Enhancement. The prices that farmers receive generally fit into three categories: (1) A good price is usually made when supplies are short, demand is good, and there is competition among the buyers for the farmers' production. Good prices are what farmers remember and like to talk about, but seldom receive. (2) An acceptable price is one above the cost of production and is sufficiently high to keep the complaints of farmers at an acceptable level. (3) A poor price is generally one that occurs when there are poor alternative crops or markets, when supplies are greater than demand or when the buyer is losing money. A poor price is often the forerunner of a bargaining association. For most farmers, price enhancement means achieving a reasonable price, which is the highest price that the economic conditions of supply, demand, and market factors can justify.

Price Stability. Farmers want a price mechanism that will give enough price stability to allow them to make systematic financial plans.

Coordination. Farmers are looking for a more systematic way of relating farm production to society's needs. Both the adjustment of total supply to demand at a stable price and the efficient organization of farmers' production and marketing methods to meet demands are involved. A farm bargaining association provides a group mechanism for coordinating farm production through planning that is vastly superior to the alternative of government planning and controls over production decisions. Farm bargaining associations have effectively worked with marketing orders and agreements as a self-help vehicle to achieve coordination and orderly marketing conditions. This is particularly true in California where both State and Federal marketing orders have been

used. Advertising and promotion programs, research, third party grading, set-asides, surplus programs, all have been used as a means of obtaining better distribution, better information, and better quality. The California experience, however, has found that the State and Federal administrators have been insistent upon operating the programs with major consideration for the public interest.

Nonprice Terms of Sale. Farmers want a say about nonprice terms of sale. They are faced with an increase in the practice of specification buying and delivery terms to accommodate the buyer's needs. Too often, nonprice terms that proved to be irritating, costly, and unfair were mandated by buyers. A farm bargaining association can regularize and improve nonprice terms of sale and obtain a value for the added costs that may be involved.

A Sense of Participation in Shaping Destiny. Many farmers are frustrated because they believe they have little or no influence over the market for their production. They find it difficult to make intelligent plans for the future. They are concerned over the increased investment required to operate a modern farm. They often feel manipulated and used. Farmers traditionally have been surrounded by uncertainty from the day of planting to the time of sale of their crops. A farm bargaining association provides a means for farmers to participate more directly in shaping their future.

V. TYPES OF BARGAINING ASSOCIATIONS

The farm bargaining associations whose major objective is to improve the economic climate of the producers of a particular commodity, be it price, terms of sale, or better markets, generally fall into five categories.

Marketing Type

The principal identifying characteristic of this type of association is that it takes title to the production of its members and negotiates the prices and terms of sale. Such an association may operate one or more pools, divert products to alternate uses, and average out returns to the members of the pool. There may be provision for retains to be used for equalization purposes. Retains may also be provided to carry out marketing activities that are beneficial to the entire pool.

A typical example of this type of association is the California Canning Peach Association. Its membership agreement passes title of the members' production to the Association. Failure to do so imposes a penalty on the member. Sale of the tonnage is made by the Association to its cannery customers. Members express a preference as to which cannery their production should be sold to, but the contract of sale is made between the Association and the cannery. For years the Association operated a single pool and members were guaranteed a home for their production. To back up this assurance, a revolving fund which retained 10 percent of the total value of the annual pool was withheld. Growers whose fruit was unsold would be compensated from the 10 percent money retained. Fruit remained unsold in only a few years, but the system served to overcome the fear of growers. Later, the Association

established additional pools. One pool included all of the production for members whose fruit was contracted by a certain date. A second pool was made up of tonnage that was uncontracted prior to harvest. Growers received the average returns from each pool. The multiple pool system was a means of separating those growers who, by virtue of variety, location, and quality, always had a ready market for their production from those who may have been marginal producers or whose orchards were in locations that suffered more from weather damage, and thus were not as reliable. The Association for many years supported a marketing order that would surplus by means of a "greendrop" the excess production of any year. The Association now has reduced its annual retain to 1 percent of gross value to maintain a \$1 million revolving fund which may be used to aid in marketing any of its fruit. The fund has been used to finance a custom pack and export sales. The fund is maintained at a \$1 million level with the excess revolved out to the members each season.

Milk bargaining associations have similar arrangements for pooling production and diverting excess milk to manufactured products.

A marketing type association enjoys greater flexibility and can develop greater bargaining power than any of the other types of bargaining associations. It also imposes greater disciplines on the members and requires maximum skills of management and strong dedicated grower leadership.

Marketing type associations tend to become institutionalized more rapidly than any of the other types of bargaining associations. This is primarily due to the responsibilities imposed on the association to market all of its members' production. The association also has the opportunity to become a reliable source of quality production for the buyers.

Bargaining or Sales Agent

Many bargaining associations operate under variations of the exclusive bargaining agent arrangement. Membership agreements generally provide that, as the exclusive bargaining or selling agent, the association will bargain or negotiate prices and terms of sale on behalf of the members. The members agree that they will not otherwise sell or contract for the sale of their production except under such minimum terms and conditions as are fixed or established or approved by the association. In most cases, liquidated damages are provided for, should the members market the production they have under contract with the

association at prices or terms that are less than those established by the association. The association may fix the minimum price and terms by prescribing or approving the form and substance of the purchase and sales agreement to be entered into between the member and the buyer.

Under this type of organization, members are restricted with respect to their ability to negotiate or contract to sell their crops except under prices and terms of contract approved by the association. Under this plan of operation, the farm bargaining association negotiates prices and terms of sale of contracts between the member and the buyer. The traditional means of transferring title remains unchanged. The farmer and the buyer maintain contact, and only the essentials of price and terms are subject to modification. Such an association does not have quite the flexibility that a marketing-type association has. At the same time, the member retains a certain amount of freedom in being able to choose and maintain contact with the buyer.

Typical of this type of organization are the California Tomato Growers Association and the Michigan Agricultural Cooperative Marketing Association.

A unique modification of this method was initiated by the California Canning Peach Association. Cannery had, over the years, entered into long-term open-price contracts with certain growers with desirable lots of fruit. Such growers were not able to join the Association because their fruit was already fully contracted. The Association then developed an agency agreement under which the Association was designated as the grower's agent for purposes of negotiating the price provisions of the contract. The concept presented the processors with a situation in which they negotiated with the Association for purchase of its fruit, so they could hardly afford to refuse to negotiate for price for their contract growers' fruit. The arrangement provided a means for the Association to increase its share of the processor's total supplies subject to negotiation. Under the arrangement, growers agreed to become regular members when their term contracts expired.

Exclusive Representative in Collective Bargaining

This term describes the NFO arrangement. The National Farmers Organization operates through National NFO Commodity Departments that assist marketing-area marketing committees with respect to negotiations and coordination. Bargaining is done by elected Marketing Area Bargaining Committees who are elected in each county for each commodity. However, the NFO membership contract specifically

provides that NFO is a “service organization, bargaining for its members who have signed marketing contracts.”

The NFO contract for dairy producers authorizes NFO to act as “exclusive agent to enter into contracts for the sale of all milk or dairy products.” Payments and collections for the sale of milk are handled through an NFO Dairy Custodial Account. The NFO contract of sale for grain provides that, “the member and NFO agree that the NFO as bargaining agent for its members has entered into or will make its best efforts to enter into a contract and has agreed to sell to NFO negotiated buyers. .”

The sales contract for slaughter livestock and wool provides that the “member and NFO agree that NFO on behalf of its members has entered into or will make its best efforts to enter into a contract and has agreed to sell to NFO negotiated buyers. .”

Each of the departments in NFO has a bargainer who contacts the trade and negotiates the best prices possible. Members’ production is often combined with others to enable block sales at more desirable terms and prices.

Market Service Association

A service-type association generally is involved with providing market supply and demand data to its members on a timely basis. Service organizations are frequently the forerunner of a full-fledged bargaining association. The service organization does not engage in direct bargaining with buyers, but will maintain contacts with the trade to keep up to date with marketing and buying activities.

A typical example is the manner in which the California Tomato Growers Association (CTGA) used to operate. For many years it operated as a service agency. It assisted its members in connection with cultural and farming problems, particularly as they related to the procurement of harvest labor. The Association became a reliable source of information for processor buying activities, keeping members informed on prices and terms of sale being offered by processors. It analyzed market conditions and then adopted a series of recommended prices to enable members to seek a common price objective in their individual negotiations. The Association took a leadership role in trying to establish uniform grade standards under State of California Regulations. It also represented its members in connection with legislative matters that affected the industry. It provided the leadership that led to a proposal for a State Marketing Order. In some of its activities it worked

with processors and buyers, and in others, the Association met stern opposition from the State tomato canneries. Each time the Association was frustrated in reaching a reasonable grower objective, particularly with regard to prices and grade standards, there was increased interest by growers to form a bargaining association.

In 1973, the tomato association finally announced its intention to enter price bargaining. A 2-year membership agreement was offered to the members that provided that, "this contract shall become operative only if the members representing 65 percent of the acres planted to processing tomatoes in the previous crop year in the State of California have signed and delivered to the Association contracts similar to this one."

The requisite contracts were signed and CTGA is a major factor in commodity bargaining today. As a bargaining association it has been able to initiate a number of improvements in quality standards and delivery terms that have made the tomato industry a better one for growers and processors alike.

There are some other service associations organized in California which may be forerunners of full-fledged bargaining associations in the future. Typical of these are California Citrus Mutual, California Association of Winegrape Growers, and the Olive Growers Council of California.

A new and innovative type of service organization is the Central California Lettuce Producers Co-operative, which has as its members most of the growers and shippers of lettuce in the Salinas/Watsonville area of California. It was organized in 1972 to engage in any activity in connection with the production, marketing, and selling of the farm products of its members. The members maintain their own field and sales organization. When the organization was formed in 1972, there was no orderly marketing and there was little if any exchange of information among the various shipping and growing organizations. The lettuce shippers had experienced a whole series of marketing and information problems that plagued the industry. Many trade practices were in effect that created a disorderly marketing situation and actually served to impede the sale of lettuce.

As a result of the organization of this service type of cooperative, the grower-shippers have been able to implement a number of improved practices that have brought some order into a formerly disorganized industry. Some of these improvements were:

1. The payment of a 10 percent brokerage fee to the representatives of eastern chainstores and buyers was eliminated.
2. Market decline "protections" that involved the practice of shipping f.o.b. acceptance arrival were eliminated.
3. The practice of shipping unsold cars or rollers was abandoned.
4. Weekly lists of outstanding accounts receivable were prepared on the basis of the SO-, 60-, and go-day accounts being carried by each member.
5. Weekly estimates of production were prepared. Estimates of acreage, yield, volume, and daily shipments were made by each member a week in advance.
6. Based on the information received, the Association would establish a floor price and a ceiling price per carton of lettuce.

It is noteworthy that the Association has attempted to set the floor price for the sale of a carton of lettuce at, or just below the production costs, depending on volume. This would mean that members could not sell their lettuce for less than the floor price. Ceiling prices have often been set at prices below the going market price, on the theory that this would establish a good market for a longer period of time.

The Association does not bargain with buyers and does not harvest or handle lettuce in its own name. It is not intended to be used as a profit-making organization, which the members believe would be self-defeating because it would lead to increased production.

When the Association was first organized, it was immediately met by a series of legal challenges. First came a complaint issued by the Federal Trade Commission alleging that the cooperative violated Section 5 of the Federal Trade Commission Act through practice of the cooperative's members illegally agreeing among themselves on the price for which they would sell the lettuce they produced. In addition, a northern California supermarket brought a complaint before the U.S. district court in northern California alleging that the cooperative conspired to increase the price of lettuce. The Federal Trade Commission in July 1977 voted five to one in favor of the Central California Lettuce Producers Cooperative, saying that the Capper-Volstead Act applied squarely in this case. The Commission further said that, in view of its decision under the Capper-Volstead Act, it saw no need to consider whether Section 6 of the Clayton Act or the Cooperative Marketing Act of 1926 provided independent authorization for the cooperative's activities.

The district court also ruled in favor of Central. The United States Supreme Court in January 1979 denied a request for a writ of certiorari and thus indirectly affirmed the opinion of the ninth circuit court of appeals which had ruled in favor of Central. In the judge's decision in the district court, he said, "Even if Central is engaged in no other collective marketing activity, mere price fixing is clearly within the ambit of the statutory protection. Accordingly, I hold that Central's activities are protected from the antitrust attack by both the Capper-Volstead Act and Section 6 of the Clayton Act because it is doing no more than carrying out legitimate objectives of an agricultural organization."

The type of cooperative farm bargaining association is determined by the needs in each particular case and Central is a good example. It is very difficult to change the marketing practices that have grown up over a period of years. There may be much fine-tuning or modest change that can be accomplished with a bargaining association, but the best solution is to work with the traditional patterns and remove or change those things that cause the system to work against the best interests of the producer.

Exclusive Agency Bargaining

In 1972, the Michigan legislature adopted legislation entitled "Agricultural Marketing & Bargaining Act, Act No. 344, Public Acts of 1972." Under this legislation farmers for the first time found their bargaining efforts supported by a government agency taking an active role in implementing collective bargaining by farmers.

The Michigan legislation provided four basic elements. It established a board that would: (1) Provide a mechanism that would define a bargaining unit, (2) determine recognition of a bargaining cooperative to represent all growers in the bargaining unit, (3) provide for mediation and arbitration, and (4) enforce a set of rules related to fair bargaining and equity treatment.

The Michigan Agricultural Marketing and Bargaining Board consists of five individuals appointed by the governor with the advice and consent of the Senate. The Board has the authority to promulgate the rules necessary to administer the act.

In order to qualify, an association must seek accreditation by filing a written request with the board and by submitting evidence that it: (1) meets the requirements of the Capper-Volstead Act, (2) has an acceptable set of bylaws that include democratic election of a bargaining committee for producers within the bargaining unit, (3) has valid, signed

contracts representing more than half of the farmers and half of the production of the commodity defined within the bargaining unit.

The board makes a decision as to whether or not a proposed bargaining unit, a geographical territory, is appropriate. The law requires the board to define the largest bargaining unit possible consistent with a set of criteria that includes: (1) the ability to bargain effectively, (2) no conflicts of interest among members, (3) wishes of growers, and (4) past marketing patterns.

Good faith bargaining is required. Rules governing fair practices are an important aspect of the legislation. Handlers are not allowed to interfere with the efforts to organize for collective bargaining, nor are associations of farmers allowed to use unfair tactics in organizing for bargaining or to discriminate in treatment among farmers in the bargaining unit. The non-discrimination provision becomes especially important in pooling arrangements and supply management practices within an association. Fees charged by the association to nonmembers must be related to cost of services provided and are limited by board rule. All producers within a bargaining unit must be allowed to join the association if they choose to do so.

The Michigan legislation is plowing new ground in the field of cooperative farm bargaining. The concept addresses a number of problems that associations have had to deal with. It removes a number of fears of producers when they consider the organization of a farm bargaining association, such as coercion, discrimination, intimidation, and refusing to bargain in good faith. It provides for a specified period during which negotiations must take place, thus removing the advantage of choosing time for negotiation from the buyer: also, it deals with impasse problems by providing for mediation or arbitration. It addresses the "free rider" problem by requiring nonmembers of the accredited bargaining association to pay their proportionate share of the costs of providing the bargaining services.

Processors and handlers are challenging the legislation in the courts. The original legislation was destined to expire in September 1976. The act was made permanent by the Michigan legislature in 1976.

VI. WHY AND HOW BARGAINING ASSOCIATIONS ARE ORGANIZED

Bargaining associations come into existence whenever the growers of a commodity experience prices that are below cost of production or terms of trade that are costly, nonproductive, and irritating. Often, buyers exhibit patronizing and arrogant attitudes that will lead growers to seek ways of dealing with such attitudes. An examination of some of the reasons why growers organize may explain the triggering points that lead to the formation of bargaining associations.

Below Cost of Production Prices

The buying power of the buyers of agricultural commodities is often so great that the temptation to take advantage of that position causes prices to be named that not only too low, but patently unfair. Modern farmers are keenly aware when an unfair price is imposed on them. This imposition is often made by the representative of a large and powerful corporation and in a manner that stimulates a call for action.

The food industry is a highly competitive one. Raw products make up a major cost of the finished product. Whenever a large buying company establishes a price for its commodity requirements, that company literally forces its competitors to meet its prices. Thus, one buyer can often establish below cost of production prices for agricultural commodities. Every bargaining association has heard buyers say that they cannot be placed in a position where a competitor can buy at lower prices. Thus one large company can, by its buying tactics, completely dominate a commodity price.

Modern management techniques also tend to depress prices for farm commodities. Big corporations work with profit centers in order to stimulate good management practices. Profit centers are not only highly rewarding to the individual managers in monetary terms, but also are a common measurement used for company advancement. The temptation to use low prices of raw materials to achieve corporate goals is a common practice. A farm bargaining association provides a means to meet this challenge. Farmers themselves frequently contribute to lowered prices. This is particularly true with respect to commodities that compete with other commodities for land use. Vegetable and field crops, for example, may compete with each other. Potato growers with lands that can grow grains or sugarbeets find that their prices for processing potatoes will be influenced to a major degree by the prices being offered for grains and sugarbeets. While the market for processed potatoes may be very profitable, justifying a good price for the raw product, prices are often dictated by the prices of competing crops, and the resulting willingness of growers in the region to seek potato-growing contracts if they are more profitable.

Adverse Terms of Trade

Modern agricultural processing plants and handling operations are moving more and more to specification buying. As labor costs move up, it is often much easier to transfer some element of the assembly line cost back to the producer. Environmental regulations are also a factor in transferring costs to the producer. Having the exact quantity of raw material delivered at the right time can have an enormous impact on processing and handling costs. Modern computer technology pinpoints the areas in which savings can be realized. In the absence of a bargaining association, these needs are often expressed by imposing delivery restrictions and grade standards on producers that can be costly, require additional capital investment, and be irritating. A bargaining association can smooth the transition and play a constructive role in helping the buyers achieve their goals. Naturally, there is a value that should be related to such changes, and determining such a value is a legitimate part of the bargaining process.

The Arrogant Buyer

Many food companies, whose executives either don't understand the farmer's problems or have a biased view toward them, believe that the best buyers and field representatives come from the ranks of the farmers

themselves. But such buyers have often failed at the business of farming and can, by their manner, antagonize their sellers. There are, of course some outstanding buyers working for food companies and they are highly respected; I wish there were more of that caliber. Few, if any, top executives in the food industry come from the ranks of the procurement departments. This downgrading of the food company buyer, intended or not, has been a factor in stimulating farmers to take action in forming a bargaining association. An arrogant, patronizing buyer attempting to impose delivery restrictions on a commodity at an unfair price is the greatest impetus to the formation of a bargaining association.

Farmers Must Take the Initiative

When farmers begin to realize that they themselves must take the initiative to improve their economic situation, they are ready to move to a bargaining association. Government programs that provided a sense of security in earlier years no longer present a satisfactory reliable alternative. Bargaining is not a perfect solution to the farmer's problem. To be successful requires discipline. Farmers must yield some of their independence to group action. They must understand the need for solidarity.

Advantages to Food Companies

Most bargaining associations have been born out of frustration. Perhaps the time has come for farm bargaining associations to be born out of careful planning. Many food companies that have dealt with farm bargaining associations find there are some advantages to themselves in dealing with a well-organized and knowledgeable group of farmers. Corporations are used to dealing with organized groups among their employees and within the various trade associations. Such a company might welcome a strong well-organized ally to deal with government regulations affecting a commodity. Reducing costs through better coordination in the handling of raw materials can often be quickly and effectively achieved in cooperation with a bargaining association. Evidence of a change in attitudes is beginning to show up in talks made by food executives. Charles E. Bailey, an executive of H.J. Heinz Company, addressing the 23d National Bargaining Conference, told his audience, "We feel and recognize that agricultural bargaining cooperatives are here to stay. In recent years some of the cooperatives bargaining for price and contract terms have developed credibility and integrity which certainly is a credit to the agricultural community."

William Smith, former head of raw product procurement for Hunt-Wesson Foods, told the managers of the Pacific Coast Bargaining Association Meeting in December 1978 in San Diego that, "I think every successful bargaining association should strive to eliminate the emotional issues and the attitude to look upon each other as adversaries. Sellers and buyers need each other's support too much to spend very much of their time fighting each other."

There are many instances of successful and mutually rewarding results from cooperative bargaining. The California Canning Peach Association has been bargaining and negotiating prices with major food companies for over 50 years. The California Canning Pear Association has been negotiating for over 25 years, and there are many others involved with processing fruits and vegetables and fluid milk that have negotiated and bargained successfully for many years. There are however problems encountered in dealing with buyers by the best of the associations from time to time. A critical problem often arises when the decisionmaking executive in the food company leaves too much authority in the hands of subordinates. Subordinates, if influenced to a major degree by the company's profit plan or by a fear of their superiors, may be unable to carry on reasonable negotiations, and sometimes may embarrass their chief executives. This situation is often well known and recognized by the bargaining association and its members and does not contribute to satisfactory results for either side.

Four Essential Considerations

Successful farm bargaining associations have come into existence when certain basic considerations were present. Four essential considerations should be met before an attempt to organize is made.

Need. There must be a widespread need for a bargaining association and a genuine interest on the part of the producers of the commodity. A very careful judgment should be made, before the organizing effort commences, that the necessary degree of interest is at hand. There are a number of ways to determine this, such as by a sample survey of producers, by the turnout and enthusiasm expressed at information meetings, and by the impressions held by suppliers and dealers who regularly contact the farmers. An objective sample survey is the best vehicle to obtain an accurate evaluation.

Understanding. The farmers need to understand what bargaining can and cannot accomplish. One of the worst mistakes is to oversell the concept and cause the potential members to expect more than can be

delivered. Understanding can be achieved by bringing in people experienced in the business who can accurately describe the parameters within which farm bargaining can effectively operate. It must be understood that successful farm bargaining involves certain disciplines and may mean giving up certain freedoms of choice in marketing. There is a commitment involved on the part of every member of the bargaining association if it is to succeed. An economic analysis should be made to determine what advantage can be expected to accrue to those growers who will join a bargaining association. Such advantages include price enhancement, improved terms of sale, and the potential market growth.

Leadership. The leadership must include most of the recognized and respected leaders in the area. These must be persons of good judgment and sufficient dedication to see the project through. Those who frame their arguments in highly emotional terms should be encouraged to support the idea, but not to assume a leadership role. Price is an emotional issue with many producers, and yet price enhancement is seldom achieved through an emotional appeal. Beware of those who would use the bargaining association for their own ends. Such ambitions arouse suspicions among the members and a lack of respect among buyers. The quality of the leadership is a central factor in successful organizing and bargaining.

Allies. Organizing a new association requires the assistance and good will of many allies. The existing farm organizations, such as the Farm Bureau, Grange, and Farmers Union, can be valuable allies or sponsors of the new organizations. If prices have been poor, suppliers, financial institutions, implement dealers, and others who do business with the producer of the commodity can be enlisted for support. Care should be taken not to associate with an organization that is controversial and will contribute its enemies as well as its supporters.

If these four essential considerations are met, organizational efforts can proceed.

A Typical Organizing Effort

A typical organizing effort would involve establishing the following:

The Sponsoring Committee. A committee made up of responsible farmers and representatives of interested organizations should be the sponsors. In that role, they will develop the initial organizing plans. The sponsors will often determine the type of organization. A contact for the media should be named. Starting a bargaining association is news and

will attract attention from local and regional media. Irresponsible or misinformed statements in the early stages of development can often cause future problems. The media should have a knowledgeable and responsible contact who knows the issues. Plans for developing initial seed money must be adopted. Sources of initial seed money include contributions from the sponsors or leading farmers, contributions from allies, or loans from lending institutions. Plans should be made for initial information meetings and the method of selecting an organizing committee. The organizing committee will have the responsibility of developing the plan of organization, developing a form of membership agreement, and going through the legal steps of incorporating the association. The members of the organizing committee will frequently make up the initial board of directors, so the manner of selection of these people is important. Every effort should be made to make sure that the members of the organizing committee are representative of the potential membership.

The *Organizing* Committee. The organizing committee members must supply the initial leadership for the new organization. They would be well advised to employ as a consultant a person with experience in bargaining. They will need the services of an attorney with a knowledge of cooperative law, antitrust work, and some experience in working with bargaining associations. The organizing committee can significantly influence the tone or philosophical approach of the new organization. Will the new organization be activist and aggressive or will it develop its bargaining power on the basis of good research and careful analyses? Will its growth be fast and dramatic or reasoned and deliberate? These choices will have much to do with the success of a drive for membership.

The organizing committee will choose the first employees, develop the means for financing, and establish the initial goals of the association. The organizers will be faced with many important decisions as they go about setting up a new organization. Some of these decisions, and how others have dealt with them, follow.

Size of the Board. Bargaining associations need a superior system of communications with the membership. Every farmer has a strong opinion as to what constitutes a reasonable price and acceptable terms of sale. Farm bargaining imposes an obligation on the members to base their opinions about price on good factual information about supply, demand, and market conditions. Communicating these facts to the members requires good organization and considerable skill. This will influence the decision on the size of the board of directors who will have

the responsibility of establishing the association's prices and terms of sale. The board, therefore, must be sufficiently large to be representative of the area to be covered, yet not so large that it cannot operate effectively. To be representative, the makeup of the board should, as far as possible, give consideration to such matters as the size of the member's operation, age, experience, and ethnic background. Inevitably, a large board ends up with an executive committee that makes many of the key decisions.

District Advisory Committees. Such committees have proved to be an excellent complement to a reasonably sized board of directors. Although district advisory committees do not have decisionmaking powers, they do provide to the management and the board an excellent means for communication and inputs on grower attitudes. Generally, directors are selected by districts and advisory committees can act as nominating committees for the district board members. District advisors, in some cases, are elected by the members in the district, particularly if they have the responsibility of acting as a nominating committee. District lines should be carefully drawn with consideration given to homogeneous groups.

Members' Voting Rights. This issue can also be controversial, particularly when the members are not of the same relative size. While one member-one vote is very democratic, it often fails to attract the larger producer whose participation is essential to success. A popular solution is to provide one vote for a given number of units of production, with each member having at least one vote. A limit is then placed on the maximum number of votes that any member may have, thus giving some consideration to both the large and small producer.

A typical example would be where the average number of units of production per member would be 100 tons. Each member would be entitled to one vote for each 100 tons or less. For each additional 100 tons, the member would be entitled to an additional vote, but not exceeding 10 votes.

Membership Agreement. The type of agreement will need the careful attention of the organizing committee. The decision on whether the new association will be a marketing-type association where title and responsibility for the member's crop is placed in the hands of the board, or whether the new organization will act as a bargaining agent for the members, or operate as a service organization will be spelled out in the membership agreement. The obligations of the member and of the association are defined. The organizers should carefully analyze the

type of organization that will develop the maximum bargaining power, and yet be acceptable to the members. It is essential to provide for sanctions on those members who fail to live up to the terms of the agreement. A liquidated damages provision with a penalty of sufficient size to discourage membership actions that weaken the association's position will generally suffice.

Consultants and Legal Help. Advice and counsel from people with a knowledge of the problems of the industry beyond the farm gate should be called on when preparing the membership agreement. A cooperative agreement, once signed up, is hard to amend later on because it may involve a whole new **signup** for an amended agreement. Care should be taken, therefore, that the document does not contain a provision that does not fit the practices in the industry and that will need to be changed later.

A provision in the membership agreement can stipulate that the agreement will become effective only when producers farming not less than a specified number of acres, or producing a specified volume, have signed the agreement. The acreage or tonnage goal should be of sufficient size to give the new association some standing from the beginning. Farmers like to feel that they are part of a successful organization. By assuring them that the organization will become operable only when a significant share of the total production is signed up, a basic concern can be met.

Membership Signup. The membership drive should be carefully planned. It is most important to secure an accurate list of potential members. Such a list can be prepared with the help of allies and by searching the county records. For some commodities, lists can be purchased from publications.

An initial membership drive should be broken down into the smallest number of practical units, with each unit served by a membership committee with an active and responsible chairman. The committees should be carefully briefed and furnished with pamphlets and information describing the new association. Personal calls, in addition to local meetings, should be encouraged. Each local committee should be urged to set a **signup** goal. Each committee should be contacted frequently for a progress report.

Media coverage should be arranged. Free publicity can be obtained, but if there is a strong opposition group, it too can secure the same free publicity. Sometimes it is better to pay for advertisements to be sure the right message gets through. A good mailing list serves to pinpoint the

targets, and frequent well-written bulletins can be of enormous help. In dealing with the media, efforts should be made to find those individuals who know what they are talking about. Interviews by phone or in person should be resisted by the inexperienced. Well-prepared press releases are the best method of getting a message out. Each meeting can be the source for a good press release. Be careful about making press releases too self-serving.

Timing. The best time to start is when the interest is greatest, but the availability of people to act on membership committees is also important.

Financing

The organizing committee will need to examine the means for financing the organization. A nonrefundable membership fee to finance the organizing drive should be collected when the membership application is signed. An annual service charge to finance the organization should also be assessed. The most satisfactory arrangement is to provide for a checkoff to be paid to the association by the buyer. A number of States have adopted laws that require a handler, buyer, or processor to honor an assignment on proceeds that is signed by the grower. Some of the older associations have negotiated for a service charge to be paid by the buyer for procurement services rendered by the bargaining association. If some form of checkoff or an association service charge based on volume cannot be achieved, the membership agreement must provide for furnishing the association with all weight tags or other evidence of delivery to provide a basis for billing the member. Membership dues or service charges can also be determined on an acreage or square footage basis, and this too should be subject to verification. A system of voluntary payment of membership dues or service charges by members is unsatisfactory. An assignment of proceeds by a member will in most cases be honored by a buyer. It may be necessary to contact the buyers to seek some assurance that an assignment will be honored.

A checkoff system required under law has a number of advantages: it is readily collectable; it can be used as a pledge to secure a bank loan for startup expenses; and it provides a sound basis for attracting the high-quality personnel needed to manage a bargaining association.

VII. MANAGING AND OPERATING A FARM BARGAINING ASSOCIATION

The Manager

While nearly every bargaining association is organized as a cooperative, there are some differences in the type of individual required to manage a farm bargaining association as compared to an operating cooperative. A farm bargaining association does not require heavy capital investments in plants, warehouses, and the like. A farm bargaining manager must have the knack of managing all aspects of human relations, and be a superb communicator, able to communicate ideas and concepts equally well to a food company president and a farm operator. Other qualities that the manager must bring to the job include: a superior knowledge of the economics of production, processing, and handling of the commodity as well as a comprehensive knowledge of the economics of the marketplace; ability to deal with criticism, complaints, and problems in an even-handed unemotional way; creativity, innovativeness, and perseverance; and, most important of all, integrity and the confidence of the association's members and customers.

A farm bargaining association has a great opportunity to improve the economic conditions of farmers. It may also, on occasion, find itself inflicting economic loss to an industry through poor judgment or bad decisions. Therefore, the integrity of the organization is linked very closely to the standing and reputation of its manager and board of directors. Growers' production is sold to numerous buyers, each jealous of the other, each eager to seek and gain advantage. Operating in such an environment requires integrity, fair dealing, and a reputation for honesty. Members of a farm bargaining association are also, in a way,

competitors. Their confidence can be maintained only by a belief that the association's leadership will provide fair and equal treatment to each member.

Failure of bargaining associations to perform can generally be related to a record of poor or inept management. Managers of many of the more successful bargaining associations are well paid. Their salaries and perquisites should be competitive with the salaries paid to the food company executives with whom they must deal.

Selecting a Board

The directors of a farm bargaining association are usually nominated by a nominating committee in the district which the director represents. Some care should be exercised in selecting people for this position. The nominating committee should know the director's responsibilities, and the selection of nominees should be considered with those duties in mind.

A list of some of the qualifications might be as follows:

1. Is the nominee known as a good farmer with independent judgment and good faith and respected by colleagues?
2. Is the nominee able to work in harmony with other members of the board?
3. Does the nominee have experience in business and financial affairs?
4. Is the nominee known as a person of integrity, capable of making decisions to benefit the association and not for personal gain?
5. Does the nominee have a grasp of the marketing programs associated with the commodity?
6. Is the nominee prepared to give the necessary time and effort to the affairs of the association?

Responsibilities

The responsibilities of the board and the manager should be clearly spelled out and understood. In a bargaining association, the board's principal obligation is involved with establishing the prices and the terms of sale of the commodity. Every farm bargaining association board of directors reserves to itself this final decision on prices and terms. The board has other duties, however, and these include:

1. Establishing association objectives, policies, and goals.
2. Selecting the manager and deciding on the compensation and duties of that position.

3. Retaining legal counsel and auditors.
4. Approving budgets and financial plans.
5. Filling board vacancies between elections.
6. Approving employee retirement and benefit programs.
7. Designating committees of the board of directors.
8. Evaluating the performance of the management.
9. Developing long-range plans and objectives for the association.

The manager's responsibilities in a typical farm bargaining association consist of the following:

1. Under direction of the board, to plan the bargaining strategy, coordinate the bargaining activities, and negotiate with buyers to obtain the prices and terms of sale approved by the board.
2. To define management objectives, goals, and policies within the constraints of overall board-established association policies.
3. To prepare the relevant economic supply and market data upon which the board will make its decisions on price and terms of trade.
4. To plan and direct the communications with members, non-members, and the trade.
5. To select employees and fix their compensation.
6. To direct and supervise the activities of the employees and measure their performance.
7. To prepare budgets and marketing-bargaining plans for Board approval.

There are also a number of areas in which decisions may be shared between the board and the management. These matters depend in large part upon the working relationship between the board and the manager and the relative skills possessed by the manager and members of the board. These may include:

1. Insurance requirements.
2. Engaging professional services.
3. Employee bonding.
4. Changes in the organizational structure.
5. Employee benefit plans.
6. Investment policies.
7. Member relations.

Board-Manager Relations

The relationship between the board of directors and the management should be clearly understood. The board derives its authority from the

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members and serves as the nerve center from which major decisions are transferred through the manager to the operating unit. Directors are not expected to give directions to members of the operating staff. This is often the basis for misunderstanding because the directors, in their personal farming activities, are the operators and the doers and it is sometimes hard for them to realize when they are meddling in management affairs.

The director has no executive function in the organization and legally a director has no power except at a properly convened board meeting. Failure to understand this concept is at the root of much board-management friction..

A director with special training or ability, and who has acquired an expertise in a certain area, may often gain some informal authority in the management of the cooperative. As a practical matter, such skills **should** be used to advantage. However, it must be borne in mind that the executive or general manager is accountable to the entire board for initiating and carrying out activities within the boundaries of authority granted by the board. The board is primarily concerned with idea decisions, and the executive is primarily concerned with the action decisions. The board decides overall objectives, policies, and goals of the association and the executive decides on matters relating to attaining those objectives and goals.

Boards of directors can make valuable managerial suggestions about policy implementation and negotiating problems. However, board participation in these areas must be regarded as opportunity rather than responsibility. Board members depend on the executive to raise the issues on which advice and counsel are sought, and a good executive will seek the advice and help of his board. The key is to remember that executive responsibility is vested in one person who is responsible to the entire board.

The directors on a bargaining association board frequently find themselves engaged in intensive bargaining among themselves over a final price decision. The final price decision may not be a unanimous one. Directors may find themselves holding views that are in conflict with the views held by the members in their districts. This is not unusual because the directors have been exposed to more information upon which they have based their opinions, while the members may not be as up to date. In such a case, the directors are faced with a decision as to whether they will vote their own convictions and conscience, or support the views of their members. Their decisions may determine their tenure

on the board. Most experienced directors caught in this dilemma will support the position which will maintain the integrity and the strength of the bargaining association.

Those seeking election to the board will sometimes campaign for a price or terms of sale which in the end is simply unobtainable. This then creates problems when the director is up for reelection. It is best for candidates not to make firm commitments when seeking directorships on a farm bargaining association board. Bargaining is essentially a business of give and take, timing, and compromise. Every farmer knows this from experience. Is there a farmer who has not said: "I should have sold earlier when the price was high," or "Had I only waited to sell, or had I only known, I would have sold on a different basis?" Farm bargaining takes much of the guesswork out of selling and tries to reach its pricing decisions based on the best and most complete information available.

A common problem in management-director relationships occurs when the board acts on a management price recommendation. The board should look to the executive to make recommendations based upon the latter's knowledge and contacts with the trade. That's what bargaining association managers are for. The board, in turn, should carefully examine the reasons and the basis for the recommendation before taking action. Individual directors on occasion will blame the manager and other directors if the decision is unpopular among the members. Such action can do serious damage to the association and its standing among the members. It may call for a vigorous defense of the action and a prompt meeting with the membership and staff to report on the facts leading up to the decision.

This is an area where district committees can be most helpful. They provide the sounding board for management and the district director. It is often much more constructive to tell an unhappy member, "I agree with you. I didn't like the results myself, but under the circumstances it was the very best decision we could make."

Bargaining association boards should guard against being "rubber-stamp" boards. Good managers appreciate a well-informed board that can intelligently evaluate management recommendations. Board members can often provide valuable insights. If the board views its responsibility mainly to vote on management recommendations and plans, it is not making an informed decision. Management recommendations, particularly on pricing matters, should be carefully evaluated. Management should be in a position to fully justify and document its recommendations. The board, in turn, should see to it that **manage-**

ment has access to all the information needed to document its recommendations. If economists, marketing specialists, or other special assistances are needed, they should be made available.

The Manager's Role

The manager's principal activity is devoted to learning the market behavior of the commodity. Each crop or commodity grown in the United States has its own particular marketing pattern and behavior. The forces that influence supply, demand, and market behavior for a commodity may differ substantially among commodities. Acquiring an intimate knowledge of these forces is the most important initial function of a farm bargaining association manager, whose stature and importance in the industry are related to the knowledge and expertise of the commodity. The manager should be the best informed individual available concerning the association's commodity. Such knowledge can be extremely significant in the bargaining process, particularly when it is recognized by the trade. The directors of the association can supply valuable assistance in evaluating potential supplies. Crop estimating can be improved through modern methods to enable the association to accurately estimate the crop, but beyond the production potential is a great unknown that the manager must explore and get to know.

Buying decisions are made on market intelligence and the bargaining association managers are most effective when they have as much as or more market intelligence than the buyer. The information is available from a multitude of sources, some of it good and some not so good. Information on inventories and stocks on hand, for example, can often be secured from government and trade sources. Friendly employees of the buyer will often share information on a confidential basis. Suppliers, brokers, and selling agents all have some knowledge concerning market forces that may be significant. Bargaining association managers or members of the association staff should attend trade conferences and conventions attended by the people who deal in the products made from the commodity. Trade contacts should be cultivated and trade publications subscribed to, so that the market intelligence of the association is maintained and improved. There should be an emphasis on market influences because the price negotiations will inevitably revolve around the final market of the product.

Farm bargaining association managers should be good communicators because part of their responsibility is in communicating the concerns and apprehensions of the farmer members to the buyers and

the intricacies of the market to the grower members. The manager stands between the farmer members who expect the best possible prices for the commodity and the buyers who hope to moderate their costs of raw material. The farmer members depend primarily on the manager's knowledge of the commodity and skills as a negotiator to achieve their economic goals. The buyers, under pressure from retailers and the trade and the bottom line demands of their corporations, will try to reduce their costs. The manager will often have to try to moderate the demands of both sides. A manager with a well-established integrity and who stays abreast of the industry can often satisfy both parties. A manager who fails to satisfy the members of the cooperative will seldom remain for long in that position.

The manager's role emphasizes the need for communication skills as well as an ability to get along with people. The farmer members, by and large, are hard-working people who expect the same hard work from those they employ. Farmers are also wary and suspicious because of past experiences in connection with marketing their production. However, once they are convinced of the integrity of their employees, they are loyal to a fault. They have long memories too, and will remember a mistake or an error in judgment for a long time. Farmers have pride in their independence and share it with few people. They tend to be forthright and frank, letting their feelings be known without reservation. Few bargaining association managers will have difficulty in knowing where they stand with their members. Working with farmers can be a rewarding experience for one skilled in communicating and dealing with people, and frustrating to one who has problems in this area.

Member Communications

Membership communications in a bargaining association should be constant, consistent, and understandable. Written communications, meetings, and personal contact all must be utilized fully to obtain good results. Written communications should utilize a medium to transmit both timely information and in-depth articles on the association and the industry. A members' newsletter should be written in a style that transmits timely information in a concise and rapidly readable form. The use of fillers in a newsletter should be discouraged. The information must be accurate and up to date. The newsletter should truly provide news that the members can use to better their understanding of the market and the association's position. The newsletter should never be more than four pages long. It should be sent out on a regular basis or

whenever important information is available. It is also important to test the readership to make sure that the newsletter is performing its task. Frequent surveys and spot checks can help.

A news magazine published on a monthly or quarterly basis can also be used. This provides an opportunity to deal with industry matters and personalities in the industry on an in-depth basis. Some associations pay for the cost of publication by selling advertising. However, that decision should be carefully considered, particularly if there is good coverage of the commodity by a trade journal. Advertising in the association house journal will place the association in competition with the trade journal. A trade journal will sometimes be willing to feature association stories and give editorial support to an association that is not in competition with it for advertising. A helping hand from a third party can often be very useful in maintaining a good image with the farmers.

Special bulletins and letters from the board chairman or manager can, of course, cover matters that, because of their importance, need to be highlighted. It is important to remember that any publication must be done with skill and designed to attract maximum readership. It is an expensive process, which is why frequent spot checks should be made.

Meetings

Meetings allow two-way communication between the directors and the members. Greater skill is required to hold meetings today than was the case a few years ago. Television has provided keen competition for people's attention. Unless a meeting is well planned, interesting, and informative, it may often prove to be a disaster. Careful planning should go into organizing a meeting format. Talks should be prepared in advance and be short and to the point. The time of the meeting should be established well in advance to make sure it is not in conflict with an important local event. The program should be timely and interesting. The formal meeting should start on time and end on time. The meeting place should be familiar to the members whenever possible. The setting should be conducive to a good meeting. Lights, screens, heating, and cooling should all be checked out in advance to make sure that some careless act doesn't ruin an otherwise perfectly planned affair. Many meetings have been ruined because the power or heat wasn't turned on, a main speaker didn't show, or the meeting was in conflict with the regional championship basketball game. It is advisable to prepare a meeting checklist and assign one employee with the responsibility of seeing to it that everything is fully covered.

Meetings can be divided into three types: annual meetings, area or district meetings, and local meetings. The annual meeting provides an opportunity for showcasing the organization. It is also an opportunity to secure a featured or "name" speaker, an authority on some phase of the industry. Such meetings are prized by political people who value the exposure, particularly if the meeting is a large one. It is a meeting to which allies, friends, and customers of the association can be invited. It is an opportunity to put one's best foot forward. If the meeting is large and has important speakers, it will receive media coverage for which press kits should be prepared. Annual meetings are not the place to air internal problems. Those should be dealt with at local or regional meetings where time can be set aside for participants to speak.

Future plans and goals should be the major theme at an annual meeting so that members and others look forward to the coming year. The main thrust should be upbeat, and association leaders should be featured.

The California Canning Peach Association used the annual meeting as an occasion to bring all its district advisory committee members together for a working session. The day before the annual meeting was set aside for a meeting of all the Association's district advisors. Each of the 11 districts had five elected and five appointed district advisors, whose expenses to the 1-day working session and annual meeting were paid by the association. The format for their working session was developed in consultation with the local chairmen and topics of current interest were placed on the agenda. The association staff prepared backup material and information to deal with the requested topics. The district advisors met with the manager and his staff and on some occasions directors were also invited to attend. Before the close of the meeting, the agenda provided for an executive session of the district advisors with only legal counsel present. This served to provide good communications from the districts and a means to deal with their interests or complaints. The meeting was followed by what was called an annual "Family Dinner" restricted to district advisors, directors, staff, and their wives, and special guests of the Association who had been particularly helpful during the past year. It was organized as an occasion for fun and contributed greatly to a close-knit feeling on the part of the farmer leadership of the association. The annual meeting was held the next day. This was a good way to give recognition and a sense of participation to district advisors.

Regional or district meetings are generally smaller. They provide an opportunity to report on the past year's activities of the association and to test the water for new ideas and approaches that may be used. The same basic planning must be followed for district meetings. They should be held in a convenient, pleasant setting with short, informed and well-planned talks. It is the place to use slide presentations and charts to illustrate the reports to the members. If there is a local problem, it should be met head-on by management. Management should always be prepared. Surprises are evidence of a poor job of communications. District meetings provide a chance for questions and answers. Members' inquiries should always be fully met and frankly answered. The format should be such that the members leave the meeting feeling they have received a full and honest report on association activities, and had all their questions answered.

In view of the competition from television and other sources, efforts should be made to secure maximum attendance at regional meetings. A few notices in the mail will not suffice. Where possible, every member should be called and reminded of the time and place of the meeting. Misconceptions and complaints can often be averted if the member has an opportunity to be at a district meeting.

Local meetings are those arranged through the district director or local advisory committee. These are usually much smaller and more informal. They are designed for a special purpose, such as dealing with a local complaint or problem, undertaking a membership drive, or to provide management with members' input. Part of the intelligence-gathering activity of the management covers the activities of buyers in the field. Local meetings, district advisors, and district directors provide an excellent means of developing a network of sources about the field activities of buyers which may provide an important signal of immense value in the bargaining process. Local members enjoy being included in the intelligence-gathering process in the field. If the association is facing opposition from certain companies and buyers in the field, their intelligence-gathering process can be very significant, by revealing each company's profile of behavior, which can be most helpful in the bargaining process.

Personal Contact

A third means of communication is through field representatives. A large association has need for a local or regional identity that can be served through local representatives. A field representative also fulfills a

vital role in the intelligence-gathering process, and in reflecting grower attitudes and concerns. A bargaining association has an important role in determining the gross returns of its members. Its economic importance is such that members want to feel in touch with what is going on. A field representative with a regular schedule of calls on the membership fills that need. Calls by the field representative should be brief, businesslike, and to the point. Growers resent long social visits from their employees at their expense. Field representatives should be constantly briefed and kept up to date on association activities so that their effectiveness is maintained. Field representatives can also be helpful in rendering services to members *in* connection with cultural and production problems. Some associations require each field representative to file a daily report showing the name of the members called on, what was discussed, and any concerns the member had. The field representative also makes frequent spot checks or surveys to ascertain member reaction to association activities or policies. This results in a constant flow of communications between management and the members and serves to prevent activities and discourage policies which would meet with member resistance. Field representatives also check on the accuracy of scales and weights and grading operations. They can also help in coordinating the harvesting.

VIII. BARGAINING : PLANNING, STRATEGY, AND TACTICS

The Bargaining and Negotiating Process

Negotiating prices and terms of sale for farm commodities involves some of the same strategies and procedures that are associated with all other forms of negotiation. It requires careful preparation and planning, an understanding of the process, the use of strategy and tactics designed to achieve the necessary goals, and the skills to bring about a satisfactory conclusion. Farm bargaining does not enjoy the same legal power base that organized labor has, nor does it have control over supply, production behavior, or market patterns that could bring real muscle to the bargaining table. These inherent weaknesses must therefore be overcome by the use of greater negotiating skills and an understanding of the farm bargaining process, its opportunities and its limitations. Planning and preparation must be undertaken within the framework of the association's goals.

Establishing Goals

In a recent study of bargaining associations, 55 managers ranked their association's bargaining goals in order of importance.¹ Higher grower income, stable prices, and assured markets were rated 1, 2, and 3. Next in order came expanded membership, expanded markets, and higher prices. Significant is the fact that managers gave higher prices

¹Mahlon G. Lang, *Collective Bargaining in Agricultural Product Markets: Findings of a Survey*, Station Bulletin No. 241, Dept. of Agricultural Economics, Purdue University, West Lafayette, Ind., September 1979.

such a low ranking. Net grower income is the result of many factors other than price. It can be influenced by better planning because prices and markets are known in advance. Uniform and fair quality standards and how they are determined can be **significant**. Such considerations as having a reliable market, receiving prompt payment, being rewarded for quality, harvest coordination, availability of long- and short-term credit at competitive terms, are all included in goals calculated to improve growers' net returns.

Goals should be determined in order of their importance and consistent with the bargaining power of the association.

Members Provide the Bargaining Power

The most significant asset that a bargaining association has is the support it receives from its members. In labor circles, this is referred to as solidarity. At the same time, one of the greatest weaknesses that an association may have is the failure of the members to support the organization. A realistic appraisal of membership support is a necessary first step in measuring the potential bargaining power of the association. Questions need to be asked such as: Will members support association strategy? Can members influence buyer decisions, and will they do so if requested? Will members resist buyers' efforts to weaken the association's position? Does the volume produced by the members amount to a significant and potentially important share of the available supply?

The degree to which the association is able to control the buyer's supply of the commodity is very important. Supply control used in this context is not necessarily the ability to withhold supplies from a buyer. It may be the fact that the members have provided the association with the authority to negotiate in their behalf, or to divert a portion of the crop to other uses. The ability of milk associations to divert milk to other markets or to manufacturing outlets is a vital factor in providing a stable base for price negotiations. The operation of a marketing order that deals with potential or actual surpluses by means of set-asides or diversion programs can be of vital assistance in bringing total marketable supplies into line with demand. Having excess supplies of a commodity hanging over price negotiations can have devastating results on the bargaining process.

The use of sanctions on the buyers is often mentioned when analyzing the bargaining power of an association. A sanction is the ability to inflict economic loss on the other party. Buyers have used sanctions for years in the form of discriminatory treatment, refusal to deal, boy-

cotting certain producers, coercion, and the like. Sanctions by an association such as refusal to deal with a certain processor, cutting off supplies, harassment, picketing, and intimidating buyers are tactics that often prove to be unproductive. They often lead to retaliation on the part of the buyer and neither side wins.

Associations can develop considerable bargaining power through their ability to lower handlers' costs through more efficient handling of the product, better quality controls, and market expansion activities. Farm bargaining associations can occasionally achieve a measure of bargaining power through the skillful exploitation of the monolithic character of a large food company.

The bargaining power of the buyer is constricted by the very existence of a farm bargaining association. The power of a buyer to select suppliers and play one against the other, to control time in price-making, to delay payments and, most of all, to determine prices unilaterally are all restricted by the presence of a farm bargaining association. Despite these constraints, however, the buyer's corporate size and franchise in the marketplace will always put the seller at a certain disadvantage at the bargaining table. The buyer knows that the ultimate pressure on the association is in having a market for the members' production. A good price for a commodity has little value to a grower without a home for the production.

Marketing orders and agreements can be effective tools in establishing a good climate for a farm bargaining association. The voluntary nature of the association often creates a situation in which the nonmember is able to reap the benefits of association efforts without paying the costs.

Marketing orders and agreements play an essential role in getting nonjoiners to share in the costs of group action from which they benefit. Such marketing order activities as establishing industry-wide grading standards, developing uniform grading and delivery procedures, developing industry statistical data on production and marketing, carrying out market expansion programs, both domestic and foreign, and devising orderly marketing programs can all be helpful. They can provide a more stable environment within which farm bargaining can be conducted, at the same time bringing benefits to the industry as a whole. However, programs carried out under a marketing order cannot substitute for the need to have strong support from members who represent a significant share of the total supply of the commodity in the area

covered by the association. Signs of instability or lukewarm membership support can have a devastating impact on negotiations.

Adequate funding is also a factor in that it signifies a degree of permanence to the association. Nonmembers will also have an impact on the bargaining process. The makeup of nonmembers is significant. If they are large and financially independent, they may be able to undercut or to support the bargaining efforts of the association and so must be taken into account in the bargaining process. Farm bargaining is a give and take process, but not as one grower described it: "We give and they take." Good bargaining involves a "give" for every "take."

Preparation and Fact Finding

Preparation and fact-finding are often as important as the negotiation process itself. Without good preparation and reliable information, even a skilled negotiator cannot perform satisfactorily. Preparation and fact-finding are also valuable in helping the board of directors to reach a sound decision. The manager of the association has the primary responsibility for assembling and coordinating the data that will be used in the negotiations.

Preparation and fact-finding are designed to save time. Working from false assumptions or on the basis of abstract convictions can be time-consuming and fruitless. Opinions should be carefully examined and verified. Both farmers and buyers will make assertions such as: "Such a price offer is outrageous," or "That price will break half the farmers in the State," or "We would have to close our plant at those prices," or "The trade would simply stop buying at those prices." Bargaining association managers have heard statements like these many times. Made without basis in fact, they have little impact. On the other hand, facts and figures developed to prove that a price is fair and reasonable, or based on cost of production studies that show that half the farmers would lose money, or some evidence that a plant would close, or the trade would stop buying, can be very persuasive.

Opinions are often based on assumptions that are no longer valid. It is easy to believe what we want to believe. We form opinions based on judgments, accusations, and statements colored by emotions. Many people try to confer immortality in their assumptions: "Once right always right." Assumptions tend to become false assumptions when they automatically become absolutes: when "I think" or "I feel" becomes "I know."

The development of sound **useable** data is the first step in the negotiating process. It is particularly important in the internal bargaining that precedes negotiations with the buyer. In my price negotiations with some of the Nation's leading food companies for over 25 years, I observed two recurring principles at work: first, any group of farmers, given all the facts, will inevitably arrive at a sound and reasonable conclusion; second, food company executives are used to making decisions based on good data and will respond favorably when growers can document and back their proposals.

The California Canning Peach Association (CCPA), and several other Pacific Coast associations, as a result of many years of price negotiation, developed what we called "the price book." The "price book" contained all of the pertinent data that would impinge on price negotiations: yields, production records, projection of acreage, wholesale and retail sales data, price data, production and processing cost data, just about anything that would be brought up in price discussions. Once the price book was established as reliable and accepted by the buyer, the data could be updated from year to year. The book also contained production and sales data of competitive fruits as well as general economic information, such as projections on disposable income in the United States, gross national product, expenditures on food, per capita income, retail and wholesale margins on food items, and food consumption trends. Projections of f.o.b. prices that could be expected to prevail under certain conditions of supply, demand, and market conditions were also included.

A number of California bargaining associations are indebted to the Giannini Foundation of the University of California at Berkeley for helping steer them in this direction. The Foundation annually prepares a report on "Pacific Coast Canned Fruits-FOB Price Relationships," which was the material that stimulated the association to prepare its annual price book. Dr. Harry **Wellman** started the series in the 1920's and Dr. Sidney Hoos and Dr. George Kuznets continued the work in recent years.

CCPA holds a fact-finding session with each of its major customers prior to formal price discussions. This practice saves a good deal of time. It is part of the negotiating process and serves to eliminate the negotiating about facts. Facts are not what are negotiated. They provide a basis for negotiation and, if properly prepared, can lead to advantageous results for both the association and the buyer.

Who Should Negotiate

A skilled and knowledgeable negotiator is an important asset in any negotiation. The negotiator is the one who takes the lead in negotiations, helps to plan, and executes the strategy. Having a single person take the lead is important. Whether the lead negotiator is an employee or a principal is not as important as having a person with skill and knowledge about the industry. Each commodity has a distinct marketing profile; it also has a rhythm of its own. Having an intimate knowledge of that profile and an almost daily contact with the market is an essential asset required of a good negotiator in addition to the skills described below and on the following page.

Farm bargaining associations use a number of different approaches to negotiation that range from an individual negotiating committee for each processor, as used by the Potato Growers of Idaho, to the single negotiator used by some of the milk producers associations. Most associations use modifications of the team approach where a certain number of association directors participate in the negotiations.

The team approach has a number of advantages: it allows wider membership participation and a pooled judgment; it presents solid support; and it can have political and public relations implications. When a team approach is used, the roles of the participants should be fully planned. Plans should be made for prearranged signals to enable the team to go into caucus if necessary. A team approach also requires a leader with experience and skill at negotiations.

The use of a single negotiator also has advantages. It frequently results in a more frank exchange of ideas and exploration of alternatives. It prevents the problem of a weaker member's answering questions in such a way as to create disagreement or leave a false impression. There is no division of responsibility, and on-the-spot decisions can be made to reach a conclusion.

No single approach will fit every situation. Some associations use a combination of the team approach and the single negotiator. The negotiations are conducted on a team basis by a "sales or bargaining committee," with **final** negotiations carried out by the negotiator on a **one-to-one** basis or two-on-two. Some farmers are superb negotiators, but others are not. While it is true that negotiation is an art, the skills can be learned. A skilled negotiator:

1. Has an open mind and is flexible.
2. Is aware of the needs of the other side as well as one's own.
3. Can quickly identify mutual goals and interests.

4. Never accuses the other side of being wrong.
5. Seldom manipulates people.
6. Is creative and imaginative, able to come up with alternative approaches.
7. Has a cooperative attitude.
8. Is a good competitor, an achiever, and has high aspirations.
9. Never sees a deal as irrevocably closed.
10. Can think clearly under stress.
11. Has analytical ability.
12. Has general practical intelligence.
13. Has personal integrity.
14. Is a good communicator.
15. Has perseverance and stamina.

If a team approach is used, the members of the team should be chosen with great care. An excellent time to judge the capabilities of the team members is during the internal bargaining that may take place among the members of the board. The negotiating team is no place for the loudest talker, the most dogmatic one, a frail person, or one who is impractical, prejudiced, confused, overanxious, changeable, timid, self-righteous, sarcastic, insensitive, crude, disloyal, dishonest, highly emotional, or suspicious. Such traits can be quickly identified and persons possessing them should be discouraged from serving on a negotiating team.

Planning Strategy

Strategy plays an important role in the negotiations and, when planning strategy, it is important to take into account the needs of the other side and how to best satisfy such needs. The common denominator of negotiation is dealing with the needs of people and their organizations. Dr. Abraham Maslow points out that the satisfaction of needs motivates nearly every type of human behavior. His classification of these needs in their order is as follows:*

1. (Basic) Homeostatic (Physiological)-need for food, warmth, shelter, elimination, water, sleep, sexual fulfillment.
2. Safety and security-need for feeling safe from injury, both physical and emotional.

*Abraham H. Maslow, *Motivation and Personality*, New York: Harper & Row, 1954, pp. 35-38.

3. Love and belonging-need to feel part of a group, need to belong to and with someone else.
4. Esteem-self-respect, feeling of personal worth, adequacy and competence.
5. Self-actualization-need to become what one is capable of being.
6. To know and understand.
7. Aesthetic.

In the negotiating process that is carried out by a farmer bargaining association, the needs of the organizations and the individuals must be kept in mind. Individuals tend to identify with the organizations to which they belong. They often move beyond the area of personal needs and mentally assume those of their organization. This has significance, because during the negotiation, an individual's own, perhaps most basic, needs may subordinate themselves to the needs of the company. It is possible that satisfying the need of the company or association will give deeper personal satisfaction, thus satisfying one's own basic needs. In planning strategy, the needs of the company must be carefully analyzed as well as those of the individual who is to do the negotiating. It is well to remember that if there were no needs, then there would be no reason to negotiate. When a person's more basic needs are satisfied, then the next in line takes its place. The needs and the goals of the organization and the individual will change from time to time.

A good negotiator will carefully analyze both the corporate needs and the personal needs of the negotiators on the other side. Knowing those needs is essential in planning strategy. Typical of corporate needs are the following:

1. To purchase a specific volume of product.
2. To purchase a particular quality necessary to reduce operating costs or meet a special market.
3. To have deliveries made at a specific time.
4. To meet a profit plan objective.
5. To achieve a larger share of the market.
6. To have prices that meet or exceed those of its competition, and not to be at a competitive disadvantage.
7. To increase or decrease purchases of the commodity.
8. To maintain a reputation or market position.
9. To maintain a corporate policy or goal.
10. To satisfy the head office.

Some typical needs of a negotiator for the buyer may include:

1. To be recognized by the company to achieve advancement.

2. To satisfy "the boss."
3. To purchase a volume of the commodity at a price necessary to satisfy corporate goals.
4. To satisfy a feeling of importance.
5. To keep one's job, needing assurance because of fear.
6. To show superior knowledge and command.
7. To be liked and admired.
8. To impress business associates.
9. To impress colleagues by demonstrating professional skills.

When planning strategy, the needs of the association, the buyer, and the individuals who are negotiating must be recognized and understood. Good strategy, for example, may be to work for the needs of the buyer who may require a change in specifications or quantity. Knowing this, and negotiating to achieve such a requirement, can be the basis for successful negotiation of the association's needs. The negotiator for the other side may need special recognition to obtain advancement. Good bargaining strategy should take this into account, perhaps meeting this need and at the same time advancing the association's goals. By letting the association's needs be known, a good negotiator can sometimes cause the other side to work for them.

Working against the needs of the other side can often lead to negotiating problems. For example, if the association needs to solidify member support behind a position it has taken, and the other side deliberately frustrates this need by circulating false rumors, the negotiating attitude of the association would reflect the frustration. The same thing is true if the association frustrates the needs of the buyer by circulating false stories. The bargaining table is where the action is, and activities deliberately calculated to threaten the needs of the other side make negotiations more difficult. This is not to say that if the buyer requires a low price that negotiating strategy would attempt to work for that need. It means that the low price should be measured against what the real need is, such as greater volume, better quality, more timely deliveries, and so forth. Such actions may achieve savings that are equal to lower prices. Naturally, there is a price associated with such accommodations and that price too should be negotiated. If the association members need to generate higher prices, they may really want better net returns, which may be achieved by better handling, delivery, or a change in grade standards or sampling procedures. Often the strategy may call for working for the needs of both parties.

Once the needs are understood, specific seasonal goals should be established. They may be both short term and long term and both should be addressed. For example, if the association's goal is to achieve an "evergreen" supply contract with a major buyer, the short-term goals with respect to that buyer should be established with that objective in mind. If a long-term goal is to enter into long-term supply contracts under formula pricing, then the short-term goals should be tailored to that objective.

What People Strive For

People and their organizations have a number of basic goals that they strive for. It is well to review these when planning strategy. Some typical goals:

Money. This is a goal that most individuals and organizations strive for, but it is not the only one. Farmers provide a good example. They like money, but not at the expense of losing control of their operations and their independence. Many people enjoy having a sense of achievement, and use money as a measure of this achievement.

Power and Competence. Men and their organizations do seek power. Farm bargaining associations want some measure of power in deciding the prices of their members' commodities. The organizations and individuals with whom they deal seek the power to establish values and terms of trade that will protect their investment and their ability to make a profit.

Knowledge. Knowledge of the factors that influence the prices of their commodities is a basic goal of every farm bargaining association. The buyers, too, must make significant decisions based on their mastery of the knowledge of the marketplace.

Achievement. Men and organizations set specific goals for themselves. The association may set a certain goal for price and terms of trade, and the achievement of that goal becomes a factor in negotiations. The same is true of the buyer. The profit goal for a particular group may be established based on certain raw product costs, and the achievement of that goal is bound to be a factor in negotiations with the association. Good negotiators will tend to aspire to high goals of achievement. Good negotiators are often very competitive and have a need for such high achievement. An association with an **achievement**-oriented negotiator must arrive at a realistic aspiration level with its own negotiator. The achievement needs of the buyer must also be evaluated in preparing the goals.

Excitement and Curiosity. Everyone has curiosity and a desire for excitement-some more than others. There is a certain excitement in the negotiating process. Negotiators have a genuine curiosity about the other side. It is a part of the negotiation process.

Social. Social goals and personal recognition are also important to many people. The need to belong to clubs and organizations, and the standing in such groups, is an important goal to some. Some farmers have a strong need to belong to, and to be the recognized leaders of, a farmer organization. Buyers, too, belong to trade organizations, service clubs, and social clubs. Their standing in such clubs is important to their self-esteem.

Recognition and Status. Some farm bargaining associations give their manager the title of president to give him added stature, particularly if he acts as a negotiator for the organization. Buyers, too, enjoy certain recognition. A buyer may be a corporate vice-president and be entitled to a larger automobile or a larger office. Farm bargaining associations are often faced with matching for their own employees the status symbols of the buyers. Status and recognition play an important role in understanding goals.

Not all bargaining associations are aware of the importance of status and recognition for their own representatives. There is an inherent disadvantage when an association negotiator must carry on negotiations with an opposite who is better paid, has more perquisites, and a higher title. One-upmanship is often practiced in the business world. The association's negotiator should not be given a handicap when negotiations commence. The stakes are often very high with millions of dollars riding on the outcome. What may mean a thousand dollars to an average member could mean many millions to the buyer and under such circumstances, the negotiator for the association should be afforded the status necessary to negotiate as an equal.

Security and Risk Avoidance. New associations have a problem with buyers who are unwilling to take a risk in dealing with a relatively unknown association. Any uncertainty should be taken into account. The farm bargaining association members, for example, may be hesitant about dealing with a new and unknown buyer.

Congruence. Men who have been successful and who have enjoyed power and influence find poor earnings almost impossible to accept. This is one of the forces that has led to the increase in farm bargaining. It may also be a factor with a buyer whose profit record has been poor in the past years.

The Bottom Line

All of these are goals that individuals strive for- and should be taken into account in planning strategy. Buyers will not always reveal their real aims and those of their organizations. Finding out those aims takes much hard work and persistent diligence on the part of the farm bargaining association management.

How does the association perceive the buyers' goals? How do the buyers perceive their own goals? How do the buyers want the association to perceive their goals? To make this analysis, the association will have to make certain assumptions and these assumptions must be based on facts. The key consideration is the accuracy of the perception or assumption.

How does the association perceive its own goals? How does the association believe the buyers perceive their goals? How does the association want the buyers to perceive its goals?

To an experienced bargaining association, the answers to these questions are the real bottom line. One of the problems encountered in the process of identifying these perceptions in a bargaining association is the frequent tendency on the part of board members to inadvertently telegraph the association's bottom line to the buyers. It is easy to understand how this can happen. The association, eager to encourage maximum grower participation, permits a frank exchange of views and reaches a consensus in a democratic fashion. Skillful buyers, however, have a way of gleaning pertinent information through sources who may never know they have been a conduit. This fact may not bother some members, but there are buyers who are achievers and competitors who would delight in shaving the association's bottom line.

The California Canning Peach Association had an interesting experience with a leak from an unexpected source one year. The Association's office was on the same floor as that of a major chainstore buyer. The board of directors had just adjourned its meeting, at which a consensus was reached after long internal negotiations. Members of the board were discussing their position in the men's room and the elevator after the meeting. The chainstore buyer, who was unknown to the farmers, was also in the men's room, on the elevator, and in the foyer of the building. He was delighted to share his knowledge with his cannery suppliers, who couldn't understand how he obtained his information.

Some bargaining associations have dealt with the problem by not taking a firm position at a board meeting, but designating a smaller committee to adopt a position based on discussions at the board meeting.

Final approval, however, is still vested in the board. This procedure requires much confidence in the ability of the negotiators to read the board's position, but the policy works.

Values Will Not Change

Most people's actions are predictable. The best way to predict a person's behavior is to look at that person's history. A careful study of a buyer's habits, temperament, opinions, and values will reveal useful patterns. Our personality traits tend to guide our behavior in line with our major intentions. A buyer will react to frustration and stress in regular patterns. Some will make excuses, bury facts, forget, blame others, or become hostile or emotional under stress. Others will react with humor and creativity. If one's reactions of yesterday are known, a sounder appraisal of that person's behavior can be made today.

A person who has a history of tricky dealing can be expected to continue to use the tactic. A tightwad will continue to be a tightwad. A risk taker will take risks and a buyer who places great value on status will go on seeking status. People generally act in what they perceive to be their self-interest and see such action as very rational behavior. Few people admit to failure or mistakes. From their point of view such behavior makes sense, even if others believe they are wrong. People will behave in strange ways to protect or enlarge a self-image. They will follow patterns which they believe were successful before from their point of view.

A good negotiator asks questions, observes, listens, speaks rarely and then in nonjudgmental terms. With the negotiator's ability to listen patiently, a buyer's self-image will emerge. A prediction of a behavior pattern is still guesswork, but diligent effort will be rewarded with signals about the buyer's personality that can be most helpful in planning strategy. Association managers would also be well advised to check their perceptions about their own behavior and what kinds of signals they send out. An association negotiator with a history of behavior patterns that leave a negative impact would be well advised to seek other employment.

Maximizing the Negotiation Effort

Tactics.

After ascertaining the facts, checking assumptions and perceptions, analyzing the association's goals and those of the buyer, and predicting

the buyer's reaction, the final strategy is ready to be considered. These questions should be asked:

1. *How can the buyer and the association benefit by working for the achievement of each other's needs and goals?* For example, the association might propose a quality-incentive program that will reduce the buyer's costs and improve the quality output, resulting in increased purchases and sales of the product. The California Canning Peach Association negotiated a quality-incentive program that satisfied the needs of the quality producer, increased the case yield and quality of the pack, and improved their plant's performance.

2. *How can both sides benefit if the association actively works to achieve the buyer's goals?* For example, planting and harvesting can be scheduled to maximize plant utilization. The California Tomato Growers Association inaugurated a series of premium payments for tomatoes delivered early in the season and late in the season, thereby extending the season and increasing plant capacities. The California Canning Peach Association proposed a sliding scale of prices related to volume pack, thus removing the fear of paying a high price for a large volume. This also permitted better pack and profit planning.

In another example, the association could offer to take responsibility for procurement, transport, and grower payments, thus reducing the buyer's costs. Associations of milk producers have assumed these burdens and made it possible to supply bottlers with the exact quantity and grade of milk needed for a bottler's customers.

3. *How can the association and the buyer benefit by the association's giving up some individual or joint goals in favor of others?* An example would be giving up firm prices for a formula price based on an index of costs. The California Tomato Growers have proposed entering into early contracting arrangements by adopting a fixed price adjusted to inflation by an index factor, thus giving growers a chance to plan their operations at an early date and processors to make their pack and profit projections on known volume and identifiable variables.

All of these are positive approaches to farm bargaining and should be carefully examined in planning strategy. There are other strategies that can also be employed.

Timing.

The time when negotiations take place is an important part of strategy planning. The timing of negotiations can have a significant impact on the results, particularly where perishable commodities are

involved. Planting time, for example, puts pressure on both the buyer and the association. The buyer wants to be assured of supplies from reliable suppliers and the producers should know so that they can make their farming plans. Advance planning may be mutually advantageous to both parties.

Timing also should be taken into account when the buyers prepare their annual processing and marketing plans, and when the profit plans are made. Associations faced with profit plans made by the executives of the buyer's company find them extremely hard to change. Pack budgets, marketing plans, and profit plans are often the end result of much internal bargaining on the part of the buyer. Once agreements have been made between the departments of production, processing, financing, and marketing, changing those plans at a later date to accommodate a bargaining association simply isn't easy to accomplish. Knowing when and how profit planning is carried out by a major customer is an important consideration in timing the negotiations. This information is not difficult to obtain. Knowing the problems of the customers can provide valuable insights in planning strategy.

Priorities.

Establishing priority is a vital part of strategy planning. Good strategy is to negotiate the **nonprice** terms before getting into price. **Nonprice** terms generally include grade standards, container handling, hauling and transport, services to be rendered, the form of price (i.e., sliding scale tied to volume, base price adjusted to an industry price). When too many **issues** are on the table, there is a tendency to trade off one issue for another with a result that may prove unsatisfactory to both sides. When grade standards and handling costs are known and established, price agreement can be more easily arrived at. This is not to say that each of the **nonprice** terms does not have a value. However, having reached agreement on those **nonprice** terms, their value can then be incorporated into the final price negotiations. It is when they are on the table and not resolved that they are subject to being traded off. Of course, this strategy can work both ways.

Farm bargaining associations generally bargain with more than one customer, and each one on an individual basis. There are legal restraints that make it impossible for the buyers of a commodity to meet as a group with a bargaining association to establish prices and terms of sale. Buyers cannot act together, either with or without an association. Having five or six issues on the table with each different buyer can lead

to difficult compromises. There is value in negotiating **nonprice** terms in advance of the final negotiation because in the process both parties can explore mutually advantageous alternatives.

Starting Point.

The starting point for negotiations is also a part of strategy planning. Associations using a contract **of sale** that contains prior agreement on terms and conditions may find such a document a good starting point. It is natural to commence with the existing document. On the matter of price, negotiation will nearly always be based on the last price negotiation. If the price favored the buyer, he wants to commence on that basis. If the price favored the association, that makes the starting place for their negotiations. The familiar and the known are always convenient starting points. Precedent and the status quo are important factors in strategy planning. We may not be happy with things as they are, but if a pattern has been established, we are prone to give it legitimacy. A contract, for example, may contain some undesirable provisions, but also several desirable provisions that could be lost if the contract terms are opened up. Proposed changes in well-established terms can also bring on a full review of the entire document. One bargaining association that had operated for years on the same form of contract proposed some changes to bring it up to date. This led to a full-blown review of the entire contract with lawyers from a dozen firms all seeking changes in the standard contract. This resulted in long delays in reaching final settlement: another reason why **nonprice** terms should be negotiated and agreed upon in advance of the final negotiations.

Prudence.

Prudence in bargaining procedures will have an influence in strategy planning. Any change in procedures or documents that have been accepted by both sides over a period of time should be carefully planned in advance. People don't like surprises, particularly if they require additional work. If changes are to be made, they are best entered into gradually so as not to raise suspicions and concerns. Unless a sudden change in procedure is a tactical move, it is well not to cause the buyer to ask, "I wonder why they did that?"

Negotiate in a Good Location.

Where to negotiate should also be part of strategy planning. It is generally believed that there is an advantage in bargaining on one's own

turf. The home team is generally believed to have an advantage. If negotiation can't take place on one's own turf, it may be well to consider a neutral place with a good environment. An example of a poor location: The California Canning Peach Association planned to hold a board of directors meeting at a San Francisco hotel. When the directors arrived, they found that the hotel had failed to book a room for the meeting, and they were accommodated in a room that was a night club bar in the evening. The acoustics were poor; the room was noisy; and the decor was anything but harmonious and conducive to careful deliberations. Discussions were difficult to hear; the surroundings were unfamiliar and unsuitable for a business meeting; those present felt uncomfortable; tempers became short, and some emotions flared. Needless to say, the meeting was a shambles and nothing was accomplished. The meeting place itself had much to do with the poor results of the meeting.

People are influenced by their surroundings. Price negotiations should always take place in a quiet, comfortable room with harmonious colors and a minimum of distraction. If the conference is a long one, accommodations should be made available for caucuses. Coffee and soft drinks should be made available to the participants.

Negotiating

Farm bargaining associations carry out price negotiations in a manner suited to the environment within which they operate. Many milk producer associations no longer are involved in long negotiation sessions with distributors and bottlers. Minimum prices and minimum terms of trade are arrived at through the Federal milk marketing order in the area in which they operate. Over-order prices for fluid milk and products are **modified and** changed from time to time based on the demand for manufacturing milk. There is constant communication between the association officials and the buyers so that price changes occur after much discussion and with knowledge of the facts. There is precedent and experience to go by and both buyer and seller feel comfortable with the procedure. This was not always so. Milk producers had many tough bargaining sessions before they came to the rather institutionalized procedures now being used.

There is no one perfect way for price negotiations to take place. The procedure calls for many skills and much understanding. Some associations negotiate in a very formal manner; others bargain in an informal way. Some negotiations involve many people, others just a few. The

negotiating procedure in each case seems to have a pattern that is influenced by the market for the commodity, the relative strength of the buyer and the seller, the personality of the people in the industry, and the experience of the association. Among the older and more experienced associations, a well-established pattern of procedure prevails that has gained credibility and acceptance by both parties.

Parties to labor negotiations usually observe certain rituals that have been described as a three-act play. In the first act, both parties behave in an aggressive fashion, making strong demands and staking out firm positions. Much of the rhetoric is designed to advise the rank and file of the hard stand taken by the other side. The second act is involved with hard bargaining. Here each side searches for a compromise. The retreats from sham positions are slow and deliberate, and each side listens for subtle signs of concession. It is here where various tactics are employed, and behavior becomes undercertain as each side seems to gain advantage by delay, or confusion, or resistance. Each side tests the other. The last act finds both sides seeking to find the last point of resistance. Here is where a crisis often leads to settlement. It is also in the last act that the negotiator's most important role- that of keeping the negotiations on track to final resolution- becomes an imperative.

Farm bargaining negotiations also have a certain ritual. Some of the activities parallel the labor negotiations model. Certainly, some initial aggressive behavior lets both sides know that their interests are being pursued and the difficulties they are facing with the other side. The aggressiveness is usually followed by some retreat from earlier positions and a search for compromise. In fact, the business of farm bargaining has much in common with negotiations in other fields, whether in labor, industry, real estate, and so forth. Each negotiation activity is tailored to fit the needs of a particular commodity or industry. The strategy and tactics used by each side can be observed and studied. Here are a few examples of tactics and strategy employed in farm bargaining.

Patience involves the maturity of being able to wait out an agreement in exchange for the expectation of gaining more in the future. This is used by both sides. It can be used, for example, if total supplies appear to be less than anticipated, causing an increase in value. It may be used if excess supplies seem to be causing a softness in the market. There are other examples. Sometimes the negotiators are only out to gain time until the values have adjusted up or down.

Deadline is often used in negotiations. Buyers use it as a means of precipitating a decision by fixing a date by which time an offer will be withdrawn. Associations may use it, too, to fix a time within which a response is expected. It is a good tactic to use to induce a decision or a response.

Fait Accompli is a risky strategy in commodity negotiations because it demands an action against the other side, and then waiting to see how the other side responds. A typical example would be where a buyer closes a plant or a receiving facility, or terminates a relationship with an important member. An association would use it by diverting product to another market without consultation. Since both sides can use this tactic, the consequences should be carefully considered before it is used.

Surprise involves a sudden shift in method of approach. It is usually dramatic and drastic, like raising the voice and walking out of a negotiating session. This tactic often doesn't work. In commodity negotiations, with participants often being the same people from one year to the next, the tactic is easily recognized after being used two or three times.

Association involves associating one's goals with the approval of an individual or organization that has influence and standing with the other side. Associations have used this tactic by referring to approval by a government agency or by another buyer. Buyers have used the same tactic by referring to approval of their position by a large producer or an important member of another buyer.

Many Issues at The Table involves having a number of issues on the table and trading off-making concessions on one issue to gain another. Buyers will frequently use this tactic by appearing to give concession on noncostly items in order to gain on the costly ones. Associations have also used the tactic, making concessions on unimportant issues to gain on the more important ones. In using this tactic, it is important to make sure that the assumption about what is important and not important is correct. Buyers have sometimes used this tactic when a **nonprice** term was of great importance to one or two members of the negotiating team, thus creating problems for the other side.

The Salami Approach involves taking a small slice at a time. This is often used by associations to achieve their long-range goals, asking for and achieving a small victory that in itself is not of great consequence. Buyers, too, use the same tactic in changing handling or grading standards. It is easy to give up a little bit at a time. However, the slices, when added together, can amount to a significant gain or concession.

Bribery and Sweetheart Deals deserve mention because they have been widely used by buyers in the form of special concessions to members and to nonmembers of the association. The most common of these are special bonuses, loans or payments for services not performed, and outright cash gifts. The tactic creates a special problem for bargaining associations, because such practices are generally known in an industry and arouse suspicions and mistrust among farmers.

Limited Authority involves restricting the authority of the negotiators to make a final decision. This tactic is commonly used by both the associations and the buyers. Few association boards will relinquish their decisionmaking authority to a negotiator, although in most cases a good negotiator knows the board's position. This method is an excellent vehicle to test out new approaches and suggest compromises that are subject to final approval. Buyers use the same tactic for the same purpose.

Question and Answer involves the use of appropriate questions posed at the right time, the purpose of which is to ascertain the assumptions and learn something about the intentions and sense of values of the other side. Even when a response is negative, the answer may give some insights not otherwise known. A question should never be designed to show how smart is the negotiator or how stupid is the buyer. Questions designed to serve an ego can be self-defeating. Associations and buyers both use this tactic. The answers should always be carefully framed, responsive, and designed to achieve the association's goals.

Threats of withdrawal of a favor or the infliction of punishment as a sanction are also sometimes used. A threat should never be used unless the party has the ability to enforce the threatened action and intends to follow through. It should be remembered that threats can induce retaliation. Unless beneficial results can be obtained, the threat should never be used; and only when these three considerations are present:

1. The threat can be carried out successfully.
2. The threat has a better than **60-percent** chance of success.
3. All of the risks and costs are well known. How a threat is delivered can also be significant. Rather than an assertive statement like, "If the desired action isn't taken, a sanction will be applied at once," a diplomatic statement like, "Without the desired action, we will be forced to consider moves that may prove to be unsatisfactory to both sides," will give the same signal, but will be less likely to elicit an emotional response.

Associations have resorted to threats on several occasions, particularly in connection with legal action over buyers' unfair buying practices.

Associations have also threatened to stop deliveries in order to stop a plant or to use pickets.

Buyers have used threats involving legal action, plant closing, bypassing acreage, and changing buying patterns. The threatened party is often forced to respond to a threat in order to remove the intimidation that a threat implies. If the tactic of using threats works once, it is bound to be used again and again until the threat is challenged.

Reading and Sending Signals, both verbal and nonverbal, is a necessary part of the negotiation. There may be, and often are, hidden meanings in conversations in the bargaining process. Being able to read and send these signals is an important skill of good negotiators. Nonverbal communications are not always as easily controlled as are verbal communications. Nonverbal signals are expressed in everyday living, and often the nonverbal signal is more accurate than the verbal message. People will often express their feelings in a nonverbal way. To read such signals, one must consider the environment and the time at which the message is given. Some of the nonverbal emotional signals that most people can read are: open or suspicious, reassuring or uncertain, aggressive or confident. When nonverbal signals are combined with verbal communication, we can conclude, for example, that a person is cooperative, honest, holding back, protective, uncertain, and so forth. Negotiators learn to listen and watch for signals that can tell them much about the person they are dealing with. Good signal reading can indicate the need to change an approach or reveal hidden motivations, feelings, or needs. Nonverbal signals can often be compared with verbal communication to determine the accuracy and meaning of the spoken word.

There are some excellent books on body language which negotiators should read. Some of the simpler gestures which the author has learned to identify are: Arms folded together across the chest is generally a defensive or protective posture. Sitting forward and leaning toward one is an aggressive posture. Legs draped over the side of a chair is an indifferent posture. Lack of eye contact may mean a lack of interest or a defensive gesture: hands on hips-a waiting posture. There are many more. Careful observations will enrich the negotiator's ability to read people. Being aware of the revealing nature of gestures, postures, and facial expressions will also help negotiators understand their own. A word of warning: It takes a consummate actor to use body language to communicate feelings that one may not have. People will distrust one who uses nonverbal communication to convey something that person

does not feel. If one wants to change one's body language, it is best done by changing how one feels.

False talk is another form of communication that a good negotiator needs to understand. False talk occurs when the words do not convey what is being said. For instance, a statement like: "The price should be in the area of \$100," may really mean, "I am not prepared to tell you the price." Prefacing a sentence with "Honestly" or "To tell the truth" when the question of honesty is not an issue, may mean the exact opposite. Phrases like, "Don't worry" or "I'll do the best I can," may really mean the opposite. When a buyer *uses* the words, "We are going to . . .", he may really be trying to put some distance between the two parties. "It's none of my business, but . . ." may really mean "It is some of my business and. . ." False talk is a part of the negotiating business and should be understood, because the most essential part of the process is being able to communicate-both ways.

Stalemate, the inability to come to an agreement, can be handled by a number of different approaches, all with some measure of success. Essentially it is the degree of interest that the parties have in coming to a decision that will hasten the conclusion. Some of the west coast fruit bargaining associations have for a number of years operated under a "reasonable price" provision in their contract of sale with processors. Some associations have provisions for mediation, while others have provided for arbitration, either using a panel of arbitrators or "last-offer arbitration." The arguments that have been used against mediation and arbitration generally are that it is very difficult to find a person who is unbiased and knowledgeable to act as a mediator or arbitrator. The possibility of mediation and arbitration induces some parties to negotiate in such a manner as to create a favorable position for mediation or arbitration. For example, a negotiator might name higher than expected prices in anticipation of a compromise, or a splitting of the difference.

Reasonable Rice contracts can be drawn to carry a provision like the following:

The buyer agrees to pay to the association and the association agrees to accept for all the commodity delivered to the buyer by the association or its members a reasonable price. The term "reasonable price" as used herein means a reasonable price for each variety and grade of the commodity covered by this contract. The said "reasonable price" shall be determined by the buyer and the association by agreement prior to _____. In the event that the "reasonable price" is not so determined by agreement of the parties, it shall be determined as set forth in the Uniform Commercial Code of the state (reference to the code and section).

Many States have in their commercial code a provision for determining price in the absence of an agreement, and the purpose of this approach is to use this section of the commercial code. It is contemplated that, in the event of a stalemate, the parties can go to court and have the court make the decision as to what would be a reasonable price under the circumstances that would prevail. This provision tends to cause the parties to seek a resolution because of the fears of long delays in the court process and the costs that might be involved. No case involving a price that I am aware of has ever been settled by the courts. The California Canning Pear Association did start action on one occasion, but settlement was reached before the action was concluded.

Power

Association members like to talk about achieving power and using it. Farmers have increasingly seen the buying power of the large food companies, and have seen that power not always used wisely. Bargaining power is the ability to influence the behavior of the other side without making a concession. Using power as a tactic in negotiations is not uncommon, but before it is used by a farm bargaining association, it should be understood. The first step is to ascertain the relative power of the association and the buyer.

Power is always relative. Rarely, if ever, does the association or the buyer enjoy complete power. For every power move, the other side has some offsetting move. For example, the power of an association to restrict the total supplies of a buyer may be met by a plant closure or legal action.

Power may be real or apparent. It's how the power is perceived that is important. If a buying company believes it will lose preferred suppliers, the buyer may be influenced, even if no such move was contemplated. The association may believe that the buyer will acquire its supplies from other sources than the association when, in fact, there was no such intention.

Power may be exerted without action. If an association or a buyer believes a move may be met by a lawsuit, it may choose not to make the move, even though such legal action was not actually contemplated.

Power is limited. Laws restrict the actions that an association or a buyer may take. Likewise, ethical standards, hope for good future relations, and competitive problems may tend to limit the use of power.

Power exists only to the extent that it is accepted. An association that refuses to be intimidated by threats or exploitation on the part of a

buyer cannot be exploited and will not be victimized. The same is true for a buyer.

The ends of power cannot be separated from the means. An association cannot develop good relations with the buyer by forcing it to act. A buyer can also not expect to develop loyal farmer suppliers by misuse of power over the farmer's association.

The use of power always entails cost and risk. The costs and risks involved in the use of power should be very carefully analyzed.

Power relationships change over time. The continuing growth in the number of successful farm bargaining associations is evidence of a change in the relationship of power.

Mediation and Arbitration

Under mediation, a third party is brought in to identify potential areas of compromise. A skilled mediator has the ability to suggest compromises not previously considered, provide moral suasion, and reduce tensions. A mediator may be sought in the hope that outlandish demands by one of the parties may be brought under some pressure to compromise. One of the parties may seek mediation because it feels the other side is unreasonable. Mediation may also provide a means for bringing buyers together. In some States, the Director of Agriculture is authorized to act as a mediator in cases involving disputes over the prices and terms of sale of agricultural commodities. When requested to do so by both parties, the Director can offer to mediate and has a unique opportunity to bring the buyers together. The Director is in a position to suggest terms of trade that will treat all of the buyers equitably. Buyers generally will seek to avoid any agreement that puts them at a competitive disadvantage with other buyers. They cannot join those competitors to arrive at a joint offer because Section 1 of the Sherman Act prohibits such activity. The State mediator provides a means of circumventing this obstacle without exposure to the antitrust laws. The California Canning Peach Association used this approach on one occasion and the mediator split the differences between the parties. The association did not use that approach again because of the tendency of the parties to make offers and negotiate in anticipation of mediation that might attempt to split the difference.

Arbitration provides a means of resolving disputes between bargaining parties in order to maintain the flow of goods through normal channels. There are different ways to provide for arbitration. The Michigan Agricultural Marketing and Bargaining Act has a provision for com-

pulsory, binding arbitration. The act provides that the association and handlers, which at the beginning of the marketing period have not arrived at an agreement, will submit their final offers for binding, last-offer arbitration to a joint settlement committee made up of one representative selected by the handler, one selected by the association, and a third person who is the chairperson. The third individual is selected by the other two members, or, if there is no agreement, from a list of five persons identified by the Agricultural Marketing and Bargaining Board as "knowledgeable in agriculture" from which each party can strike two names.

The Michigan provision is significant because it limits the arbitrators to choose from one of the final last offers. The result has been that both sides tend to make their final offers sufficiently reasonable to be persuasive to the chairperson.

Several associations provide for arbitration in their contracts, and the method of selection is negotiated when the contract is signed. The problem, of course, is to find an arbitrator who is both knowledgeable and unbiased. A three person panel with two partisan arbitrators and one neutral merely transfers the discussions to a smaller group and leaves the final decision largely in the hands of the neutral arbitrator. Most associations see arbitration as evidence of a failure in the negotiating process rather than as a part of the bargaining effort.

Operating Cooperatives

On the west coast, some commodities are processed and marketed principally by cooperatives. For canned Bartlett pears and canned apricots, the operating co-ops market more than half of the production. This growth in the share of marketing activity going to the cooperatives has been gradual over a period of years. The result is that the price-making negotiations with the cash buyers represent an ever smaller portion of the entire crop. This situation has raised some concerns among proprietary companies, the bargaining co-ops, and the operating co-ops.

Unique, perhaps, to the California situation is the single-pool method of operation used by most operating co-ops. All the raw products furnished by the members are placed in a single pool at the established market value for each year. The established market value has, for these commodities, been established by the bargaining associations as a result of their negotiations with the proprietary companies. Over the years, many of the members of the operating co-ops joined the bargaining

co-ops because they were interested in the ability of the bargaining association to stabilize prices and to realize the highest prices that could be justified for the commodity in each marketing year. The interest was generated because, under the single-pool method of operation, each member of the operating co-op is allocated the margins earned by the co-op on the basis of the value of the products that member delivered during the year. The higher the established value, the greater would be the member's share of the margins.

The bargaining associations do not negotiate with the operating co-ops, but discussions take place each season with the management of the operating co-ops, to gain their perspectives on the market for the product during the coming year. Such discussions are regarded by both parties as being helpful in attaining the "right" price for the commodity. This arrangement also benefits the proprietary companies. The fact that the operating co-ops with which they compete use the same value for raw products as are used in their operations creates a more orderly market.

A single-pool operation based on established values is also important for the co-op, particularly one that handles many products. Margins can be allocated on a fair basis for all the members, and the opportunity for one commodity to dominate the pricing of the other commodities is averted.

If the operating cooperative were to change to a multipool form of operation where each commodity would stand on its own, members would stand to lose the advantages of a single pool which tends to level off the peaks and valleys of grower prices that often characterize individual commodities. Cost allocation is also a problem in multipool operations. Proprietary companies with multiple crops operate like a single-pool cooperative in that their earnings are based on the results of handling many commodities. Economies of scale and the use of the same facilities for many crops keep operating costs in line.

At this time, there is no well-established institutional mechanism, that I am aware of, to actually bargain with an operating cooperative except for the informal methods used in California.

An interesting rationale expressed by many farmers who are members of both a bargaining association and an operating cooperative is their belief that management performance of the operating cooperative can be judged more accurately when the transfer prices used for raw products are the same as the prices arrived at by bargaining with commercial buyers. When operating cooperative managers are paid based on the

returns above commercial prices, growers are fearful that transfer prices may be depressed if bargaining does not take place.

Operating cooperatives that actually enter into the cash market may need to bargain with a bargaining association in order to secure the needed supplies. Such an action tends to establish the transfer price used for the cooperative member's production.

There are many arguments put forth that farmers should not have to bargain with themselves. This may hold true with respect to an operating cooperative that handles but a single commodity and where grower returns are geared directly to the selling prices of the finished commodity. In such cases, the cooperative must compete with commercial handlers to keep its grower-suppliers, unless there is a management compensation arrangement that could create an incentive to keep grower prices low.

Where two or more cooperatives compete in the same market with the same products, a bargaining association may be needed to prevent price competition that uses low raw product costs to gain market position.

The role of the bargaining association and its relationships with operating cooperatives may differ depending on the circumstances in each case. A grower's dual membership in both a bargaining association and a canning cooperative is typical of California. The experience in most cases is that the membership on the board of directors is predominantly noncooperative producers whose production is directly involved in the negotiating process with the cash buyers of the commodity.

When the role of the bargaining association in an industry has been established as that of achieving fair and reasonable prices that are geared to the market, it should have a common goal with an operating cooperative and an institutional arrangement for negotiating industry prices may come about. When the basic goals of fair and reasonable grower returns are not the same, then there may be problems.

A bargaining cooperative whose board members market their production through an operating cooperative must exercise great care that its commercial customers are treated in an even-handed and fair manner. Each buyer negotiating or dealing with a bargaining association for the same commodity competes with each other buyer. Great care must be taken that no single buyer or cooperative has the slightest advantage over the other in its dealings with the bargaining association. Failure to observe this basic rule can destroy the credibility of the bargaining association and interfere with attaining the association's objectives. This

is a particularly delicate matter whenever cooperative members with dual membership serve on a bargaining association's board of directors.

Final Decision Making

Final approval of the association's price position is made by a board of directors, which may often consist of a large number of farmers. This decisionmaking process involves considerable bargaining among the members of the board of directors. The manager of the association is frequently a mediator among the members of the board. The compromises that are reached by the members of the board are sometimes rather fragile, which may restrict the flexibility needed in the bargaining process. The decisionmaking process on the part of the buyers will generally follow corporate procedures. One or two major buyers often make a decision for the industry, and it is with these buyers that the association will have its most intense negotiations.

Where possible, the board should give its negotiators some flexibility, or at least an indication that there may be some give and take, which is the basic part of negotiations. Board members must bear in mind that most large food companies work on a system of profit centers. The size and scope and timing will vary from company to company. Long before the harvest, pack or volume budgets are established. Cost inputs for supplies, direct labor, indirect labor, overheads, advertising and finance costs are projected for the season. The cost of the commodity is also projected. From these projections, contracts for raw materials and supplies are made, and transportation and financing are arranged. Finally, selling prices are projected. The budgets and projections that are made form the basis for the profit plan. The profit center-regional, local, or company-wide-rewards the executive who meets or operates below the budget and projections. The savings realized contribute to corporate profits and the executives with a good record not only enhance their own income, but are among those chosen for advancement. If bargaining takes place during the time that budgets and projections are made, the buyer may have more flexibility. Once a profit plan has been established, buyer positions are often locked in.

The system of profit centers makes it necessary for the board of directors to consider the best timing for negotiations. Flexibility and timing are often the essential lubricants that lead to smooth negotiations for a mutually agreeable pricing arrangement.

IX. THE FUTURE OF FARM BARGAINING

The interest in and the need for farm bargaining have been manifest for over 100 years. There is no evidence that farmers or the marketing system in which they operate will change in such a way that farmers will lose interest in seeking some measure of influence in the marketplace to protect and enhance their economic welfare. The economic climate for agriculture in the future will surely respond to the trends that have characterized developments of the past decade. Farms are larger, and farmers are better educated and are better managers of the business aspect of farming. Farming has always been capital intensive, and is becoming more so. Operating costs as a percentage of gross dollar sales are greater, thus placing a premium on good management and skillful financial planning. Farmers can no longer "go broke cheap." Increasingly, farmers are faced with having to deal with the group actions of others in their production operations. Those with labor intensive crops, those with crops dependent on reliable transportation, those with crops grown for processing, all are experiencing economic pressures. Such an economic environment will cause farmers to continue to consider cooperative farm bargaining as a necessary part of their farming practice. The type of association and how it may operate is the subject for this chapter.

The political climate of the future will have a great influence on the future of farm bargaining. Government programs to support farm prices are expected to become increasingly difficult to achieve or even to maintain. The conditions attached to government assistance will become more onerous. Government programs tend to be created based

on political considerations to further social goals. There is little reason to believe that farmers, in the long run, can expect to be treated any differently than others who are subsidized or who contract with the government in industry and commerce. Government programs that provide benefits to farmers can be expected to require compliance with regulations that will further the social or political goals of the party in power. As a result, farmers will need to consider other alternatives to maintain and protect their investments. One of these alternatives is cooperative farm bargaining.

The American farmer's political influence has long been on the wane. The number of farm votes, even counting those who at one time lived on the farm and still hold a measure of sympathy for the farmer's problem, has declined sharply as a percentage of the entire voting population. As the number of farmers has become smaller, the individual enterprise has become larger. With the increase in size have come greater political sophistication and the gradual recognition of the need to build political influence from a new base. Economics, and not numbers, will become the new political base for agriculture. New allies may require compromises that have in the past not been acceptable.

The nature of the marketing system will also have an influence on the future of farm bargaining. There is little likelihood that the buying power in the food industry now held by nationwide manufacturers, retailers, wholesalers, institutional buyers, and exporters, will be modified in a manner that will enhance the bargaining position of the farmer. The food industry beyond the farm gate will become more powerful as it becomes more efficient and continues to generate its growth from large volume low-unit-cost operations. The increasing buying power of the food industry will inevitably result in a move either to impose legislative restraints, or to develop some type of countervailing power for the producer of the raw product. Both parties should find the latter course more acceptable and practical.

The type of farming operation of the future will also be significant. The trends toward larger farms, greater specialization, more mechanization, and greater need for capital are bound to change the traditional ways of farming, as in fact, they already have. The farmer will become more a farm *manager* with greater emphasis on management skills. Marketing strategies and financial planning will be the tools needed for the successful farming enterprise. Besides the skills needed for farming with its many disciplines will be management skills, and this combination means a farmer executive who will make farming decisions based

on the bottom line, thus increasing the need to exercise some influence on prices and terms of trade.

I believe that the future of cooperative farm bargaining must be analyzed in the context of the foregoing circumstances of political environment, market systems, and farming operations-particularly the market systems. The fading open assembly and free markets are being replaced by a system of contract farming. Contract farming lends itself to group association by producers for negotiating contract terms. Contractual agriculture will be bargained agriculture.

Cooperative farm bargaining in the future must meet the test of operating in the public interest, as well as for the farmer's benefit. These two objectives are not mutually exclusive. The public interest is best served by maintaining an adequate supply of good quality food for the American consumer. The adequacy of the food supply, its variety, and its quality depend on a market system that provides a profit for the efficient farmer, processor, and distributor. Profit is the incentive needed to maintain productivity. Cooperative farm bargaining will be one means to maintain the profits necessary to provide the Nation with an adequate supply of food. Agricultural production is also a key element in maintaining a favorable balance of trade, and profit will encourage the production needed. The undue price enhancement provision of the Capper-Volstead Act provides the necessary limitation that will protect the American consumer from unfair or unreasonable prices beyond that of earning a needed profit to maintain production. Price is not the only means of achieving profitable results from farming; greater efficiency, better coordination, and the elimination of wasteful practices are all important factors in bringing profits to the producer while at the same time maintaining reasonable costs of food for the consumer, thus serving the public interest.

Dairy bargaining associations have served the public interest by their remarkable achievements in coordinating the production and the deliveries of fluid milk in such a way that, despite the variable production pattern in the dairy business, fluid milk bottling plants can operate at maximum efficiency; excess supplies are diverted to beneficial uses; handling costs are minimized; and the costs of milk and dairy products are maintained at reasonable levels without waste of valuable resources.

Tomorrow's farm bargaining association cannot expect to maintain its bargaining strength by dealing with the issue of price and terms of sale alone. It should assume the full responsibility for supply management, be it on a buyer-by-buyer basis, regional basis, or national ar-

rangement. Supply management in this context means that the producers of the commodity through their cooperative bargaining associations, and utilizing marketing orders when necessary, will be responsible for furnishing the necessary quantity of raw product of the quality needed to maximize the efficient operation of the buyer's plants and the marketing system. The association will have the responsibility for coordination, transport, quality control, and producer payments. Under this arrangement, the buyer will specify the quantity, quality, and time of delivery of the raw product. The role of the association will be to coordinate the members' production to meet this market requirement. Multiple-year contracts will be negotiated, thus providing producers with firm markets for certain production. The buyer will have an assured supply to encourage better planning and marketing of the finished product. The cooperative bargaining association will be a voluntary organization. Those producers who choose not to become members will have to compete with the cooperative for a share of the market.

The system of country buyers competing with each other and playing one producer off against the other is inefficient and costly. It is only justified when handlers or processors can acquire their supplies at costs that are less than their competitors. The nature of the competition is such today that few processor/handlers can achieve large reductions in cost of raw material without either violating the law or exploiting the farmer. The advantage to a farmer of doing business with one large company instead of another is not always apparent. Significant savings can be realized from better coordination by the producers. Such things as uncoordinated transportation, multiple inspection arrangements, scattered loading and receiving operations, particularly for fruits and vegetables for processing, are costly and can be improved. The prospects for cost reduction in this area loom large when compared to the overall wasteful practices that are now being used. Mergers and acquisitions in the food industry have enabled many companies to achieve economies of scale. The independent farmer can also achieve economies of scale through the operation of a cooperative bargaining association that assumes the responsibility for the coordination, the acquisition, and the handling of farm products. At the same time, the independent farmer has a chance to reduce the market risks by the use of multiple-year contracts.

The food industry's mass handling and mass marketing techniques have resulted in a system of blending the quality of the raw products

that are received. The good is mixed with the not so good to produce a finished product of average quality. A bargaining association, able to negotiate a system of proper incentives, can improve the quality of the raw product. While weather and location have a significant impact on quality, farming techniques and skills are still a basic factor in maximizing quality. Like anything else, it requires more money to produce higher and better quality. In California, many peach growers took great pride in producing cling peaches of exceptional quality, often at the expense of lower yields and higher costs per unit of production, but they were never fully compensated for their efforts. Their production improved the average of all the deliveries, but their fruit was never processed separately and identified for its real value. There simply was no way in a mass production operation to deal with separate lots of fruit. The costs would have been prohibitive. The bargaining association was finally able to negotiate a system of incentives and penalties for deliveries; those lots with fewer defects received a higher price than those with many defects or other quality problems. This served to reward quality growers for their efforts. To the processor, fewer defects meant greater efficiency in the operation of the processing plant, and so the added payments for quality were justified and have become a standard in the industry.

Farm products soon lose their identity in the large volume operation. Processors and handlers deal in total tons of production. It is the average quality that is significant. Better overall quality may improve market position for a processor/handler or even permit a higher than average price. Buyers will generally negotiate for prices related to quality that can be measured. A bargaining association can and should provide the leadership in meeting the quality needs of the primary market by negotiating the incentives necessary to achieve the results that are required.

A bargaining association can meet the food industry's needs, while at the same time meeting the needs of the farmer member. Quality control, volume regulation, and coordination of deliveries are proper functions for the association. All three of these functions are a significant part of the need for cost control on the part of the handler/processor. These functions are also important to the producer in providing a stable market and fair returns. An opportunity for significant reduction in costs may be found in transportation. In California's two largest canning crops, tomatoes and peaches, there are often as many loaded trucks going in one direction as there are in the other. Nondifferentiated prod-

ucts moving in opposite directions to supply the same industry is not an efficient operation. Coordination of deliveries could sharply reduce the handling costs for these crops.

Every commodity has experienced dramatic changes in its marketing system. Changes in life-styles of the consumer, changes in eating habits, changes in handling methods, processing techniques, and distribution systems all have a final impact on the farm. Consider the dramatic changes of the past 15 years in the handling of fluid milk: the advent of refrigerated handling, bulk deliveries, and new technology has resulted in fewer dairy farmers with more cows, fewer and larger processing plants, and a virtual revolution in the system of buying and handling of fluid milk. Bargaining associations have become regional in nature. They perform services that complement the marketing system. Today's Wisconsin dairy farmers don't know if their milk will be consumed as fluid milk or cheese in Chicago, Minneapolis, or Cleveland. They do know that they have a home for their production and that their returns will be based on the efforts of a bargaining association that has become a part of the marketing system.

An example of the impact of the change in eating habits can be found in tomatoes. Fast food franchises and the popularity of pizzas have dramatically changed the demand for tomato products. This change in the market was one of the factors that led the tomato growers in California to undertake a successful bargaining operation.

The increase in the demand for boxed beef, replacing the traditional system of dealing in carcasses, will have an important impact on the manner in which beef cattle will be marketed. Some feedlot operators in the Pacific Northwest have entered into long-term participation contracts with a major packer of boxed beef. There is a mutual need in the livestock industry for assured supplies and an assured market. The cattle cycle which haunts the industry may lend itself to a cooperative bargaining effort more than any other major commodity if one considers the needs of the producers, and of the handlers and processors, for a stable market and improved methods for handling and coordination. Every time there is a major change in the marketing system of a commodity, some opportunities are opened up for the bargaining process. This appeared to be the case with respect to broilers, and a real effort was made, but later abandoned by the Farm Bureau. There are some, however, who feel the efforts will be resumed in the future when the mutual needs of the producers and the integrators can both be served by cooperative bargaining.

Handlers, buyers, and processors are looking for ways to reduce costs and increase efficiency. The larger the organization, the more difficult it is to deal with many individual producers. A modern food conglomerate is programmed to deal with large customers, large suppliers, large labor unions, and larger vendors of services. They deal with chain-store executives and the executives of large industrial concerns who supply their manufactured items. They deal with computerized systems that require good cost controls. Yet, when it comes to farm commodities, they deal with many individuals. Many food companies deal with more individual farmer suppliers than the total of all of the other suppliers they do business with. Their method of dealing with farmers is the same as that used in dealing with any other large company. Dealing with many farm suppliers has been profitable. By using their buying power, buyers have been able to maintain low costs for their raw materials. As the number of farmers has declined and the individual farmers have become larger, they have also become more sophisticated. In many commodities, farmers have joined cooperative bargaining associations. The cost advantages that the buyers have enjoyed from doing business with many individual farmers are no longer as significant as they were. There are potential cost advantages in dealing with cooperative bargaining associations capable of recognizing and coping with the complex needs of a large volume operation.

This is a system ready-made to deal with organized producers capable of supplying their needs on a stable basis. The escalating costs of energy, labor, and capital make the prospects of dealing with producers on a responsible basis most attractive. The main fear of a buyer is that a competitor may be able to purchase raw products at a lower cost. Experience has been that this is increasingly difficult to achieve without resorting to sharp buying practices or cheating the producer. What is important is being able to handle a large volume of raw products in a most efficient manner. The prospects of entering into long-term supply contracts at reasonable prices on a basis calculated to maximize plant efficiency can be mighty attractive. The price of the product may be less important than the manner in which it is handled, provided that the competition does not receive a price advantage. "Why," the reader may ask, "if this arrangement is so attractive, hasn't the practice become universal?"

There has been a long record of growth and development of a successful system of cooperative bargaining that operates to fulfill the needs of an industry. It is the only bargaining method that has continued to

grow. The idea that the very formation of a collective bargaining agency will by itself bring handsome results has not proven to be the case.

Bargaining associations of the future must fulfill a marketing service and be able to demand and receive a price for such services that the market can afford. The bargaining association of the future must perform some of the same functions of mass assembly and coordination that a large corporation now performs. The bargaining association will perform the service for its members, while the food corporation will perform the service to increase the shareholders' returns from their investments. The bargaining association is in a unique position to perform a service for a processor/handler dealing with many growers. Why then hasn't this happened to a greater extent than it has?

Change in any industry comes slowly. Perhaps in the business of farming it comes at even a slower pace because farming is not a transitory business. Most farmers come from farm families. The land is held for long periods of time. Farmers, above all, value their independence. There are few farmers who have not had difficult times brought on by weather, insects, government regulations, and depressed markets. They don't panic easily. Changes do come, though often at a pace that may seem slow. Given the fact that farmers measure changes by seasons or by crops rather than day to day, change has been rapid, particularly in production technology.

Tradition has a significant influence in the farming business. Farmers, for example, have traditionally maintained a loyalty to those who buy their production. Experience over the years has demonstrated the importance of maintaining a relationship with the buyer. This loyalty has been shaken in recent years by the many mergers and changes among companies that have been buying the farmers' production. New people and new policies often lack a reciprocal sense of loyalty to the farmer.

The idea of cooperative farm bargaining is just reaching a new threshold in its growth and development. The experience of the past 20 years has shown what will work and what works best. Changes in the market structure, the political strength of agriculture, and the business of farming itself have served to limit the number of options available to agriculture to maintain access to a fair share of the consumer's dollar.

Notwithstanding the growth of cooperatives, not all farmers are "cooperative minded," particularly in marketing. They are basically competitive with each other. Many cooperatives came into existence because of hard times, and because farmers had few other options to

consider. Many cooperative bargaining associations were formed because of low prices and unfair treatment by the buyers. In the future, bargaining associations will come into being and grow in importance because they can perform a service that is beneficial to both the farmer members and the particular industry their commodities fit into. Bargaining will grow because it is a natural fit in today's food marketing system. The capital investment required to produce most commodities is largely held by the farmer. Even when taking into account the finished product, the major portion of the capital required to produce food is furnished by the farmer.

Many food companies are just beginning to realize some of the advantages that are associated with a strong, well-organized, and well-managed bargaining association. Bad experiences in the past are often an inhibiting factor in coming to terms with the idea of farm bargaining, but as the prospects for a more stable supply of raw materials become evident, the food industry will support and recognize bargaining associations if it believes that the services that the associations can perform will complement its operations.

The function of a bargaining association in the future might include the following:

Contracts:

- A. Negotiate multiyear supply contracts for all or most of the supplies of the handler/processor.
- B. Contract with the members through membership agreements to handle and market the production from specified production units.
- C. Annually negotiate the prices and the terms of sale for the members' commodities on a delivered-to-the-plant basis, and cover those matters that are not included in the multiyear contract.
- D. Contract for the diversion and sale of the production not needed in the primary market.

Services:

- A. Provide both field inspection and plant inspection of the members' commodity.
- B. Promulgate uniform standards of quality and production necessary to meet contract requirements and to maximize total returns.
- C. Furnish transportation from farm or receiving station to buyer's facilities.

- D. Coordinate all deliveries to all buyers in accordance with pre-established pickup and delivery schedules set forth in the contract.
- E. Effect prompt payment for commodities delivered and pay the members.

Planning:

- A. Assist the members in planning production for the market, quality, volume, and possible diversion.
- B. Assist the buyers in planning deliveries to maximize plant efficiency.
- C. Carry out directly, or by contract, research on production problems, new varieties, and market opportunities.

The bargaining association of the future will be involved primarily with providing services to the members which the individual member is not able to perform as efficiently. The volume handled by the association can develop economies of scale that the individual cannot achieve. Such a bargaining association would not require large amounts of capital. It would be operated on a not-for-profit basis with financing derived principally from a service charge per unit of production that is handled.

Many obstacles will need to be overcome before such a system will become generally acceptable. Farmers in commodities where bargaining has not existed, or where it has failed in the past, may have bitter memories of other plans that failed, both governmental and private. There may be reluctance to accept the disciplines that are associated with the kind of bargaining association outlined. Hopefully, the records of successful associations will help overcome such reluctance. Handler/processors, particularly those who have an efficient buying and handling operation, will be reluctant to embrace this idea because they will have little to gain. Others will point to bad experiences with bargaining, where, for example, a high price at any cost was the sole objective of the association.

The kind of bargaining association that is contemplated will require skilled and dedicated management. Few people are trained to step into such a responsibility today. Responsible and reliable management will tend to quiet the fears of many, and such management is not easily found. It must be paid at a level commensurate with the responsibility of the organization. The current lack of trained management to operate bargaining associations is probably the most significant deterrent to successful growth. It is to be hoped that, as the need becomes more evident,

universities will offer courses that can prepare individuals to take up the work as a profession.

Over time, I believe these problems can be overcome. Surely there is a place for an organization that can bring to farmers stable and fair returns for all of their production grown under a contract, while at the same time supplying to the handler/processor supplies of a quantity and a quality that are needed at fair prices. Such an arrangement would serve to increase the returns for both through efficient handling and coordination.

Farm bargaining in the future may find that regional or area multi-crop associations will be formed to handle the administrative responsibilities such as accounting, insurance, personnel development, economic research, and public relations. The bargaining process, however, will, in my opinion, continue to be carried out commodity by commodity. Those farmers who produce the commodity will continue to control the bargaining for their commodity through the election of their bargaining board or committee. The regional or area association will provide a service function but not a bargaining function. Bargaining for many commodities by one association is fraught with problems such as trade-offs between commodities and control by the representatives of the dominant commodity in the area. It would be a very complex operation that might tend to attract regulatory laws designed to limit its power. In addition, there are natural economic conflicts: a grain producer will not want a fruit producer to vote on or influence a price decision on grain and vice versa.

The Michigan Farm Bureau's bargaining arm, MACMA, operates as a service agency to the various bargaining committees which are elected by the members who grow and produce the crop to be bargained for. Each commodity group operates with its own staff. Whether this type of operation under the auspices of AFBF will spread remains to be seen. Michigan State law provides for exclusive agency bargaining. There will be a need for regional service agencies if farm bargaining continues to grow. It is to be hoped that the question of who will control the regional service agency will not bog down in a struggle between farm organizations where who does it is more important than providing the needed services.

From time to time proposals have been made that marketing orders should provide the institutional mechanism within which formalized price negotiations could take place. Such proposals will no doubt be made again should the voluntary type of bargaining association

described in these chapters fail to bring about some measure of equity between producers of farm commodities and food manufacturing and food distribution industries. Marketing orders continue to come under attack from consumer-oriented members of Congress and administrative agencies not familiar with the complexities of agricultural marketing and production problems, or seeking to find scapegoats for the rising prices of food. Marketing orders are not free from government control and influence, and there is always the risk that political and social goals will receive priority over economic or orderly marketing goals.

Legislation requiring good faith bargaining on the part of both parties is under consideration. Similar legislation has been considered in the past. This time, however, prospects are improved due to the widespread support for the idea among all the major farm organizations. Such legislation, if passed, should serve to close the last loophole for refusing to bargain with a bona fide farmer owned and controlled bargaining association. Legislation based on the Michigan bargaining legislation which establishes a bargaining unit and provides for exclusive agency bargaining may not be necessary if the trend moves toward the adoption of the type of organization projected in this chapter. On the other hand, if the legitimate needs of the farmers in the Nation who find themselves operating in a market environment that is dominated by a handful of powerful handler/processors are frustrated, the Michigan type of legislation is likely to be used as a means of satisfying the farmers. However, even within the framework of exclusive agency bargaining as provided for in the Michigan example, the functions of a successful bargaining association must be oriented toward the needs of the primary market, the public interest, and the needs of farmers.

Cooperative bargaining associations should expect that the undue price enhancement provisions of the Capper-Volstead Act will be given greater attention by the Federal Government. The absence of any legal history leaves an interpretation that may result in doubt. What is undue enhancement? Is it a price in excess of parity or some other formula? Is it a price over and above the cost of production? If so, what is a fair margin of profit? These and other questions will no doubt dominate the discussions that will take place over the administration of this provision in the future. The growth and development of the kind of cooperative bargaining association contemplated in this chapter would certainly hasten a decision to make greater use of the undue enhancement provision if that decision has not already been made. As farmers gain power

and influence in pricing their production, others will seek to restrain and limit that power. The political realities almost guarantee such a result. This, however, may not be as bad as some may think. The Secretary of Agriculture has had such powers since the Act was passed in 1922. The fact that little was done about it is an indication that farm prices simply have not been unduly enhanced. The growing strength of dairy bargaining associations has brought the issue into focus and raised many questions. Perhaps for the first time, some farmers have gained a measure of influence over the prices for their production.

Bargaining associations might find it in their best interest to work with the Administration and the Congress to develop a procedure that will be responsive to the desire to prevent undue price enhancement by a bargaining association. The public interest is served by adopting a policy of encouraging agricultural prices to rise to the point necessary to maintain enough production of a commodity to meet the needs of the Nation. Such a policy rewards the most efficient producers and discourages the inefficient. It is a policy that would allow bargaining associations of the kind described in this chapter to grow and prosper.

APPENDIX A
SAMPLE COOPERATIVE
MEMBERSHIP AND MARKETING
AGREEMENTS

1. Membership Agreement --
California Canning Peach Association

Name _____ Number _____ County _____

Address _____ District N _____ Orchard . _____

Social Security No. _____

City _____ Zip _____

THIS AGREEMENT, made this _____ day of _____, 19____, between CALIFORNIA CANNING PEACH ASSOCIATION, a non-profit cooperative association organized under the Agricultural Code of the State of California ("the Association"), and _____, ("the Member"), applies to the following orchards: (see Exhibit A for acres, variety and year of plant.)

Member _____

Witness _____

California Canning Peach Association by: _____

WITNESSETH:

- | | |
|------------------------------|--|
| Consideration | 1. The Member acknowledges that other growers throughout the State have or hereafter may execute similar Membership Agreements with the Association and this Agreement is executed in consideration of becoming a member in the Association and of all other growers who are or will become members in the Association, with the purpose of achieving the mutual satisfaction and benefit of all members of the Association through cooperative endeavor and enterprise. |
| Term of Membership Agreement | 2. This Membership Agreement shall become effective on November 1, 19____, and shall be for a term of fifteen (15) years, unless terminated in accordance with paragraph 3 hereof. |
| Termination | 3. This Membership Agreement may be terminated by the Member by giving written notice thereof to the Association between November 1 and November 14, inclusive, of any crop year during which the Agreement is in effect. The Association, likewise, may terminate the Membership Agreement by giving written notice thereof to the Member between January 1 and February 28, inclusive, of any crop year during which the Agreement is in effect. Any notice of termination given in accordance with this paragraph shall become effective upon the close of the crop year in which such notice is given. |

Sample Cooperative Agreements

Sale and Delivery of Products	<p>4. The Association hereby purchases and the Member sells all of the varieties of peaches produced by or for the account of the Member on the lands described in Exhibit "A" hereto during each year this Membership Agreement is in effect; provided, however, that notwithstanding any provisions in this paragraph 4 to the contrary, the obligation to deliver peaches of a Member whose canning peaches are presently under contract to a processing cooperative shall be as described in paragraph 5 hereof and the obligation to deliver peaches of a Member whose canning peaches are sold under an existing contract to a commercial canner shall be as described in paragraph 6 hereof.</p> <p>All deliveries of peaches under this Membership Agreement shall be in accordance with such rules and regulations as may be adopted by the Board of Directors of the Association and as are authorized by the By-Laws of the Association.</p>
Cooperative Members	<p>5. Any Member of the Association who is also a member of a cooperative processing company may deliver his peaches directly to said cooperative and is exempt from the provisions of paragraphs 4 and 11 hereof. Such Member acknowledges that the Association may collect from the cooperative to which his peaches are delivered a service charge per ton on the peaches described herein equal to the service charge paid to the Association by commercial processors. Additionally, the Member agrees to direct the cooperative to which he delivers his peaches to pay to the Association an amount equal to 1% of the established price for such peaches, which sum shall be held by the Association and disbursed in accordance with paragraph 10 hereof.</p>
Agency Members	<p>6. Any Member of the Association who, at the time of execution of this Membership Agreement, is obligated by contract to deliver the peaches described herein to a commercial cannery shall deliver his peaches directly to such commercial cannery and shall be exempt from the provisions of paragraphs 4 and 11 hereof until the expiration of the current term of said contract, but thereafter the Member shall become subject to the provisions of said paragraphs 4 and 11 and this paragraph shall no longer apply. The Member hereby appoints the Association to act as his agent during the current term of his contract with such commercial cannery to perform such services and to conduct such activities (including price negotiations) as the Association deems necessary or advisable to assure that the Member will receive a price for his peaches which is equal to the price received by other members of the Association. The Member agrees to pay a service charge per ton on the peaches described herein equal to the service charge paid by commercial canners to the Association on peaches sold by the Association and that the Association may collect such service charge directly from said commercial canners. In this regard, the Member agrees that he will give notice to such commercial cannery pursuant to Section 58451 of the Agricultural Code of the State of California that he hereby assigns such sum to the Association and directs that such sum be deducted from the price to be paid for the peaches sold by him and to pay the same directly to the Association.</p>

Additionally, the Member agrees to direct the commercial canner to which he delivers his peaches to pay to the Association an amount equal to 1% of the proceeds arising from the sale of such peaches, which sum shall be held by the Association and disbursed in accordance with paragraph 10 hereof.

Establishment
of Purchase
Price and Time
of Payment

7. A member who has delivered peaches under this Agreement which the Association has been able to resell shall receive a minimum price therefor equal to 95% of the proceeds arising from such sale, and the Association shall cause 95% of the proceeds realized from such sale to be paid directly to the Member by the buyer thereof. The Association shall receive the remaining 5% of such proceeds, 4% of which it may deposit in a Contingency Fund designated and maintained as provided in paragraph 9, and the remaining 1% of which it shall deposit in a Revolving Fund designated and maintained as provided in paragraph 10.

Operation
of Pool

8. All peaches subject to this Agreement which the Association has been unable to sell at its established price or prices after using its best efforts to do so shall be placed in a pool with peaches of like grade, kind and classification. The price to be paid by the Association for the peaches delivered to the pool shall be based upon the net proceeds received by the Association from the operations of pool, after first restoring to the Contingency Fund or the Revolving Fund, as the case may be, all moneys expended from such funds in the financing or maintenance of the pool, as provided in paragraphs 9 and 10, and after deducting an amount equal to 1% of the net proceeds realized from the operations of the pool, which amount shall be held by the Association and disbursed in accordance with paragraph 10 hereof; provided, however, that the Board of Directors may excuse the payment of said 1% if in its discretion it would be fair and equitable to do so. The net proceeds of the Pool shall be distributed to the members participating in the Pool at such times and in such amounts as the Board of Directors, in its discretion, shall determine. The Board of Directors shall manage the pool in such a manner as, in its judgment, will provide the maximum returns to the members participating in the pool consistent with the purposes of the Association.

Contingency
Fund

9. Each year the Board of Directors of the Association shall determine whether it is necessary or appropriate to create a Contingency Fund for that year to supplement or augment the Revolving Fund established under paragraph 10. If such a fund is created, all moneys accumulated in the fund for that year shall be available to the Association for the primary purpose of assisting in the financing and administration of the pool established for that year (but not to purchase any of the peaches delivered to the pool); provided, however, that the Contingency Fund shall be utilized for such purpose only after all moneys accumulated in the Revolving Fund have first been exhausted.

In the event that the Board of Directors of the Association determines that the creation of a Contingency Fund is necessary in any year, all payments received by the Association representing 4% of the proceeds arising from the sale of its fruit during such year shall be placed in the fund. Contingency Fund Certificates shall be issued to the members whose peaches have been resold by the Association evidencing the amount of payments thus credited to the Contingency Fund. After the close of the pool established for that year, and prior to the distribution of the proceeds of the pool to the members participating therein, the Association shall cause all moneys expended from the Contingency Fund to be restored to the Fund; and as soon as practicable thereafter, the Association shall redeem pro-rata from its members all outstanding Contingency Fund certificates issued for that year.

In the event that the Board of Directors of the Association determines that the establishment of a Contingency Fund is not necessary in any particular year, then it shall cause all payments representing 4% of the proceeds arising from the sale of its fruit during such year to be paid to the members delivering such fruit.

Revolving
Fund

10. The Association shall create and designate upon its books a Revolving Fund. All payments received by the Association representing the 1% deduction referred to in paragraphs 5, 6, 7, and 8 shall be deposited in the Revolving Fund and accumulated annually until the balance in the Revolving Fund reaches \$1,000,000. Certificates shall be issued annually to the Members evidencing the amount of the deductions or contributions made by the Members and credited to the Revolving Fund. When the balance in the Revolving Fund reaches \$1,000,000 all subsequent 1% deductions received by the Association shall be used to retire pro-rata the then oldest Revolving Fund certificates; provided, however, that if disbursements are made from the Revolving Fund, as hereinafter provided, so that its balance falls below \$1,000,000, all further redemptions of Revolving Fund certificates shall be suspended until said balance is restored to \$1,000,000. To the extent practicable, the corpus of the Revolving Fund shall be maintained at \$1,000,000 and shall be available for use by the Association for such purposes of the Association as the Board of Directors deems advisable, specifically including the financing and maintenance of the pool provided for in paragraph 8 (but not to purchase any of the peaches delivered to the pool). In the event that the Revolving Fund is utilized to finance or maintain such pool, all moneys so utilized shall be restored to the Revolving Fund, after all disbursements from the Contingency Fund have been repaid, before any distribution of the net proceeds of the pool is made to the members participating therein. Except as otherwise provided herein or by the By-Laws of the Association, there shall be no limitation on the use of the moneys accumulated in the Revolving Fund or on the manner of its investment by the Board of Directors for the purposes of the Association.

Cooperative Farm Bargaining

Liquidated Damages for Non-Delivery	11. The parties hereto fully understand and admit it would be impracticable or extremely difficult to fix the actual damages to the Association which would result from a breach of this Membership Agreement by the Member, and therefore they expressly agree that in the event of the Member's neglect, failure or refusal to deliver to the Association the products purchased hereunder, the Member will pay to the Association as liquidated damages, a sum equal to 25% of market value of each and every ton of peaches that the Member fails to deliver to the Association in accordance with the terms hereof. In default of such payment, the Association may offset against such sums owing from Member any credit standing in the name of Member, including Member's interest in any fund of the Association, or may bring suit in any court of competent jurisdiction in the State of California, and the Member agrees to pay all expenses arising out of or caused by such litigation, including reasonable attorneys' fees.
Operating costs	12. Each Member agrees to pay a pro-rata share of the annual operating costs of the Association to the extent that such operating costs are not covered by the service charge paid to the Association under paragraphs 5 and 6 or by a commercial canner; provided, however, that in any one crop year the obligation of the Member shall not exceed \$1.50 per ton for each ton of products sold subject to this Agreement. In this regard, the Member agrees that, when requested to do so by the Association, he will give notice to the processor to which his peaches are delivered pursuant to Section 58451 of the Agricultural Code of the State of California, that he hereby assigns such sum to the Association and directs that such sum be deducted from the price to be paid for the peaches sold by him and to pay the same directly to the Association.
Deliveries to be in the Name of Members	13. All deliveries of the peaches subject to this Agreement are to be made in the name of the Member unless notice to the contrary is given in writing to the Association, and all payments or advances hereunder are to be made to the person in whose name such deliveries are made or upon order signed by him and duly accepted by the Association.
Records	14. The Member agrees to furnish or to make available to the Association any records concerning the production, delivery and sale of the peaches subject to this Membership Agreement.
Notices	15. All notices herein provided to be given, shall be deemed to have been given to the Association when mailed, postage prepaid, to its office in Lafayette, California, and to the Member when mailed, postage prepaid, to his address as noted hereon, or to such other address as may from time to time be furnished in writing by either party to the other.
Partnership Member	16. If this Agreement is signed by an individual in behalf of a partnership, he warrants that he is authorized to sign in behalf of the partnership and agrees that this Agreement is binding upon the partnership and all its individual partners.

Sample Cooperative Agreements

Bona Fide Transfer	17. If a Member transfers any portion of the land described herein during the term of this Agreement, the peaches produced thereon shall be delivered to the Association during the crop year in which such transfer is made, but not thereafter. The Member agrees to notify the Association in the event of such a transfer and to provide the transferee with a copy of this Agreement prior to the transfer. If the transferee fails to deliver said peaches to the Association in accordance with this Agreement, the Member shall remain obligated to the Association for liquidated damages as provided in paragraph 11 hereof, and the Association shall have such additional remedies as are provided by law.
Force Majeure	18. In the event that the performance of this Agreement by the Member or the Association is prevented by strikes, disasters or any other cause beyond the parties' control, injunctions or the orders of any officer or regulatory body of the state, federal or any local government, the parties shall be excused from such performance to the extent thus prevented, and neither party shall have any right against the other by reason of such non-performance.
Agreement Expressed Herein	19. The parties agree that there are no oral or other promises, conditions, covenants, representations or inducements in addition to or in variance with any of the terms hereof and that this Agreement represents the full understanding of both parties.
Succession	20. This Agreement shall bind the heirs, administrators, successors, and/or assigns of the respective parties hereto.
Counter-Part Execution	21. This Agreement and all similar agreements executed by other members shall be deemed counter-parts of one and the same contract, but each Member shall be severally liable for the full performance of the Agreement signed by him. This Agreement shall not be effective until it has been executed by the Association and authorized or ratified by the Board of Directors of the Association.
By-Laws Acceptance & Approval	22. The Member hereby acknowledges receipt of a true and correct copy of the By-Laws and hereby gives his full assent to and approval thereof, with like force and effect as if the Member's signature has been affixed to the original By-Laws.
Crop Year	23. A crop year as used herein shall begin on November 1 and shall close on the following October 31.

**2. Washington Asparagus Growers Association
Marketing Agreement**

This contract made and entered into this _____ day of _____
19____, by and between _____ of the
County of _____, State of _____
_____, whose present mailing address is

_____ of the State of _____ hereinafter
called the "Grower", cooperative corporation organized under the cooperative
marketing act of the laws of the State of Washington, hereinafter called the "Associa-
tion", WITNESSETH:

In consideration of the promises, stipulations, and agreements hereinafter set
forth to be performed by the parties hereto respectfully, and in further consideration
of substantially similar agreements between members of the Association and other
members of the Association, IT IS AGREED by and between the Association and the
Grower as follows:

1. The Grower hereby appoints the Association his sole and irrevocable agent for
the purpose of marketing and selling all asparagus to be grown and harvested by the
said Grower or for him or on lands leased by him to tenants or otherwise acquired
by him, during the life of this contract, and the Grower agrees to market all such
asparagus exclusively through the Association.

2. The Grower hereby appoints and designates the Association as exclusive sales
agent and agrees to annually market through the facilities of the Association his
entire harvested production of asparagus each year.

3. The Association is hereby authorized, and the Association agrees to, determine
in its' sole discretion as to the sale of signed asparagus for processing and the Associa-
tion is empowered to sell asparagus for processing to such processors, firms, persons,
corporations, and at such prices as the Association shall determine; provided, how-
ever, that insofar as practicable and possible,, the Association will confer with and
respect the desires of Growers' before the Association sells Growers' signed asparagus
to other than a processor or processors designated by Grower.

4. In the event that Grower is by contract obliged to market signed asparagus to
or through a cooperative cannery or a commercial processor, or to any other person,
processor, broker, corporation, or firm, the appointment of the Association as
exclusive sales agent for signed asparagus shall not be or become effective until such
time as the Grower is no longer so obliged to market signed asparagus; provided,
however, Grower shall not cause to be renewed or extended any such contract
beyond date of termination. Grower's obligation to share in the Association's operat-
ing expense shall immediately become effective on the date this contract is signed.

5. In the event Grower shall market, sell or dispose of any signed asparagus of
Grower, contrary to the provision of this Agreement, or shall sell, market, or other-
wise dispose of any signed asparagus other than through the agency of the Associa-
tion, such act will injure the Association in an amount that is, and will be, impracti-
cable and extremely difficult to determine and fix, and that is, therefore, fixed in an
amount of 20% of the market value of all asparagus sold, marketed or disposed of
contrary to the provisions of this Agreement and which amount Grower so violating
this Agreement agrees to pay, and shall pay, to the Association as liquidated damages
and in default of payment thereof to the Association upon demand, such damages

may be recovered in any court of competent jurisdiction in the name of the Association. In case any action is brought against Grower to recover from Grower the damages above provided for, Grower agrees to pay all costs, premiums on bonds, expenses and attorneys fees in such action.

6. Either party hereto may terminate this agreement and membership in the Association by giving written notice to the other any time during the month of August of any year, such termination shall be effective as of the 1st day of September of the year in which the notice is given.

7. Each year after the effective date of this Agreement, the Grower shall furnish in written form, and in such manner and such time or times as the Association shall prescribe such estimates of Grower's expected signed asparagus tonnage as the Association may determine. The Association may require that the Grower, in furnishing such estimates, shall designate his preference of the purchaser of his signed asparagus.

8. If this Agreement is signed by the members of a partnership, it shall apply to them and each of them individually in the event of a dissolution or termination of said partnership.

9. In case of a bona fide sale made by the Grower of any portion or all of the land upon which the signed asparagus is grown and produced to any person, firm, or corporation during the term of this Agreement, all asparagus produced upon the land so sold shall be marketed or sold pursuant to this Agreement during but not beyond September of the succeeding year in which sale shall have been made and such purchaser shall be deemed to be obligated to market or sell said asparagus pursuant to this Agreement, provided, however, that the Board is empowered to release asparagus grown upon such property prior to the actual sale of said asparagus to the Association. In the event of the failure of the purchaser so to market or sell said asparagus the Grower shall remain obligated to the Association for liquidated damages as herein provided for all asparagus not so marketed or sold by such purchaser and in addition the Grower shall be subject to any and all other remedies available to the Association in the event of breach of this Agreement.

10. It is mutually understood and agreed that the Grower shall pay to the Association for and in consideration of the services to be rendered by the Association a sum equal to 1% of all asparagus marketed by the Grower and the Grower hereby authorizes and instructs the purchaser of said asparagus to deduct such amounts from the proceeds of the sale of said asparagus each pay day and pay same to the Association.

11. This contract shall continue in full force and effect for a period of five years from the date hereof, provided, however, to the right of termination by written notice as hereinabove provided.

12. The parties agree that there are no oral or other promises, conditions, covenants, representations, or inducements in addition to or in variance with any terms hereof, and that this Agreement represents voluntary and full understanding of all parts.

13. The parties hereto agree that this Agreement shall bind the heirs, administrators, successors, and assigns of the respective parties hereto.

14. Inasmuch as the signature of the original By-Laws adopted by the Association by each and all Growers would be difficult and impracticable, now, therefore, the Grower does hereby agree with the Association and with all other members of the Association that by execution of this Agreement, the Grower acknowledges the receipt of a full true and correct copy of the By-Laws of the Association and does hereby give his full assent to, and approval thereof, with like force and effect as if the Grower's signatures had been affixed to the original of said By-Laws, and the member agrees to abide by the said By-Laws and all amendments thereof.

Cooperative Farm Bargaining

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year above written.

Local Description of Asparagus Farm Headquarters: _____

Are You now subject to a Term Contract with a Commercial Processor (Yes or No) ?

If your answer is Yes, list the expiration date for each field below.

FIELD NO.	ACREAGE	AGE	NAME OF PROCESSOR	DATE OF CONTRACT EXPIRATION

(SOCIAL SECURITY NUMBER)

(Grower)

WASHINGTON ASPARAGUS
GROWERS ASSOCIATION

Telephone _____ by _____

**3. Membership Agreement of
California Tomato Growers Association, inc.**

THIS AGREEMENT, made this _____ day of _____, 19____,
between CALIFORNIA TOMATO GROWERS ASSOCIATION, INC., a non-profit
cooperative association organized under the Agricultural Code of the State of Cali-
fornia ("the Association") and _____

_____, a grower-member of said Association ("Member").

WITNESSETH:

WHEREAS, Member is one of numerous producers situated throughout the State
of California engaged in the production of tomatoes and the by-products thereof;

WHEREAS, Member can more efficiently and economically market his products
by joining together with other growers in the State of California in a cooperative
association;

NOW THEREFORE, the parties hereto agree as follows:

1. Consideration. This Agreement is made by Member in consideration of the
execution of similar membership agreements by other producers of tomatoes situated
throughout the State of California and in consideration of the service to be performed
by the Association as hereinafter set forth.

2. Duration of Membership Agreement; When Operative. Subject to Member's
right to withdraw as provided in paragraph 8 hereof, and subject to the Association's
right of termination as provided in the Association's by-laws, this Agreement shall be
for a period of two (2) crop years beginning with the crop year in which the Board
of Directors of the Association determines that this agreement is first operative, and
shall be extended from time to time thereafter for additional periods of two (2)
crop years unless written notice of withdrawal is received by the Association prior
to November 1 of the last year of the current membership agreement period. This
contract shall become operative only if Members representing 65% of the acres
planted to processing tomatoes in the previous crop year in the State of California
have signed and delivered to the Association contracts similar to this one, and if
Members representing said acreage do not sign and deliver to the Association con-
tracts similar to this one, then and in such event this contract shall be null and
void and of no further force or effect.

The determination of the Board of Directors of the Association in regard to the
acreage planted to processing tomatoes in the previous crop year in the State of
California represented by Members of the Association signing and delivering to the
Association contracts similar to this one, and the dates upon which such contracts
become effective shall be final and conclusive and binding upon the parties hereto.

3. Sale and Delivery of Tomatoes. During the term of this contract, Member
shall sell and deliver all processing tomatoes to be produced by or for him or in
which he has any interest whatsoever whether it is as landlord or tenant or other-
wise, only upon such minimum terms and conditions as Association shall fix and
establish and approve, and Member shall not sell or deliver or permit to be delivered
any processing tomatoes produced by or for him other than in accordance with
this Contract. Notice of such approval shall be given to Member by Association by
United States mail addressed to Member at his post office address appearing on the
records of Association.

Cooperative Farm Bargaining

4. **Services of Association.** Association, as the exclusive bargaining agent for Member, shall have the exclusive authority, right and power during the term of this Contract, without taking title, to establish and fix (including the authority to change and amend) and to approve the minimum terms and conditions of sale or of the Contract of sale of all of the processing tomatoes produced by or for Member and other members who have executed contracts similar to this one, and the minimum terms and conditions of sale or of the Contract of sale shall be fixed and established and approved by Association in such form and manner and at such price as Association deems for the best advantage of all members who have signed such similar contracts. Association shall during the term of this Contract perform its services for Member to the best of its ability under economic and marketing conditions from time to time existing.

In performing the bargaining service herein specified, Association shall solicit for and on behalf of its members contracts which it will approve with the greatest possible number of processors of processing tomatoes and brokers thereof, and diligently attempt to procure the largest possible market for the members' processing tomatoes.

5. **Approved Contract.** 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.

6. **Payment.** During the term of this contract, the buyer of Member's processing tomatoes shall make payment directly to the member for all tomatoes sold by Member to the buyer less the maximum amount of Fifteen Cents (\$.15) per ton for all tomatoes delivered by the Member (hereinafter referred to as "the deducted amount") which amount Member hereby authorizes and directs to be deducted by the buyer of his tomatoes from the gross sales price, and paid by the buyer directly to the Association. Such deducted amount shall be paid to and used by the Association for the actual and necessary bargaining expense of Member's tomatoes and also for the general maintenance and support of the Association.

7. **Other Services.** Association shall, to the best of its ability, furnish to its members such other services in the nature of information, data and statistics pertaining to production, marketing and utilization of tomato crops as may from time to time be currently available.

Association shall represent Member and other members in matters relating to the improvement of conditions respecting the production, marketing, utilization and grading of canning or processing tomatoes.

8. **Member's Right of Withdrawal.** Member may file with the Association on or before November 1 of the last year of the then current period that this Agreement is in force, a written notice of withdrawal and the Association shall thereupon give a

Sample *Cooperative Agreements*

written release to Member and thereupon this Agreement shall be cancelled as to Member with respect to all succeeding years of the contract period, and the Association is given the reciprocal right to give written notice to Member at any time during the month of March in any of said years of its desire to withdraw from the Agreement, and thereupon this Agreement shall be cancelled as to Member with respect to all succeeding years of the contract period.

9. Articles of Incorporation, Etc. Member shall comply and abide by the provisions of the Articles of Incorporation and the By-Laws of Association and all amendments thereto that may from time to time be hereafter adopted, and all rules and regulations that may from time to time be adopted by the Board of Directors of Association.

10. By-laws Acceptance and Approval. Inasmuch as the signature of the original by-laws adopted by the Association and by each and all of its members would be difficult and impracticable, Member hereby agrees with the Association that by the execution of this Agreement he acknowledges the receipt of a full, true and correct copy of the by-laws of the Association and does hereby give his full assent to and approval thereof, with like force and effect as if Member's signature had been affixed to the original of said by-laws.

11. Information from Member. At such times as Association may request during the term of this Contract, Member shall promptly notify Association in writing of the location of his tomato crop, the number of acres planted to tomatoes, the varieties of tomatoes planted, his estimated production, and such other information as the Association may deem necessary.

12. Liquidated Damages. It is understood and agreed that this Contract is one of many marketing contracts generally similar in substance and form entered into and executed by and between other members and Association who together with Member are mutually and individually obligated to each other through the Association; and Association shall be deemed to be acting in its own name for and on behalf of all such members in carrying out and enforcing such contracts in any action or legal proceedings arising therefrom.

The true value of this Contract, and all similar marketing contracts executed by other members and Association, depends upon the adherence of each and all of the contracting members to each and all of said contracts, and Association and its members would be materially damaged by the breach of this Contract. In case of the breach of this Contract, it would be extremely difficult and impracticable to calculate with mathematical accuracy the exact amount of damages. and, therefore, it is specifically agreed that Member will pay to the association an amount equal to twenty-five percent (25%) of the gross sales proceeds for all processing tomatoes sold or otherwise disposed of by or for Member contrary to the provisions of this Contract, which amount is agreed to be reasonable and liquidated damages.

13. Breach or Cancellation of Other Contracts. The breach or cancellation of a similar bargaining contract or contracts entered into by Association with one or more other members shall in no manner impair or affect the obligations under this Contract, or the mutuality of interests hereunder created.

14. Successors and Assigns. This Agreement shall bind the heirs, administrators, successors and assigns of the respective parties hereto. Therefore, no sale, transfer, lease or other conveyance of land by member for the purpose of evading directly or indirectly his obligations hereunder shall discharge any obligations herein created.

15. Counter-Part Execution. This Agreement and all similar agreements executed by other members shall be deemed counter-parts of one and the same contract, but each Member shall be severally liable for the full performance of the contract signed by him. This Agreement shall not be effective for any purpose unless and until the execution and delivery hereof by the Association shall have been authorized or ratified by the Board of Directors of the Association.

16. Partnership Member. If this Agreement is signed by a member or the members of a co-partnership, it shall apply to them and to each of them individually in the event of a dissolution or termination of said co-partnership.

17. Bona-fide Transfers. In case of a bona-fide transfer made by Member during the term of this Agreement of all or any portion of the land upon which the products subject to this Agreement are produced, all products produced upon the lands so transferred shall be delivered subject to this Agreement during, but not beyond, the calendar or crop year in which such transfer shall have been made, and such transferee shall be obligated to deliver said products hereunder. If the transferee shall fail to deliver said products, Member shall pay to the Association liquidated damages as herein provided with respect to all products not so delivered by such transferee, and, in addition, the Association shall have any other remedy given to it by law or by this Agreement.

18. Performance Excused. In the event the Association is prevented in any year from performing the terms of this Agreement by strikes, injunctions or the orders of any officer or regulatory body of any governmental agency having jurisdiction in the premises, it shall be excused from such performance, and Member, in such case, shall have no right of damages against the Association.

19. Exclusive Agreement. The parties hereto agree that there are no oral or other promises, conditions, covenants, representations or inducements in addition to or in variance with any of the terms hereof and that this Agreement represents the voluntary and full understanding of both parties.

20. Costs of Legal Action. If Association brings any action to enforce any of the provisions hereof or to secure specific performance hereof, or to collect damages of any kind for any breach hereof, Member shall pay to Association all costs, premiums for bonds, expenses and fees including any reasonable attorney's fees expended or incurred by Association in any such proceedings, and all such costs, expenses and fees shall be included in the judgment.

21. Governing Law. The terms of this Agreement shall be construed in accordance with the laws of the State of California.

22. Notices. All notices herein provided for shall be deemed to have been given to the Association when mailed, first class, postage prepaid, to its office in Stockton, California, and to Member when mailed, first class, postage prepaid, to his address as noted hereon, or to such other address as may from time to time be furnished in writing by either party to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate the day and year first above written.

CALIFORNIA TOMATO GROWERS ASSOCIATION, INC.

By: _____ Member: _____

Accepted at: _____ Address: _____ City: _____

this _____, 19____,
in accordance with a resolution duly
adopted by the Board of Directors. County: _____

By: _____ I declare my voting district to be: _____

**4. Processing Apple Membership and Marketing Agreement,
Processing Apple Growers Division of Michigan Agricultural
Cooperative Marketing Association, Inc.**

THIS AGREEMENT is entered into between Michigan Agricultural Cooperative Marketing Association, inc., an agricultural cooperative incorporated under the laws of the State of Michigan (hereinafter called "association"), and the undersigned producer (hereinafter called "member").

In consideration of the mutual promises, covenants and conditions to be kept and performed by the parties hereto, the parties agree as follows:

1. The member hereby appoints and employs the association as his exclusive sales agent as herein provided to market all apples to be grown or produced by him, or for him, or acquired by him as landlord or tenant that he hereafter may have to dispose of each season for processing purposes during the life of this agreement, and the association accepts such appointment and employment to act as such exclusive sales agent.

2. The association agrees to negotiate sales on behalf of the member, to the best of its ability under economic and marketing conditions from time to time existing for all processing apples subject to this agreement.

3. The member agrees he will not dispose of or sell apples subject to this agreement except through the association as the exclusive sales agent. The member further agrees to deliver apples in accordance with the terms of such negotiated sales.

4. Shortly before harvesting time, the member shall indicate his choice of processor or handler and will furnish an estimate of the number of bushels of processing apples by variety he will have for processing, furnishing this information on forms supplied by the association, which shall be returned to the association on or before a date set by it. This information will be used by the association to plan sales and make composite offerings. The member may adjust estimate later by notifying the association.

5. The member agrees to pay the association for services rendered annually under this agreement a maximum of 5% of the gross sales price of all processing apples subject to this agreement. The service fee shall be set annually within such maximum by the Processing Apple Marketing Committee after determining the current financial needs of the association. The member authorizes purchasers of member's apples to deduct said percent of the gross sales price from member's gross sales proceeds and to remit such deduction to the association directly. The purchaser shall remit the balance of gross proceeds directly to the member. In the event the purchaser fails to or refuses to make deductions as authorized by the member, the member agrees to make payment directly to the association. The minimum fee payable by the member to the association shall be \$10.00 per crop season payable on or before January 1 following harvest.

6. The association agrees to render, to the extent of its capacity and ability, such other services with reference to dissemination and distribution of information, data and statistics pertaining to the production, marketing and utilization of processing apples, as may, from time to time, be currently available.

7. If the member shall sell any processing apples covered by this agreement contrary to its provisions or shall sell any such apples other than through the association, it is agreed that such act will damage the association in an amount that is, and will be, impracticable and extremely difficult to determine and fix, and therefore, member agrees to pay the association three times the regular commission as liquidated damages for all processing apples that are disposed of contrary to this agreement, which damages may be recovered by the association in any court of competent

Cooperative Farm Bargaining

therefor and any other requested information.

10. Any fictitious sale or lease of a farm on which processing apples are grown by the member, or any other device entered into by him to avoid this agreement, shall be a violation thereof.

11. The member hereby applies for membership in the association, if not already a member thereof, and agrees to abide by the bylaws and policies thereof, and subscribes for one share of common stock of the association having a par value of \$1 .00 per share. The member authorizes the association to retain said share of stock on his behalf, and to effect a transfer of such stock on the books of the association from the member to the association at any time the member fails to fulfill all of the stock ownership eligibility requirements of the association. It is understood and agreed that the member is hereby designated as a member of the Michigan Processing Apple Growers Division of the association, and the member agrees to abide by the Rules of Organization and Operation (by laws) of such Division and by the decisions of its Processing Apple Marketing Committee.

12. This agreement shall continue in effect indefinitely unless cancelled as herein provided by one of the parties hereto. Either party hereto shall have the right to cancel this agreement by giving written notice to that effect by mail to the other party during the month of December of any year after this agreement has been in effect for at least one processing apple marketing season. Obligations of both parties shall end on December 31 of the year following the year in which notice of termination is received; provided, however that, at the discretion of the association, this agreement shall not be terminated upon notice given by the member until his financial obligations to the association under this agreement are paid in full.

13. This agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their respective heirs, legal representatives, successors, and assigns.

14. This agreement, by mutual consent of both parties, shall supersede any previous agreement consummated by the same parties for processing apples.

15. This agreement is one of many other marketing agreements similar in substance and form executed between other producers and the association, who are mutually and individually obligated to each other through the association. The association shall be deemed to be acting in its own name for and on behalf of all such producers in carrying out the provisions of such agreements.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto on this _____ day of _____ 19__.

(WITNESS SIGNATURE)

1074 Agreement No.

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Sample Cooperative Agreements

_____ (Farm Name)		
_____ (Partners Names)		
BY _____ (Authorized Signature)		
_____ (Route No. & Box)	_____ (Street or Road & No.)	
_____ (City)	_____ (State)	_____ (Zip Code)
_____ (County)	_____ (Area)	_____ (Telephone No.)

MICHIGAN AGRICULTURAL COOPERATIVE
MARKETING ASSOCIATION, INC.
7373 West Saginaw Highway, Lansing, Michigan 48917

<input type="checkbox"/> \$1.00 for one share of MACMA voting stock
<input type="checkbox"/> Subscriber is already a MACMA member
_____ (Agent)

NOTE: Send all copies to Home Office. Duplicate will be returned after signing.

BY _____
(General Manager)

5. Association-Handler Agreement, Processing Apple Growers
Division of Michigan Agricultural Cooperative
Marketing Association, Inc.

AGREEMENT

Memorandum of an agreement made and entered into this _____ day
of _____, 1978 by and between the Michigan Processing
Apple Growers Division of Michigan Agricultural Cooperative Marketing Association,
Inc. of 7373 West Saginaw, Lansing, Michigan, hereinafter referred to as the "Asso-
ciation", and _____ of _____
hereinafter referred to as the "Handler".

WITNESSETH:

The Association, acting as sales agent for its members who are producers of process-
ing apples as well as other producers included in the processing apple bargaining unit
under Act 344 of the Public Acts of Michigan of 1972, as the accredited association
under such Act, and the Handler, which proposes to purchase processing apples from
such producers during the 1978 marketing season have arrived at an agreement as to
the minimum base prices which the Handler shall pay to the producers for various
varieties of processing apples delivered to it during the 1978 apple crop marketing
season.

NOW, THEREFORE, in order to consummate such agreement, and in consideration
of their mutual covenants and obligations, the parties agree, as follows:

1. The Handler shall pay to the producers referred to above for all processing
apples delivered to it by such producers the amounts as listed below:

Peeler apples, U.S. No. 1 Processing Grade, for canning and freezing, 2 1/2 inches
in diameter and up.

Spy Variety _____ per cwt. Soft Varieties _____ per cwt.

Hard Varieties _____ per cwt. Undersize _____ per cwt.

Preferred slicing varieties _____ per cwt. _____

Straight loads of apples for juice on a delivered basis _____ per cwt.

2. Unless other payment arrangements have been agreed upon between the
Handler and the producers, and subject to the provisions of paragraph 3 herein, such
payments shall be cash and made to the producers, respectively, following the deliv-
ery of the processing apples to the Handler. Scheduling, deliveries, grading, weighing
and containers shall be handled under the same arrangements and practices as have
been common in recent years within the industry in Michigan.

3. The Handler shall deduct two (2) percent of the gross sales proceeds paid to
the producers referred to above for all processing apples used for peeling and or
juice apples and remit the same promptly to the Association as a marketing fee in
accordance with the membership and marketing agreement between the Associa-
tion and its members and Public Act 344 referred to above. The Association shall
provide the Handler with a list of its current members. The Handler also agrees to
maintain a record of cwt. of apples delivered to it by the producers referred to

Sample Cooperative Agreements

above, including the gross value of the processing apples and the marketing fees deducted, and to provide a recap of such information to the Association at the end of the season on a form supplied by the Association.

4. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

Witnesses: Processing Apple Growers Division of
Michigan Agricultural Cooperative
Marketing Association, Inc.

_____ By: _____
Title

By: _____
Title

6. Membership Agreement – Potato Growers of Idaho, Inc.

THIS AGREEMENT, between the POTATO GROWERS OF IDAHO, INC., a non-profit corporation of the State of Idaho, hereinafter called "Association," whose present mailing address is P.O. Box 949, Blackfoot, Idaho 83221 and _____

whose mailing address is _____

hereinafter called "Member," and who hereby applies for membership in Association,

WITNESSETH: That, in consideration of such application and its acceptance and the mutual covenants herein contained, it is agreed as follows, TO-WIT:

1. MEMBER AGREES:

A. Not to make or enter into any contract or agreement prior to the season date of any year for sale or delivery of contract potatoes except upon an approved contract form for that year in the district where the potatoes are to be delivered; provided this paragraph shall not be construed to prohibit crop share leases and crop mortgages in usual form.

B. To faithfully keep and perform all approved contracts made by Member.

C. To promptly provide Association, directly or through district officers as requested from time to time, information as to the location, acreage, varieties, estimated yield and production of Member's potato crop and acreage or quantity which Member is considering marketing under an approved contract for that season.

D. And hereby Sells, Assigns and Transfers to POTATO GROWERS OF IDAHO, INC., such percentage, not exceeding one-half of one percent ($1/2\%$) of the gross sales price of my potatoes hereafter sold by or for me as may from time to time be fixed and determined to be my State and District Members Dues for my membership in said Association and authorize and direct all buyers of my potatoes hereafter during the term of my membership in said Association to deduct such amounts from the purchase price and pay the same for my account directly to the State Treasurer or other designated officers and agents of Assignee, provided that member agrees, in any event, to pay annual dues of Ten Dollars (\$10.00).

E. To abide by and comply with the Articles of Incorporation, By-Laws and rules and regulations of Association, and all amendments thereto that may from time to time be hereafter adopted not inconsistent herewith, and the same shall be deemed part of this agreement as fully as if set out herein at length.

F. To pay all costs and expenses, if any, incurred by Association, including reasonable attorney's fees, for any successful action or proceeding to enforce any of the terms of this agreement.

2. ASSOCIATION AGREES:

A. To negotiate each year before the season date with buyers of contract potatoes in each district and, with the approval of the majority of the district directors, to determine and procure the best possible approved contracts for each district for that year.

B. To furnish to Member, to the best of the ability of Association's officers, information, data and statistics as may from time to time be currently available pertaining to production, marketing and utilization of potato crops in Member's district.

C. To keep records of receipts and disbursements of the Association and its districts, and report a summary thereof to Member at least annually.

3. ASSOCIATION AND MEMBER MUTUALLY AGREE:

A. Whenever the terms "contract potatoes," "season date," "approved contract," and "Member's dues" are used in this agreement, they shall be given the same meaning as in the by-laws in effect at the time.

B. To promote the purposes end objectives of Association and the general mutual welfare, upbuilding and improvement of the Idaho potato industry.

C. That this agreement is one of many membership agreements generally similar in substance and form which shall be considered as mutual agreements with each and every other Member as well as with the Association, and that this agreement may be enforced by the Association or by any other Member acting in the name of the Association and for and on behalf of all other Members. The true value of this agreement and all similar membership agreements executed by other Members with the Association depends upon the adherence of each and all of the contracting Members to each and all of the terms of said membership agreement, and Association and its Members would be materially damaged by any breach of this agreement. In case of breach of this contract, it would be extremely difficult and impracticable to calculate with mathematical accuracy the exact amount of damages, and therefore it is specifically agreed that in the event of any breach of this contract by Member, Member will pay to the Association an amount equal to ten percent (10%) of the gross sales proceeds of all contract potatoes sold or otherwise disposed of by or for Member contrary to the provisions of this agreement, which amount is agreed to be reasonable and liquidated damages.

D. This agreement shall be binding upon and inure to the benefit of both parties hereto, their respective administrators, executors, heirs, successors, devisees, legatees, assigns, and also the spouse of Member.

E. This agreement may be terminated by the termination of Member's membership in the Association, as provided in the By-Laws, but such termination shall not relieve the Member of Member's obligations to comply with the terms of this agreement until Member has marketed all potatoes planted, raised or harvested by or for Member during the calendar year in which such termination occurs.

F. The terms of this agreement shall be from the date hereof until and including the last day of August 19 _____ and shall be automatically renewed for successive terms of twelve months each thereafter unless on or before the first day of September preceding the end of such term or any renewal thereof, one party gives the other written notice of election not to renew by depositing such notice in any United States Post Office properly addressed with postage prepaid.

G. There are no oral or other promises, conditions, covenants, representations or inducements in addition or in variance with any of the terms hereof, and this contract represents the voluntary and full understanding of the parties.

DATED AND EXECUTED IN TRIPLICATE this _____ day
of _____, 19____ POTATO GROWERS OF IDAHO, INC.

BY: _____

Agent — Witness

Member

7. Membership Agreement,
National Farmers Organization
Corning, Iowa 50841

Name _____ or _____ Date _____
Print or Type

County _____ Township _____ State _____

ARTICLE I-AUTHORIZATION

I authorize the National Farmers Organization (hereinafter referred to as the N.F.O.) its agents or representatives to act for me as my exclusive representative in collective bargaining in respect to all commodities marketed from my farm, with the exception of those commodities presently covered by other marketing contracts, and to enter into contracts with the processors of products I own and control covering the selling prices and other conditions of disposal, and establish marketing procedure. I further authorize the said organization to act as my exclusive representative in the presentation, prosecution and adjustment of any complaint that I may have against the processor of the commodities of my farm, in accordance with and subject to the rights and privileges granted me by the By-laws of the N.F.O.

This authorization and direction shall be irrevocable for a period of three (3) years from the date appearing above. I agree and direct that this authorization and direction shall be automatically renewed and shall be irrevocable for successive periods of three (3) years each unless written notice is given by me to the N.F.O. not more than twenty (20) days and not less than ten (10) days prior to the expiration of each three (3) year period. This authorization is made pursuant to the provisions of the Capper-Volstead Act enacted February 18, 1922.

ARTICLE II-NATIONAL N.F.O. COMMODITY DEPARTMENTS

Sec. 1-The Board of Directors of the N.F.O. shall create National Commodity Departments for Dairy, Grain, and Meat. Miscellaneous commodities may be assigned by the Board of Directors to any one of the three established Commodity Departments.

Sec. 2-The President of the N.F.O. shall appoint a Department Head who shall be known as a Director, and staff for each of the National Commodity Departments, subject to the approval of the Board of Directors. The Board of Directors shall have the power to remove a director or staff members of a Commodity Department.

Sec. 3-The National Commodity Departments shall be under the direction of the President and responsible for carrying out the intent of this Agreement and administrative policy established by the Board of Directors.

Sec. 4-The National Commodity Departments shall have the responsibility of assisting the Marketing Area Bargaining Committees in their negotiations with the processors and coordinate the activities of all Area Marketing Committees.

Sec. 5-The National Commodity Departments shall at the direction of the Board of Directors make plans for effective marketing procedures to be submitted to the Marketing Area Bargaining Committees for their consideration.

ARTICLE III-MARKETING AREAS

Sec. 1-The President and the Board of Directors shall establish marketing areas for each commodity based on area of supply of key markets.

Sec. 2-Bargaining with processors in each marketing area shall be done by elected Marketing Area Bargaining Committees under the supervision of the Executive Board and with the assistance of the National Commodity Departments.

Sec. 3-Contracts consummated with processors shall cover only members of the marketing area who have signed membership contracts with the N.F.O.

Sec. 4-Marketing areas may from time to time be changed to provide better service for the membership.

ARTICLE IV-MARKETING AREA BARGAINING COMMITTEES

Sec. I-When in the opinion of the Board of Directors of the N.F.O. sufficient contracts have been signed covering a specific commodity to be effective in collective bargaining, the President shall call a meeting of the members of County Bargaining Committees who represent the commodity in each zone of the marketing area for the purpose of electing a member of the Area Bargaining Committee and an alternate member who shall serve as a member of the Area Bargaining Committee when the regular member is unable to serve.

Sec. 2-The Board of Directors shall divide each marketing area into seven (7) geographical zones for the purpose of distribution of bargaining committee representation.

Sec. 3-Each Marketing Area Bargaining Committee shall be composed of seven (7) members, one from each of the geographic zones of the marketing area.

Sec. 4-The term of office of the bargaining committee members and alternates shall be for a period of one year.

Sec. 5-The Marketing Area Bargaining Committee shall be responsible for the bargaining with the processor for the commodity they represent within their marketing area under the direction of the Board of Directors and the assistance of the National Commodity Department.

Sec. B-The Marketing Area Bargaining Committee shall meet and counsel with the County Bargaining Committees as provided herein and at other times that they deem necessary.

ARTICLE V-COUNTY BARGAINING COMMITTEES

Sec. I-Each county organized under the N.F.O. shall call meetings and elect a bargaining committee composed of a chairman and four members for each commodity represented by the N.F.O. in the county, such committees to be for Dairy, Grain, and Meat.

Sec. 2-Anyone who is an N.F.O. member producing farm products for which a bargaining committee is established is eligible to vote for members of the bargaining committee. However, in order to be elected to a bargaining committee, a member of the N.F.O. must be able to furnish ample proof that a substantial part of his farm income is derived from the commodity that the bargaining committee represents.

Sec. 3-County Bargaining Committees shall gather information and determine fair prices for the agricultural commodities which their committee represents.

Sec. 4-The Marketing Area Bargaining Committee shall, before entering into negotiations with a processor, call a meeting of the County Bargaining Committee for the commodity they represent, and by a two-thirds' vote of those attending this meeting shall determine the fair price for the commodity to be bargained for with the processor.

Sec. 5-From time to time, Marketing Area Bargaining Committees may call meetings of the County Bargaining Committees to report on the status of negotiations and seek their advice.

Sec. 6-The County Bargaining Committee shall be responsible for organizing farmers in their counties who produce the commodity they represent.

Sec. 7-The County Bargaining Committees may at times be called by the Area Marketing Committee to represent the organization in collective bargaining with processors of their commodity.

ARTICLE VI-RATIFICATION OF MARKETING CONTRACTS

Sec. 1-No contract consummated with a processor shall be effective or binding until it has been ratified by a two thirds' vote of members in a marketing area who have signed contracts with the N.F.O. for the commodity, attending a meeting called for that purpose by the Marketing Area Bargaining Committee and has been approved by the Board of Directors of the N.F.O.

Sec. 2-If a marketing procedure is formulated for a marketing area, it will require the same ratification as contracts with processors.

Sec. 3-It will be the responsibility of the Marketing Area Bargaining Committee to give at least ten days' notice to members who have signed marketing contracts, by first class mail, to the address shown on this contract, giving date, time and place of meetings on any issue requiring ratification of N.F.O. members.

ARTICLE VII-MARKETING REQUIREMENTS

Sec. 1-Until such time as a contract has been consummated with the processor for a commodity I own or control in accordance with the provisions of this agreement; or until a marketing procedure has been established for a commodity and ratified in accordance with the terms of this agreement, a member shall be free to market his commodity as he chooses.

Sec. 2-When a contract has been consummated in accordance with the terms of this agreement covering a member's commodity, and he sells this commodity to a processor other than the one specified by the agreement, the member shall be assessed 10% of the gross sale of the commodity for liquidated damages.

Sec. 3--A member may request his Marketing Area Bargaining Committee to waive provisions of this agreement in instances arising that were unforeseen at the time of the signing of this agreement. The Area Marketing Committee must make a complete report on all such cases to the N.F.O. Board of Directors, on waivers granted. The Board of Directors shall have authority to revoke a waiver if, in their opinion, the waiver is not justified.

ARTICLE VIII-QUOTAS

Sec. 1-If quotas should become necessary on members under contract, they will be determined by the same democratic procedure that the fair-price formula was determined and shall require the same procedure of ratification, membership and approval of the Board of Directors as the contract with the processor before becoming effective.

Sec. 2-If quotas are established they will be based on contracts with processors for a specific quality and quantity of products and quotas will be based on quality, bushel and poundage basis and good land practices and ratio instead of crop history, and administered by the establishment of pools based on quality.

Sec. 3-This to be financed, if necessary by additional deductions at the processor level from commodities marketed.

Sec. 4-To implement the provisions of the other Sections of this Article, approval must be obtained from the members affected, in accordance with Article VI of this agreement.

Sec. 5-By a two-thirds' vote of N.F.O. members attending county meetings of which due notice has been given by the County Bargaining Committee at least ten days in advance of the meeting to the affected member giving date, time and place and purpose of meeting, an additional surplus disposal amount shall be checked off at the processor level, either for buying farm products and channeling to needy worthwhile organizations, or to form welfare agencies or others the N.F.O. may find necessary to keep production in balance with consumption.

Sample Cooperative Agreements

ARTICLE IX-MEMBERSHIP DUES AND FEES

Sec. 1-The membership dues of the N.F.O. shall be \$15.00 per year, or such amount as may hereafter be established by the N.F.O., which shall be due and payable to the Treasurer of the member's county organization, at the date of making application for membership in the N.F.O., and yearly thereafter, as prescribed by the By-Laws of the organization.

Sec. 2-A member shall be assessed \$60.00 at the time of signing this contract and yearly thereafter by the N.F.O., which shall be used as directed by the Board of Directors to defray expenses incurred in carrying out a program of effectuating collective bargaining with the processor, and other activities in the best interest of the membership of the organization to be determined by the Board of Directors of the N.F.O.

Sec. 3-When a marketing contract has been consummated by the N.F.O. covering a member's commodity, it shall provide that the processor check off 1% of the gross sales of the commodity for the N.F.O. This amount shall then become the member's dues and shall replace the dues and fees otherwise prescribed above in Sections 1 and 2.

ARTICLE X-RESPONSIBILITY OF THE N.F.O.

Sec. 1-The N.F.O. shall not become legal owner or engage in business activities but must remain within the framework of a service organization bargaining for its members who have signed marketing contracts.

Sec. 2-The Board of Directors of the N.F.O. shall decide on all questions involving interpretation of this agreement and make decisions on matters arising not covered by this agreement between conventions.

ARTICLE XI-RESPONSIBILITY OF MEMBER

Sec. 1-I agree to be bound by the terms of this agreement as herein provided, and further agree to comply with the decisions made by the membership and Board of Directors of the N.F.O., as herein provided.

Sec. 2-I agree to process any complaint I have against the N.F.O., its officers or members in accordance with the terms of the By-Laws of the N.F.O.

ARTICLE XII-MODIFICATION

It may become necessary during the life of this agreement to change or modify certain Articles, or make amendments to it. In the event this becomes necessary, it will require a two-thirds' vote of members in attendance at marketing area meetings called for that purpose, which notice has been given in accordance with Article VI, Section 2 of this agreement.

Witness _____

Member's Legal Signature _____

Mailing Address _____ State _____

WHITE

National N.F.O. Copy

CANARY

County N.F.O. Copy

PINK

Member's Copy

8. Commodity Participation — Membership Agreement —
One Year Only, National Farmers Organization,
Corning, Iowa 50841

Date _____

Name _____ or _____

County _____ Township _____ State _____

I understand this agreement gives me the right to commit my agricultural production with other members through the Collective Bargaining Programs of the National Farmers Organization (NFO); hereafter referred to as organization; which the organization agrees to engage in, for and on behalf of its members, to the best of its ability.

I understand I am free *to* market my production as I choose, until such time that I voluntarily complete a supplemental agreement or make other commitments, through the organization's collective bargaining programs, covering my production.

This membership agreement is for a period of one year and shall be automatically terminated one year from date of this agreement.

The membership dues shall be \$75.00 per year. Such dues shall be distributed on a pro-rata basis to the County, District, State and National organizations as outlined in the Bylaws of the organization.

I understand I shall have all voting rights and other privileges of any other member. However, I am not eligible to hold a District, State or National office unless and until I sign a three-year membership agreement.

The organization shall not become legal owner or engage in business activities normally engaged in by a corporation in private enterprise for profit, but the organization shall remain within the framework of a service organization bargaining as an agent in behalf of its members. As the duly elected representatives of the members, the Board of Directors of the National Farmers Organization shall decide on all questions involving interpretation of this agreement, and I agree to be bound by the decisions of the Board of Directors. I further agree to process any complaint against the organization, its officers, or members in accordance with the terms of the Bylaws of the organization.

Witness _____

Member's Legal Signature _____

Address _____

City State Zip

Telephone No. _____
(include area code)

Soc. Sec. No. (If Corp., tax ID No.) _____

<p>FOR INFORMATION ONLY: Please list commodities normally sold from your operation in order of importance to you:</p>
--

Green - National NFO copy; Blue - County NFO copy; Goldenrod - Member's copy

APPENDIX B
STATE LEGISLATION

1. Michigan Agricultural Marketing and Bargaining Act

AN ACT to permit producers of agriculture commodities to be represented by associations; to create an agricultural marketing and bargaining board; to provide for the accreditation of associations; to establish obligations on the part of handlers and associations; to provide for arbitration; to define unfair practices; and to prescribe penalties.

§ 290.701 Agricultural marketing and bargaining act; short title.

Sec. 1. This act shall be known and may be cited as the "agricultural marketing and bargaining act".

§ 290.702 Definitions.

Sec. 2. As used in this act:

(a) "Association" means a cooperative association of producers or a division thereof, or federation of cooperative associations of producers engaged in the marketing, bargaining, shipping or processing functions of an agricultural commodity on behalf of its members who are producers of such agricultural commodity.

(b) "Accredited association" means an association accredited in accordance with this act.

(c) "Person" means an individual, partnership, corporation or association.

(d) "Board" means the agricultural marketing and bargaining board created in section 3.

(e) "Producer" means any person who produces or causes to be produced in any 1 marketing period within the previous 2 marketing periods, any agricultural commodity in quantity beyond his own family use and having a minimum value at first point of sale as determined by the board for that agricultural commodity, and who is able to, during the marketing period transfer to a handler or an association a merchantable title to the agricultural commodity or provide management, labor, machinery, facilities or any other production input, with the assumption of risk, for the production of agricultural commodity under a written or oral contract.

(f) "Agricultural commodity" means all perishable fruits and vegetables as defined by the board. The kinds, types and subtypes of products to be classed together as an agricultural commodity for the purposes of this act shall be determined by the board on the basis of common usage and practice.

(g) "Handler" means a person other than an association engaged in the business or practice of acquiring agricultural commodities from producers or associations for processing or sale; grading, packaging, handling, storing or processing agricultural commodities received from producers or associations; contracting or negotiating contracts or other arrangements, written or oral, with producers or associations with respect to the production of any agricultural commodity; or acting as an agent or broker for a handler in the performance of any function or act specified above. It does not include a producer who sells at a retail establishment which he owns and operates or who sells directly to consumers at a produce market, agricultural commodities produced by him and agricultural commodities produced by another producer subject to value limitation established by the board.

(h) "Marketing period" for an agricultural commodity shall be a period of time determined by the board during which producers normally deliver for sale to handlers or contract with handlers for the production and future delivery for sale of substantially all of a crop or periodic production of the agricultural commodity.

(i) "Member" means a producer who has entered into a contract with an association appointing the association as his exclusive agent in negotiations with handlers with respect to the marketing of an agricultural commodity.

§ 290.702a Exclusion sales.

Sec. 2a. Any sale of a commodity by a producer to another producer for his own exclusive use and not for resale or any sale of fresh market produce directly to a consumer or to a retail store or stand for resale to consumers shall be excluded from the provisions of this act.

§ 290.703 Agricultural marketing and bargaining board; duties; rules.

Sec. 3.

(1) An agricultural marketing and bargaining board is created within the department of agriculture. The board shall administer this act.

(2) The board consists of 5 individuals who shall be citizens of the state appointed by the governor with the advice and consent of the senate, not more than 3 of whom shall be affiliated with the same political party. A minimum of 2 members of the board shall derive a substantial portion of their livelihood from agricultural enterprises. One member shall be considered a lay person, neither a producer, nor handler, nor a member of an association, as defined under this act. The governor shall designate 1 member of the board to serve as chairman of the board. The original board shall be composed of 2 members of the board for a 1-year term, 1 member of the board for a 2-year term, 1 member of the board for a 3-year term and 1 member of the board for a 4-year term. The governor shall indicate the length of term when making the appointment of the original board. Thereafter, as the term of each member of the board expires, the governor, with the advice and consent of the senate, shall appoint a successor to serve for a term of 4 years. An individual appointed to fill a vacancy caused by other than expiration of the term shall be appointed only for the unexpired term of the member of the board whom he shall succeed.

(3) A member of the board may be removed by the governor, upon notice and hearing, for neglect of duty, or for corrupt conduct in office, or for any other misfeasance or malfeasance but for no other cause.

(4) A vacancy in the board shall not impair the right of the remaining members to exercise all of the powers of the board. Three members of the board constitutes a quorum.

(5) Members of the board are entitled to receive a per diem fixed by the legislature and all necessary traveling and subsistence expenses incurred while attending meetings of the board or engaged in the performance of official responsibilities delegated by the board or such other amounts as may be appropriated by the legislature.

(6) Services for implementing this act shall be provided by the department of agriculture from appropriations made therefor by the legislature.

(7) The board may promulgate rules necessary for the administration of this act in accordance with the subject to Act No. 366 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Compiled Laws of 1948.

§ 290.704 Unfair practices; complaints; hearings; findings.

Sec. 4.

(1) Producers of agricultural commodities are free to join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage nor pen-nit an employee or agent to engage in any of the following practices, defined as unfair practices:

(a) To coerce a producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association or to refuse to deal with a producer because of the exercise of his right to join and belong to an association except as provided in section 15.

(b) To discriminate against a 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.

Cooperative Fawn Bargaining

(c) To coerce or intimidate a producer to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a handler.

(d) To pay or loan money, give anything of value or offer any other inducement or reward to a producer for refusing or ceasing to belong to an association.

(e) To make or circulate unsubstantiated reports about the finances, management or activities of associations or handlers.

(f) To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this act.

(g) To refuse to bargain with an accredited association with whom the handler has had prior dealings or with an accredited association whose producers in the bargaining units have had substantial dealing with the handler prior to the accreditation of the association.

(h) To negotiate with a producer included in the bargaining unit after an association is accredited.

(2) An association shall not engage nor permit an employee or agent to engage in the following practices, defined as unfair practices:

(a) To enter into a contract which discriminates against a producer represented by an accredited association whether or not he is a member producer.

(b) To act in a manner contrary to the by-laws of the association.

(c) To refuse to bargain with a handler with whom the accredited association has had prior dealing or with whom its producers have had substantial dealing prior to the accreditation of the association.

(d) To coerce or intimidate a handler to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a producer.

(e) To make or circulate unsubstantiated reports about the finances, management or activities of other associations or handlers.

(f) To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this act.

(3) For the purpose of enforcing this act, the board may receive sworn complaints with respect to violations or threatened violations. The board may make all necessary investigations, examinations or inspections of any violation or threatened violation specified in the sworn complaint filed with the board. If, upon such investigation, the board considers that there is reasonable cause to believe that a person charged has committed a practice in violation of this act, the board shall issue and cause to be served a complaint upon the person in accordance with Act No. 306 of the Public Acts of 1969, as amended. The complaint shall summon the person to a hearing before the board or a member thereof or a hearing officer at the time and place fixed.

(4) If, upon a preponderance of the evidence, the board determines that the person complained of has committed a practice in violation of this act, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease the violation and shall order further affirmative action as will effectuate the policies of this act.

(5) If, upon a preponderance of the evidence, the board is of the opinion that the person complained of has not committed a practice in violation of this act, it shall make its findings of fact and issue an order dismissing the complaint.

(6) Until the record in a case has been filed in a court, as provided in this act, the board at any time upon reasonable notice and in such manner as it deems proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

§ 290.705 Orders, enforcement; judicial review; stay of proceedings.

Sec. 5.

(1) The board may petition the court of appeals for the enforcement of its orders, and for appropriate temporary relief or restraining order and shall file in the court the record in the proceedings. Upon the filing of the petition, the court shall cause notice to be served upon the person and thereupon shall have jurisdiction of the proceeding and of the question determined, and may grant temporary relief or restraining order as it deems just and proper and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board. An objection that has not been urged before the board, a member thereof or a hearing officer before whom a hearing was conducted shall not be considered by the court, unless the failure or neglect to urge the objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole is conclusive. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the board, the court may order additional evidence to be taken before the board, a member thereof, or hearing officer and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed and it shall file the modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that it shall be subject to review in accordance with established procedures for appeal.

(2) Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of an order in the court of appeals, by filing in the court a written petition requesting that the order of the board be modified or set aside. A copy of the petition shall be transmitted by the clerk of the court to the board and the aggrieved party shall file in the court the record in the proceeding certified by the board. Upon the filing of the petition, the court shall proceed in the same manner as in the case of an application by the board under this section and shall have the same jurisdiction to grant temporary relief or a restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board; the findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(3) The commencement of proceedings under this section shall not stay enforcement of the board's decision by the board or the reviewing court may order a stay upon such terms as it deems proper.

§ 299.796 Bargaining unit; determination; criteria.

Sec. 6.

(1) The board shall determine whether a proposed bargaining unit is appropriate. This determination shall be made upon the petition of an association representing not less than 10% of the producers of the commodity eligible for membership in the proposed bargaining unit as defined by the association. An association with an overlapping definition of bargaining unit may, upon the presentation of a petition by not less than 10% of the producers eligible for membership in the overlapping bargaining unit, contest the proposed bargaining unit. The board shall hold a hearing in accordance with Act No. 306 of the Public Acts of 1969, as amended, to resolve the dispute.

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(2) In making its determination, the board shall define as appropriate the largest bargaining unit in terms of the quantity of the agricultural commodity produced, the definition of the agricultural commodity, geographic area covered and number of producers included as is consistent with the following criteria:

- (a) The community of interest of the producers included;
- (b) The potential serious conflicts of interests among members of the proposed unit;
- (c) The effect of exclusions on the capacity of the association to effectively bargain for the bargaining unit as defined;
- (d) The kinds, types and subtypes of products to be classed together as agricultural commodity for which the bargaining unit is proposed;
- (e) Whether the producers eligible for membership in the proposed bargaining unit meet the definition of "producer" for the agricultural commodity involved;
- (f) The wishes of the producers;
- (g) The pattern of past marketing of the commodity.

§ 290.707 Association, conditions of accreditation.

Sec. 7. An association shall be accredited upon determination by the board that the association meets all of the following:

(a) The association meets the requirements of the Capper-Volstead act, 7 USC 291-2.

(b) The association has submitted a copy of its bylaws which provide that: Each member of the association shall have 1 vote in all votes of the membership of the association; that officers or directors shall be elected by a majority of the members voting or by delegates representing a majority of the membership; and that all elections shall be by secret ballot.

(c) The association has marketing and bargaining contracts for the current or next marketing period with more than 50% of the producers of an agricultural commodity who are in the bargaining unit and these contracts cover more than 50% of the quantity of that commodity produced by producers in the bargaining unit. The board may determine the quantity produced by the bargaining unit using information on production in prior marketing periods, current market information, and projections on production during the current market periods. The board shall exclude from that quantity any quantity of the agricultural commodity contracted by producers with producer owned and controlled processing cooperatives and any quantity produced by handlers. An association whose main purpose is bargaining but which processes a surplus into a form which is not the subject of bargaining is not a processing cooperative. The contracts with members shall specify the agricultural commodity and that the members have appointed the association as their exclusive agent in negotiations with handlers for prices and other terms of trade with respect to the sale and marketing of the agricultural commodity and obligate them to dispose of their production or holdings of the agricultural commodity through or at the direction of the association.

(d) The association has established and authorized a marketing and bargaining committee to negotiate with handlers for the agricultural commodity. The committee shall be comprised of members elected by the members in a secret ballot election. The production of the agricultural commodity shall comprise a significant portion of the total farming operation of each committee member. Members who have any quantity of the commodity contracted with a producer owned and controlled processing cooperative are not eligible to serve on a marketing and bargaining committee for such commodity.

§ 290.708 Application for accreditation; contents; fee; reports; confidentiality.

Sec. 8.

(1) An association desiring accreditation shall file with the board a written request for accreditation in the form as required by the board. The request shall contain properly certified evidence that the association meets the standards for accreditation and shall be accompanied by a report of the names and addresses of members, the name of each handler to whom the member delivered or contracted to deliver the agricultural commodity during the previous 2 marketing periods and the quantity delivered. A fee to cover the costs of the board in processing the request shall be established by rule and paid by the association when the request is filed.

(2) The board may require all handlers of an agricultural commodity produced in the bargaining unit area as individuals or through their trade association to file with the board within 30 days following a request, a report, properly certified, showing the correct names and addresses of all producers of the agricultural commodity who have delivered the agricultural commodity to the handler during the 2 marketing periods preceding the filing of the report and the quantities of the agricultural commodity received by the handler from each named producer during the periods. The information contained in the individual reports of handlers filed with the board shall not be made public by the board nor available to any person for private use.

§ 290.709 Determination by board; hearing.

Sec. 9.

(1) Within 60 days following the date of filing with the board a request for accreditation by an association, the board shall determine whether the association shall be accredited. If the board determines that insufficient evidence was filed by the association, the board may permit the association to file an amended request for accreditation within 30 days following the determination and notification of the association.

(2) Within 30 days following the board's preliminary finding that the association is to be accredited, the board shall hold a public hearing to obtain further evidence relevant to confirmation that the association is to be accredited. Producers of record involved in the bargaining unit shall be notified of the hearing by mail and publication in a newspaper of general circulation in the bargaining unit area at least 10 days prior to the date of the hearing.

§ 290.710 Determination, publication; effective date; referendum; refiling.

Sec. 10.

(1) The board shall issue and publish its determination within 30 days after the close of the hearing. If the determination of the board is to accredit the association, the board shall include a preliminary declaration of accreditation in its determination. The preliminary declaration of accreditation shall clearly state that the association shall represent all producers, members and nonmembers alike, who are in the bargaining unit and act as exclusive sales agents for the bargaining unit in negotiations with handlers. A producer covered in a declaration of accreditation may join the association and have full membership rights therein. Handlers shall deduct marketing service fees from the proceeds to be paid to producers for the agricultural commodity in the amount as determined by the association and forward the service fees promptly to the association. The fees shall be within guidelines determined by the board and shall be subject to review by the board upon petition by 15% of the affected producers.

(2) The accreditation of the association by the board shall be effective 30 days after the publication of the preliminary declaration of accreditation. The board shall delay the accreditation of the association whenever it receives during the 30day period a petition signed by at least 1/3 of the producers in the bargaining unit who

produce at least 1/3 of the production of the agricultural commodity produced by the bargaining unit, exclusive of quantities contracted with processing cooperatives and produced by handlers, and requesting that the association should not be accredited. The board shall determine by a mail referendum of bargaining unit producers within 30 days following receipt of the petition if producers assent to the accreditation of the association. Producers in the bargaining unit shall be deemed to have assented to accreditation if more than 50% of the producers in the bargaining unit who produce more than 50% of the volume of the affected commodity assent to representation by the association.

(3) All affected producers, handlers and other interested parties shall be notified of the outcome of the referendum within 10 days following the referendum. Accreditation shall be effective immediately if producers assent. Accreditation shall be denied without the required assent of the producers.

(4) An association which is denied accreditation may not file another request for accreditation for a period of 1 year.

§ 290.711 Annual report; content.

Sec. 11. An accredited association shall file an annual report with the board in such form as required by the board to determine if the association continues to meet the requirements of accreditation as provided in section 7.

§ 290.712 Revocation of accreditation.

Sec. 12. To revoke the accreditation of an accredited association the board shall employ a procedure similar to the accreditation procedure set forth in sections 8, 9 and 10. Revocation of accreditation shall be considered by the board upon any of the following conditions:

(a) Upon receipt of a request from an accredited association for its own disaccreditation.

(b) Upon receipt of a petition requesting that the accredited association be disaccredited and bearing the signatures of at least 1/3 of the producers in the bargaining unit who produce at least 1/3 of the bargaining unit production of the agricultural commodity exclusive of quantities contracted with processing cooperatives and produced by handlers.

(c) A request for revocation of accreditation may not be accepted by the board during the marketing period or for a 60day period prior thereto.

§ 290.713 Bargaining, defined; negotiations; terms included.

Sec. 13.

(1) As used in this act, "bargaining" means the mutual obligation of a handler and an accredited association or their designated representatives to meet at reasonable times and confer and negotiate in good faith. The obligation does not require either party to agree to a proposal or to make a concession. An accredited association is the exclusive representative of all producers in the bargaining unit for the purpose of bargaining with all handlers that purchase the agricultural commodity produced in the bargaining unit. Negotiations may include all terms relative to trading between handlers and producers of the agricultural commodity such as:

(a) Prices and related terms of sale.

(b) Quality specifications.

(c) Quantity to be marketed.

(d) Transactions involving products and services utilized by 1 party and provided to the other party.

(2) The parties shall notify the board of the commencement of negotiations.

§ 290.714 Mediation of issues; mediator; employment; fee.

Sec. 14.

(1) Upon the request of an accredited association or upon the request of a handler, the board shall provide for the mediation of the issues in dispute. The board shall take such steps as it deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the association and the handler which could disrupt the normal sale and purchase of the agricultural commodity between producers and the handler. The board shall:

- (a) Arrange for, hold, adjourn or reconvene a conference or conferences between disputants and 1 or more of their representatives.
- (b) Invite the disputants and their representatives to attend the conference and submit, orally or in writing, the differences between the disputants.
- (c) Discuss the differences with the disputants or their representatives.
- (d) Assist in negotiating and drafting agreements for the adjustment and settlement of differences.

(2) In implementing its duties under this section, the board may designate 1 of its members or retain a competent individual to act in its behalf and may delegate to the designee its duties, and for such purpose, the designee shall have all of the powers conferred upon the board in connection with the discharge of the duties so delegated. If the board seeks to retain an individual to mediate a dispute, it shall attempt to retain an individual who has experience in mediation and in agricultural marketing.

(3) Where an individual is retained, the board shall establish his fee in advance.

§ 290.715 Election not to buy or sell; result.

Sec. 15. At any time prior to 30 days before the first day of the marketing period, if an agreement on the issues in dispute between the accredited association and the handler has not been reached, the handler may elect not to purchase, directly or indirectly, any quantity of the agricultural commodity produced in the bargaining unit during the marketing period or the affected producers may elect, as represented by the association, not to sell, directly or indirectly, any quantity of the agricultural commodity to the handler during the marketing period. If either party makes an election, the other party is not under an obligation to continue bargaining with the party so electing during that marketing period.

§ 290.716 Failure to elect; determination of quantity; arbitration committee.

Sec. 16.

(1) If the election provided for in section 15 is not exercised by the association or the handler involved in negotiations, and if the issues in dispute are not agreed upon through good faith bargaining by the first day of the marketing period for the agricultural commodity, the parties shall be deemed to have consented to the settlement of all issues in dispute by arbitration and the association shall agree that producers shall deliver the agricultural commodity to the handler or initiate the production of the agricultural commodity for future delivery to the handler and the handler shall accept delivery of the agricultural commodity or shall commit for the future delivery of the agricultural commodity. Where the quantity of the agricultural commodity to be marketed is in dispute, the handler shall offer to accept for delivery a reasonable quantity of the agricultural commodity. This offer shall be made in writing to the accredited association at least 7 days prior to the start of the marketing period. A copy of this offer shall be sent by registered mail to the board. The accredited association may file a claim for relief with the board if it feels that the offer is unreasonable. The board shall determine the issue of reasonableness at a hearing in accordance with Act No. 306 of the Public Acts of 1969, as amended. This determination shall have priority over all other board matters. The board shall base its determination on: (a) Projections as to the quantity of the agricultural commodity to be

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produced, (b) the relationship between the quantity of the commodity available and the amount of the quantity accepted by the handler, (c) the kind, grade, and quality of the commodity available, and (d) the past practices of the handler in relation to the items in subdivisions (a), (b) and (c). If, upon the preponderance of the evidence, the board is of the opinion that the quantity is unreasonable, it shall order the handler to accept the quantity which the board finds to be reasonable. The finding of the board shall be final, subject to later modification by the joint settlement committee. This finding shall be enforced in accordance with the provisions of section 5. Within 15 days following the start of the marketing period for the agricultural commodity, the board shall establish a joint settlement committee to arbitrate the issues in dispute.

(2) The committee consists of 1 committeeman selected by the association, 1 committeeman selected by the handler and 1 committeeman selected by the committeeman representing the association and the handler. This third committeeman shall be chairman of the committee. If the third committeeman cannot be agreed upon by the association and the handler committeeman, the board shall submit a list composed of the names of 5 persons knowledgeable in the marketing of the agricultural commodity from which the third committeeman shall be chosen. The selection shall be made by the association representative and the handler representative each striking 2 different names from the list. The remaining name shall be the person who serves as the third committeeman and as its chairman. The order of striking shall be determined by chance.

§ 290.717 Arbitration hearing; notice; intervenors; record; expenses; conclusion.

Sec. 17. The chairman shall call a hearing to begin within 15 days and give reasonable notice of the time and place of the hearing. The chairman shall preside over the hearing and shall take testimony. Upon application and for good cause shown, and upon such terms and conditions as are just, a person, having a substantial interest therein may be granted leave to intervene by the committee. Any oral or documentary evidence and other data deemed relevant by the joint settlement committee may be received in evidence. The proceedings shall be informal. Technical rules of evidence shall not apply and the competency of the evidence shall not thereby be deemed impaired. A verbatim record of the proceedings shall be made and the chairman shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them but the transcripts shall not be necessary for a decision by the committee. The expense of the proceedings, including a fee to the chairman, established in advance by the board shall be borne equally by each of the parties to the dispute and the state. The hearing conducted by the arbitration panel may be adjourned from time to time, but, unless otherwise agreed by the parties, shall be concluded within 30 days of the time of its commencement. Its majority actions and rulings shall constitute the actions and rulings of the joint settlement committee

§ 290.718 Arbitration committee; powers; oaths; subpoena; failure: penalty.

Sec. 18. The committee may administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as may be deemed by it material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the committee may, or the attorney general if requested shall, invoke the aid of any circuit court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.

§ 290.719 Committee's decision; time; mailing; limitation on award.

Sec. 19. The committee within 20 days after the conclusion of the hearing or such further time to which the parties may agree shall make written findings of fact and issue its written award upon the issues presented to it and upon the record made before it, and shall mail or otherwise deliver a true copy thereof to the parties or their representatives. The award of the committee shall be limited to the last offer of the association or the last offer of the handler which more nearly complies with the criteria contained in section 20.

§ 290.720 Bases for committee's decision.

Sec. 20. The committee shall base its decision upon the following factors:

(a) Prices or projected prices for the agricultural commodity paid by competing handlers in the market area or competing market areas.

(b) Amount of the commodity produced or projections of production in the production area or competing marketing areas.

(c) Relationship between the quantity produced and the quantity handled by the handler.

(d) The producers cost of production including the cost which would be involved in paying farm labor a fair wage rate.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The impact of the award on the competitive position of the handler in the marketing area or competing areas.

(g) The impact of the award on the competitive position of the agricultural commodity in relationship to competing commodities.

(h) A fair return on investment.

(i) Kind, quality or grade of the commodity involved.

(j) Stipulation of the parties.

(k) Such other factors which are normally or traditionally taken into consideration in determining prices, quality, quantity and the costs of other services involved.

§ 290.721 Decision; finality; enforcement.

Sec. 21. A majority decision of the committee, if supported by competent, material and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the committee in the court of appeals.

§ 290.722 Failure to obey order; penalty.

Sec. 22. A party who willfully disobeys a lawful order of enforcement by the court of appeals pursuant to section 21, or willfully encourages or offers resistance to such order shall be in contempt. The punishment for each day the contempt persists, may be a fine fixed in the discretion of the court in an amount not to exceed \$500.00 per day.

§ 290.723 Committee awards; judicial review.

Sec. 23. Awards of the committee shall be reviewable by the court of appeals but only for reasons that the committee was without or exceeded its jurisdiction; the award is unsupported by competent, material and substantial evidence on the whole record; or the award was procured by fraud, collusion or other similar and unlawful means. The pendency of such proceeding for review shall not automatically stay the order of the committee.

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§ 290.724 Negotiated contracts; copy to board.

Sec. 24. Within 30 days after an accredited association negotiates a contract with a handler or receives a committee award, it shall send to the board by registered mail a copy of the contract or award.

§ 290.725 Board; right of access; enforcement; service of papers.

Sec. 25.

(1) At all reasonable times the board shall have access to and the right to copy evidence relating to any person or action under investigation by it in connection with any failure or refusal to bargain or for engaging in unfair practices.

(2) In case of contumacy or refusal to obey a subpoena issued to any person, the circuit court, upon application by the board, shall have jurisdiction to order such person to appear before the board to produce evidence or to give testimony touching the matter under investigation, and any failure to obey such order may be punished by the court as a contempt.

(3) Complaints, orders and other processes and papers of the board may be served personally, by registered mail, by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return of service shall be proof of the service. Witnesses summoned before the board shall be paid the same fee and mileage allowance that are paid witnesses in circuit court and witnesses whose depositions are taken and the person taking the same shall be entitled to the same fees as are paid for like services in circuit court.

(4) All processes of any court of which an application or petition may be made under this act may be served at any place in the state wherein the person or persons required to be served reside or may be found.

§ 290.726 Activities not in violation of antitrust laws.

Sec. 26. The activities of accredited associations and handlers in bargaining with respect to the price and other terms of sale of the agricultural commodities produced by the members of such accredited associations do not violate any antitrust law of this state.

§ 290.727 Expiration of act; savings clause.

Sec. 27. Repealed by Pub. Acts 1976, No. 155.

2. California Cooperative Bargaining Associations Act

Article	Section
1. Definitions and General Provisions	54401
2. Unfair Trade Practices	5443 1
3. Penalties.	54461

Article 1

DEFINITIONS AND GENERAL PROVISIONS

Sec.

54401. Cooperative bargaining association.

54402. Public policy.

54403. Powers of director; hearings and investigations.

54404. Complaint; investigations, examinations or inspections.

54405. Injunction against violations; consolidation of actions.

§ 54401. Cooperative bargaining association

As used in this chapter, "cooperative bargaining association" means a farmer association which is organized and functioning pursuant to Chapter 1 (commencing with Section 54001) of this division, for the purpose of group bargaining between its producer members and the first handler or processor, with respect to the sale of any agricultural commodity except milk, cotton, or cottonseed.

§ 54402. Public policy

It is the public policy of the State of California to establish and support the right of any farmer to join voluntarily and belong to cooperate bargaining associations.

§ 54403. Powers of director; hearings and investigations

The director may exercise any or all of the powers which are conferred by Article 2 (commencing with Section 11180), Chapter 2, Part 1, Division 3, Title 2 of the Government Code upon the head of a department of the state with respect to hearings and investigations pursuant to this chapter.

§ 54404. Complaint; investigations, examinations or inspections

For the purpose of enforcing this chapter, the director may receive complaints from producers against any processor, handler, distributor, or any agent of such persons, or any other person, with respect to violations of the unfair trade practices which are specified in Section 54431.

Upon verification of the complaint, the director shall, or upon his own motion may, make any and all necessary investigations, examinations or inspections of any transaction which involves a suspected violation of any provision of this chapter.

§ 54405. Injunction against violations; consolidation of actions

The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter in the superior court of the county in which such violation occurred or is about to occur. Actions against different defendants may be consolidated, in the discretion of the court, if the alleged violations are of the same provision, have occurred in the same or an adjoining county, relate to the same agricultural commodity, occurred in the same production season, and such consolidation can be done without prejudice to a substantial right of any defendant. Any proceedings which are brought pursuant to this section shall be governed in all other respects by Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure.

Article 2

UNFAIR TRADE PRACTICES

Sec.

54431. Acts constituting.
54432. Processors, handlers, etc.; refusal to negotiate or bargain; prior course of dealing.
54433. Cooperative bargaining association; refusal to negotiate or bargain.
54434. Business done among members of association; inapplicability of subd.(e) of § 54431.
54435. No specific negotiation time or agreement required of processors, handlers, etc. with association.

§ 54431. Acts constituting

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) Interfere with, restrain, coerce, or boycott producers in the exercise of the rights which are guaranteed pursuant to Section 54402.
- (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.
- (c) Pay or loan money, or give any other thing of value, to a producer as an inducement or reward for refusing to, or ceasing to, belong to a cooperative bargaining association.
- (d) Maliciously or knowingly give false reports about the finances, management, or activities of a cooperative bargaining association.
- (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 subdivision only applies to a cooperative association which meets all of the following:
 - (1) That under the articles of incorporation or bylaws of the cooperative bargaining association, the association is producer owned and controlled exclusively by producers.
 - (2) The cooperative bargaining association has enforceable contracts with its members.
 - (3) The cooperative bargaining association has financial resources and management reasonably sufficient to accomplish the purpose for which it was organized.
 - (4) The cooperative bargaining association represents, through its own members, a sufficient number of producers or a sufficient quantity of any particular commodity, or both, to make it an effective agent for producers in bargaining with handlers.
 - (5) One of the functions of the cooperative bargaining association is acting as principal or agent for its producer members to negotiate or bargain with handlers for prices, terms of sale, compensation for commodities produced under contract and other terms of contracts with respect to the production, sale, and marketing of their commodity.

§ 54432. Processors, handlers, etc.; refusal to negotiate or bargain; prior course of dealing

The provisions of subdivision (e) of Section 54431 only apply to any processor, handler, distributor, or agent of any such person, who refuses to negotiate or bargain, as specified by such provisions, with a cooperative bargaining association which represents producers with whom such a processor, handler, distributor, or agent of any such person, has had a prior course of dealing.

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For purposes of this section, "prior course of dealing" means that the processor, handler, distributor, or agent of any such person has purchased in any two of the immediate preceding five years a commodity from a producer which a cooperative bargaining association represents.

§ 54433. Cooperative bargaining association; refusal to negotiate or bargain

It is an unfair trade practice, and unlawful, for any cooperative bargaining association to which subdivision (e) of Section 54431 applies to refuse to negotiate or bargain with any processor, handler, distributor, or agent of any such person, for price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which the cooperative bargaining association represents.

§ 54434. Business done among members of association; Inapplicability of subd. (e) of § 54431

The provisions of subdivision (e) of Section 54431 shall not apply to cooperative associations in respect to business done with its own membership.

§ 54435. No specific negotiation time or agreement required of processors, handlers, etc. with association

Nothing in subdivision (e) of Section 54431 shall require any processor, handler, distributor, or agent of any such person, to negotiate over any specific period of time, or to agree upon price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which any such cooperative bargaining association represents.

Article 3

PENALTIES

Sec.

54461. Offense; punishment.

54462. Civil penalty.

§ 54461. Offense; punishment

The willful violation of any provision of this chapter is a misdemeanor punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) for each and every such violation.

§ 54462. Civil penalty

In addition to the penalty which is provided by Section 54461, any person that violates any provision of this chapter is liable civilly for a penalty in an amount not to exceed a sum of five hundred dollars (\$500) for each and every violation.

3. Maine Agricultural Marketing and Bargaining Act of 1973

§ 1953. Legislative findings and purpose

Because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. Furthermore, membership by a farmer in a cooperative organization can only be meaningful, if a handler of agricultural products is required to bargain in good faith with an agricultural cooperative organization as the representative of the members of such organization who have had a previous course of dealing with such handler. The purpose of this Article is to provide standards for the qualification of agricultural cooperative organizations for bargaining purposes, to define the mutual obligation of handlers and agricultural cooperative organizations to bargain with respect to the production, sale and marketing of agricultural products and to provide for the enforcement of such obligation.

§ 1954. Short title

Article 6 shall be known and may be cited as the "Maine Agricultural Marketing and Bargaining Act of 1973."

§ 1955. Definitions

As used in this article, unless the context otherwise requires, the following words shall have the following meanings.

1. Association of producers. "Association of producers" means any association of producers of agricultural products organized and existing under this subchapter.

2. Board. "Board" means the Maine Agricultural Bargaining Board provided for in this Article.

3. Handler. "Handler," in the case of potatoes, means "processor" as defined under Title 7, section 1012, subsection 14 and in the case of other agricultural products means any person engaged in the business or practice of:

A. Acquiring agricultural products from producers or associations of producers for processing or sale;

B. Grading, packaging, handling, storing or processing agricultural products received from producers or associations of producers;

C. Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or

D. Acting as an agent or broker for a handler in the performance of any function or act specified in paragraph A, B or C.

4. Person. "Person" includes one or more individuals, partnerships, corporations and associations.

5. Producer. "Producer" means a person engaged in the production of agricultural products, excluding forest products, as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable or nut grower, or independent agricultural contractor as specified in section 1774, subsections 6-A and 8-A. If producer is also a handler, he shall be considered only a handler for the purposes of this Act.

6. Qualified association. "Qualified association" means an association of producers accredited in accordance with section 1957.

§ 1955. Maine Agricultural Bargaining Board

1. Board. There is established in the Department of Agriculture a Maine Agricultural Bargaining Board, which shall administer this Article.

2. Membership. The board shall consist of 5 members who shall be appointed by the Governor. One member shall be appointed from a list of names submitted by agricultural producer organizations organized under this subchapter and chapter 81. One shall be appointed from a list of names submitted by processors of agricultural products. Three shall be representatives of the public.

The initial terms of office of members of the board shall be 2 years for 2 representatives of the public and 3 years for the producer and processor representative and 4 years for the remaining public member. The Governor shall designate one member to serve as chairman of the board. Thereafter all terms shall be for a period of 5 years. Each member of the board shall be eligible for reappointment and shall hold office until his successor is appointed and qualified. In the event of avacancy, the Governor shall, within one month, appoint a successor to fill the unexpired term of his predecessor. All appointments to the board shall be made in conformity with the foregoing plan. Members shall take the oath of office prescribed for state officers.

3. Removal. Members of the board shall be removed by the Commissioner of Agriculture upon notice and hearing for neglect of duty or malfeasance in office but for no other cause.

4. Quorum. A vacancy in the board shall not impair the right of the remaining members to exercise all of the powers of the board. Three members of the board shall, at all times, constitute a quorum of the board, provided that reasonable notice has been given to all members of the board of the subject matter and date of any meeting at which the board is to exercise any of its powers.

5. Expenses. Members of the board shall be compensated at the rate of \$50 per day, in addition to their actual expenses while carrying out the functions of the board.

6. Rules and regulations. The board shall have authority from time to time to adopt, amend and repeal, in the manner prescribed by the Maine Administrative Procedure Act such rules and regulations as may be necessary or appropriate to carry out this Article.

§ 1957. Qualification of associations of producers

1. Qualification. Only those associations of producers that have been qualified in accordance with this section shall be entitled to the benefits provided by this Article.

2. Petition. An association of producers desiring qualification shall file with the board a petition for qualification. The petition shall contain such information and be accompanied by such documents as shall be required by the regulations of the board.

3. Hearing. The board shall provide notice and opportunity for a hearing, provided in a manner consistent with the provisions as to adjudicatory proceedings of the Maine Administrative Procedure Act. The board shall qualify such association, if based upon the evidence at such hearing, the board finds:

A. That under the charter documents or the bylaws of the association, the association is directly or indirectly producer-owned and controlled;

B. The association has contracts with its members that are binding under state law;

C. The association is financially sound and has sufficient resources and management to carry out the purposes for which it was organized;

D. The association represents 51% of the producers and produced at least 1/2 of the volume of a particular agricultural product for the specific handler involved with those producers and that agricultural product during the previous 12 months; if the board has reasonable cause to question such representation, the board shall require a secret ballot election to certify the percentage of representation; and

E. The association has as one of its functions acting as principal or agent for its producer-members in negotiations with handlers for prices and other terms of contracts with respect to the production, sale and marketing of their product.

4. Refiling of petition. If after said hearing, the board does not deem an association qualified, it shall, in a manner consistent with the Maine Administrative Procedure Act, clearly specify the reasons for such failure to qualify in its decision and, upon the refiling of said petition, shall reconsider its decision within 30 days after the date on which said petition was filed.

5. Notice. After the board qualifies *such* association, it shall give notice of such qualification to all known handlers that, in the ordinary course of business, purchase the agricultural commodities that such association represents.

6. Annual report. A qualified association shall file an annual report with the board in such form as shall be required by the regulations of the board. The annual report shall contain such information as will enable the board to determine whether the association continues to meet the standards for qualification.

7. Revocation. If a qualified association ceases to maintain the standards for qualifications set forth in subsection 3, the board shall, in a manner consistent with the Maine Administrative Procedure Act, apply to the Administrative Court to revoke the qualification of such association.

§ 1958. Bargaining

1. Definition. As used in this Article, "bargaining" is the mutual obligation of a handler and a qualified association to meet at reasonable times and negotiate in good faith with respect to the price, terms of sale, compensation for commodities produced or sold, or both, under contract and other contract provisions relative to the commodities that such qualified association represents and the execution of a written contract incorporating any agreement reached if requested by either party. Such obligation on the part of any handler shall extend only to a qualified association that represents producers with whom such handler has had a prior course of dealing. Such obligation does not require either party to agree to a proposal or to make a concession.

2. Prior course of dealing. A handler shall be deemed to have had a prior course of dealing with a producer if such handler has purchased commodities produced by such producer in any 2 of the preceding 3 years, provided that the sale by a handler of his business shall not negate any prior course of dealing that producers have had with this business.

3. Contracts. Nothing in this Article shall be deemed to prohibit a qualified bargaining association from entering into contracts with handlers to supply the full agricultural production requirements of such handlers.

4. -limitation. It shall be unlawful for a handler to negotiate with other producers of a product with respect to the price, terms of sale, compensation for commodities produced under contract and other contract provisions relative to such product while negotiating with a qualified bargaining association able to supply all or a substantial portion of the requirements of such handler for such product.

5. -further limitation. It shall be unlawful for a handler to purchase a product from other persons under terms more favorable to such persons than those terms negotiated with a qualified bargaining association for such product, unless such handler has first offered to purchase said product under said more favorable terms from the members of the qualified association of producers and said members have failed to supply the required product within a reasonable time according to said more favorable terms.

6. Investigation. Whenever it is charged that a qualified association or handler refuses to bargain, as that term is defined in subsection 1, the board shall investigate the charges. If, upon investigation, the board considers that there is reasonable cause to believe that the person charged has refused to bargain in violation of this Article, the board shall provide that person with notice and opportunity to be heard, in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory hearings.

7. Hearing. Hearings held pursuant to subsection 6 shall be held in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory hearings. The board shall request that the Attorney General, or any attorney in his department designated by him, be present at these hearings and shall advise the board on procedure and on the admissibility of any evidence.

8. Findings. If, upon a preponderance of the evidence, the board determines that the person complained of has refused to bargain, in violation of this Article, it shall state its findings of fact and shall issue and cause to be served on such person an order requiring him to bargain as that term is defined in subsection 1 and shall order such further affirmative action, excluding an award of damages, as will effectuate the policies of this Article.

9. Dismissal. Repealed. 1977, c. 694, § 283.

10. Modification. Until the record in a case has been filed in a court, as provided in section 1959, the board may at any time, upon reasonable notice and in such manner as it deems proper, modify or set aside, in a whole or in part, any finding or order made or issued by it.

§ 1959. Enforcement of orders and judicial review

1. Complaint. The board shall have power to complain to the Superior Court for the enforcement of its orders made under section 1958 and for appropriate temporary relief or restraining order, and shall file in the court the original or certified copy of the entire record in the proceeding, and shall cause notice of such complaint to be served upon such person, and said court shall thereupon have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. No objection that has not been urged before the board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

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2. Appeal. Repealed. 1977, c. 694, § 284,

3. Stay. The commencement of proceedings for judicial review shall not stay enforcement of the board's decision, but the reviewing court may order a stay upon such terms as it deems proper.

4. Procedure. Repealed. 1977, c. 694, § 286.

§ 1960. Copy evidence; oaths; subpoenas

The board shall at all reasonable times have access to and the right to copy evidence relating to any person or action under investigation by it in connection with any refusal to bargain. The board is empowered to administer oaths and to issue subpoenas requiring the attendance of witnesses or the production of evidence.

§ 1961. Contempt

In case of contumacy or refusal to obey a subpoena issued to any person, the Superior Court, upon application by the board, shall have jurisdiction to order such person to appear before the board to produce evidence or to give testimony touching the matter under investigation and any failure to obey such order may be punished by the court as a contempt thereof.

§ 1962. Service

Complaints, orders and other papers of the board shall be served in accordance with the methods provided by the Maine Rules of Civil Procedure.

§ 1963. Subpoena

In any proceeding before the board under this Act, the board may issue subpoenas for the attendance of witnesses, or for the production of documents and may examine witnesses under oath provided that:

1. Upon written application of a party to a proceeding, the board shall issue subpoenas for the attendance of witnesses or for the production of documents;

2. A person who fails to obey the subpoena of the board may be punished as for contempt of court on application by the board to the Superior Court for the county in which such failure occurs;

3. Witnesses who are summoned before the board or its agents shall be entitled to the same witness and mileage fees as are paid to witnesses subpoenaed in the District Courts of the State.

§ 1964. Antitrust

The activities of qualified associations and handlers in bargaining with respect to the price, terms of sale, compensation for commodities produced under contract or other contract terms relative to agricultural commodities produced by the members of such qualified associations shall be deemed not to violate any antitrust law of this State. Nothing in this Article shall be construed to permit handler to contract, combine or conspire with one another in bargaining with qualified associations.

§ 1965. Unfair practices

1. Producers of agricultural commodities are free to join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage nor permit an employee or agent to engage in any of the following practices, defined as unfair practices:

A. To coerce a producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association or to refuse to deal with a producer because of the exercise of his right to join and belong to an association except as provided in section 1958, subsections 4 and 5;

B. To discriminate against a 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;

C. To coerce or intimidate a producer to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a handler;

D. To pay or loan money, give anything of value or offer any other inducement or regard to a producer for refusing or ceasing to belong to an association;

E. To make or circulate unsubstantiated reports about the finances, management or activities of associations or handlers;

F. To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act;

G. To refuse to bargain with an accredited association with whom the handler has had prior dealings or with an accredited association whose producers in the bargaining units have had substantial dealing with the handler prior to the accreditation of the association;

H. To negotiate with a producer included in the bargaining unit after an association is accredited.

2. An association shall not engage or permit an employee or agent to engage in the following practices, defined as unfair practices:

A. To act in a manner contrary to the bylaws of the association;

B. To refuse to bargain with a handler with whom the accredited association has had prior dealing or with whom its producers have had substantial dealing prior to the accreditation of the association;

C. To coerce or intimidate a handler to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a producer;

D. To make or circulate unsubstantiated reports about the finances, management or activities of other associations or handlers;

E. To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act;

F. To hinder or prevent, by picketing, threats, intimidations, force or coercion of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance;

G. To exercise coercive pressure by picketing, patrolling or otherwise business establishments other than the premises owned or controlled by the handler in order to cause such parties to cease doing business with such handler.

4. Wisconsin Marketing, Warehouses, and Trade Practices Act (Excerpt)

100.235 Unfair trade practices in purchase of vegetable crops

(1) No processor of vegetable crops, who grows in this state more than 10% of the acreage of a species of vegetable, processed at a single processing plant, may pay to growers who sell vegetable crops under contract to * . . . *the processor* for processing at such plant, an average amount per ton less than the average cost per ton incurred by the processor in growing such vegetable species . . . in this state during the past 3 consecutive years prior to the current contract year. If the processor has grown a vegetable species less than 3 consecutive years, * . . . *the processor* shall average the costs of the past 2 consecutive years, if applicable, or use the cost of the preceding year when it is the only one available.

(2) On the complaint of any grower filed with the department within 180 days after completion of the processing of a vegetable at a plant, alleging that the processor to whom . . . *the grower* sold a vegetable crop under contract may have engaged in such unfair trade practice, the department shall make investigation thereof. In making its investigation the department may require the processor to submit reports of * . . . acreages, tonnages, costs of growing, and amounts paid to contract growers. For vegetables contracted on a tonnage basis and for open-market tonnage purchased, the processor shall report the estimated acreage based on this state's average yield per acre for the preceding year. All such reports shall be confidential and shall not be open to public inspection.

The department may require such reports to be certified by a public accountant or the department may inspect the processor's records to verify such reports. Upon completion of its investigation, the department shall issue its determination as to whether the processor has engaged in an unfair trade practice. If the department finds that the processor has engaged in an unfair trade practice, it shall specify the amount per ton by which the processor's costs of growing the vegetable species exceeded the amount paid to contract growers. Either the complainant or the processor may demand a public hearing of the matter, before the department, within 30 days of receipt of the determination, and shall be entitled to judicial review of the department's order under ch. 227.

(3) The department, after public hearing, may by rule adopt a uniform system of cost accounting to be used by processors in determining and reporting growing costs. Such accounting system shall take into account cost differences attributable to factors affecting prices for the vegetable species under the processor's contract with growers. If the contract provides for no seed charge or for cancellation of seed charges and charges for services furnished by the processor, if any, with respect to growers' nonharvested acreage, then the processor's cost of growing such species of vegetable shall not include the cost of . . . *the processor's* nonharvested acreage. A violation of this section or any rule issued under this section is an unfair trade practice under s. 100.20.

**5. Minnesota Agricultural Marketing
and Bargaining Act of 1973**

17.691 Citation

Sections 17.691 to 17.701 shall be known and may be cited as the "agricultural marketing and bargaining act of 1973."

17.692 Declaration of policy

Since agricultural products are produced by numerous and often scattered individual producers, the marketing and bargaining position of individual producers will be adversely affected unless they are free to join together voluntarily in cooperative associations or other associations as authorized by law. Membership of a producer in such a cooperative association or other association can only be meaningful if a handler of agricultural products is required to bargain in good faith with an agricultural cooperative association or other association as the representative of the members of such association. Production and marketing of agricultural commodities constitutes a basic and essential industry. Agricultural producers do not now enjoy the opportunity, comparable to that of industrial workers and those in many other forms of enterprise or employment, to organize and bargain effectively. Neither is adequate government provision available to assure that the bargaining process shall be fair both to producers and handlers and in the public interest.

17.693 Definitions

Subdivision 1. For the purposes of sections 17.691 to 17.701, the terms defined in this section have the meanings given them.

Subd. 2. "Association" means an association of producers, or federation of cooperative association of producers engaged in producing, marketing, bargaining, shipping or processing functions of an agricultural commodity on behalf of its members who are producers of such agricultural commodity, which has been accredited by the commissioner.

Subd. 3. "Person" means an individual, partnership, corporation or association.

Subd. 4. "Producer" means any person, who in any one calendar year within the previous two calendar years, produces or causes to be produced any agricultural commodity in quantity beyond his own family use, and who is able to transfer, during the calendar year, to a handler or an association a merchantable title to the agricultural commodity or provide management, labor, machinery, facilities, or any other production input, with the assumption of risk, for the production of the agricultural commodity under a written contract.

Subd. 5. "Agricultural commodity" includes all agricultural goods produced under contract for marketing as defined by the commissioner of agriculture. It does not include any commodity sold by a producer to another producer for his own exclusive use and not for resale. The kinds, types and subtypes of products to be classed together as an agricultural commodity for the purposes of sections 17.691 to 17.701 shall be determined by the commissioner on the basis of common usage and practice.

Subd. 6. "Handler" means a person, other than an association, engaged in the business or practice of acquiring agricultural commodities from producers or associations for processing or sale; grading, packaging, handling, storing or processing agricultural commodities received from producers or associations; contracting or negotiating contracts or other arrangements with producers or associations with respect to the production of any agricultural commodity; or acting as an agent or broker for a handler in the performance of any function or act specified above. It does not include a producer who sells at a retail establishment which he owns and

operates or who sells at a produce market, agricultural commodities produced by him and agricultural commodities produced by another producer subject to value limitation established by the commissioner.

Subd. 7. "Commissioner" means the commissioner of agriculture of the state of Minnesota or his designated authority.

Subd. 8. "Marketing year" shall mean, generally, any time between the second day of February of the previous calendar year and the first day of February of the subsequent year, unless the commissioner shall determine an alternative time period for a specific agricultural commodity to be designated as its marketing year.

17.694 Accreditation

Subdivision 1. Any association accredited under this section may engage in bargaining as provided for under sections 17.691 to 17.701.

(1) An association desiring accreditation shall file with the commissioner in the form required by the commissioner. The request shall contain properly certified evidence that the association meets the standards for accreditation and shall be accompanied by a report of the names and addresses of member producers, the name of each handler to whom the member producer delivered or contracted to deliver the agricultural commodity during the previous two calendar years and the quantity delivered or acreage grown. A fee to cover the costs of the commissioner in processing the request shall be established pursuant to Chapter 15, and paid by the association when the request is filed.

(2) The commissioner may require all handlers of an agricultural commodity produced in a bargaining unit area as individuals or through their trade association to file with the board within 30 days following such a request, a report, properly certified, showing the correct names and addresses of all producers of the agricultural commodity who have delivered the agricultural commodity to the handler during the two calendar years preceding the filing of the report and the quantities of the agricultural commodity received by the handler from each named producer during those periods. The information contained in the individual reports of handlers filed with the commissioner shall not be made public by the commissioner nor available to any person for private use.

Subd. 2. In determination of accreditation, the commissioner shall determine whether bargaining shall be appropriate by plant, processor, or company. This determination shall be the unit area for the bargaining provisions of sections 17.691 to 17.701 as is applicable to associations and handlers. In making his determination, the commissioner shall define as appropriate the largest bargaining unit area in terms of the quantity of the agricultural commodity produced, the definition of the agricultural commodity, geographic area covered and number of producers included as is consistent with the following criteria:

- (a) The community of interest of the producers included;
- (b) The potential serious conflicts of interests among members of the proposed unit;
- (c) The effect of exclusions on the capacity of the association to effectively bargain for the bargaining unit as defined;
- (d) The kinds, types and subtypes of products to be classed together as agricultural commodity for which the bargaining unit is proposed;
- (e) Whether the producers eligible for membership in the proposed bargaining unit meet the definition of "producer" for the agricultural commodity involved;
- (f) The wishes of the producers;
- (g) The pattern of past marketing of the commodity.

Subd. 3. An association shall be accredited only if it complies with the following:

(a) The association meets the requirements of the Capper-Volstead Act, 7 U.S.C. 291-2.

(b) The association has submitted a copy of its bylaws which provide that:

Each member of the association shall have one vote in all votes of the membership of the association; that officers or directors shall be elected by a majority of the members voting or by delegates representing a majority of the membership; and that all elections shall be by secret ballot.

(c) The association would have marketing and bargaining contracts for the current or next marketing year with more than 50 percent of the producers of an agricultural commodity who are in the bargaining unit area and these contracts would cover more than 50 percent of the quantity of that commodity produced by producers in that bargaining unit area. The commissioner may determine the quantity produced by the bargaining unit area using information on production in the prior year, current marketing information, and projections on production during the current marketing year. The commissioner shall exclude from the quantity of the agricultural commodity contracted by producers with producer owned and controlled processing cooperatives and any quantity produced by handlers. An association whose main purpose is bargaining but which processes a surplus into a form which is not the subject of bargaining is not a processing cooperative. The contracts with members shall specify the agricultural commodity and that the members have appointed the association as their exclusive agent in negotiations with handlers for prices and other terms of trade with respect to the sale and marketing of the agricultural commodity and obligate the members of the association to dispose of their production or holdings of the agricultural commodity through or at the direction of the association.

Subd. 4. Within 60 days of the filing date of the request for accreditation by an association, the commissioner shall determine whether the association shall be accredited. If the commissioner determines that insufficient evidence was filed by the association, the commissioner may permit the association to file an amended request for accreditation within 30 days following the determination and notification of the association. The commissioner shall then determine, within 30 days of the filing of the amended request, whether the association shall be accredited. An association which is denied accreditation after filing of an amended request may not file another request for accreditation for a period of one year.

Subd. 4a. Within 30 days of a decision by the commissioner denying accreditation to an association, the association may request a hearing before the commissioner. The commissioner shall then conduct a hearing to determine whether the association shall be accredited. This hearing shall be governed by the provisions of sections 15.0418 and 15.0419. If the commissioner, after this hearing has been held, determines that the association should not be accredited, the association may appeal this decision in accordance with sections 15.0424 and 15.0425. Only an association denied certification after such hearing may appeal under this chapter.

Subd. 5. Accreditation of the association by the commissioner shall be effective upon receipt by the association of the notice of accreditation from the commissioner.

Subd. 6. The commissioner shall consider revocation of accreditation upon any of the following conditions:

(a) Upon receipt of a request from an accredited association for its own dis-accreditation.

(b) Upon receipt of a petition requesting that the accredited association be dis-accredited and bearing the signatures of at least ten percent of the producers of an accredited association in the bargaining unit. Following the receipt of a petition bearing the signatures of at least ten percent of the producers of an accredited association in a bargaining unit the board shall order the commissioner to initiate a referendum among the members of the accredited association and if in the referendum a majority of the producers, producing 50 percent of the commodity approve, the association accreditation shall be revoked by the board.

Subd. 7. The accredited association shall represent all member producers who are in the bargaining unit area and it shall act as exclusive sales agents for the bargaining unit area in negotiations with handlers. The association may not assess, bargain for, or claim to represent those producers who choose not to be represented by the association or choose not to have a bargaining committee bargain for them.

17.695 Marketing and bargaining committee

Subdivision 1. After accreditation of the association, the association shall establish and authorize a marketing and bargaining committee to negotiate, as the association's exclusive agent, with handlers for the sale and marketing of the agricultural commodity for which the association was accredited.

Subd. 2. This committee shall be comprised of members of the association elected by the association in a secret ballot election, except that the association may contract with legal counsel who shall, at the discretion of the association, be eligible for membership on the committee.

Subd. 3. The production of the agricultural commodity shall comprise a significant portion of the total producing operation of each committee member.

Subd. 4. Members who have any quantity contracted with a producer owned and controlled processing cooperative are not eligible to serve on a marketing and bargaining committee for such a commodity.

17.696 Unfair practices of handlers and associations

Subdivision 1. Producers of agricultural commodities are free to join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage in any of the following practices, defined as unfair practices:

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

(b) To discriminate against a 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.

(c) To coerce or intimidate a producer to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a handler.

(d) To pay or loan money, give anything of value or offer any other inducement or reward to a producer for refusing or ceasing to belong to an association.

(e) To make or circulate unsubstantiated reports about the finances, management or activities of associations or other handlers.

(f) To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of sections 17.691 to 17.701.

(g) To refuse to bargain with an association with whom the handler has had prior dealings or with an association whose producers in the bargaining units have had dealings with the handler prior to July 1, 1973.

Subd. 2. An association shall not engage nor permit an employee or agent to engage in the following practices, defined as unfair practices:

- (a) To enter into a contract which discriminates against a producer represented by that association.
- (b) To act in a manner contrary to the bylaws of the association.
- (c) To coerce or intimidate a handler to breach, cancel or terminate an agreement or marketing contract with an association or a contract with a producer.
- (d) To make or circulate unsubstantiated reports about the finances, management or activities of other associations or handlers.
- (e) To conspire, combine, agree or arrange with another person to do or aid or abet the doing of any practice which is in violation of sections 17.691 to 17.701.

17.697 Bargaining defined; notice of commencement of negotiations: mediation procedure

Subdivision 1. As used in sections 17.691 to 17.701, "bargaining" means the mutual obligation of a handler and an association or their designated representatives to meet at reasonable times and confer and negotiate in good faith. Negotiations may include all terms relative to trading between handlers and producers of the agricultural commodity such as:

- (a) prices and terms of sale
- (b) quality specifications
- (c) quantity to be marketed by acreage or weight
- (d) transactions involving products and services utilized by one party and provided by the other party
- (e) check off procedures pursuant to assessments levied by the association, not to exceed one-half of one percent of the gross value of the producers annual production contract are collected by handlers from proceeds to producers within the bargaining unit and paid to the association.

Subd. 2. The association shall notify the commissioner of the commencement of negotiations.

Subd. 3. (a) If no agreement is reached at the expiration of ten days after service of such notice to the commissioner, the association may, at any time thereafter, petition the commissioner to assume supervision over the dispute, except as provided for by clause (e).

(b) The commissioner shall then set a time and place for conference with the parties to present facts representing each party's case and hearing arguments. The commissioner shall take such steps, in accordance with rules promulgated under sections 17.691 to 17.701, as he deems expedient to affect a voluntary, amicable and expeditious adjustment and settlement of the differences between the handler and the association.

(c) At any time prior to 15 days before the first day of the marketing year in dispute, if an agreement on the issues in dispute between the association and the handler has not been reached, the handler may elect not to purchase, directly or indirectly, any quantity of the agriculture commodity produced by the association during that marketing year; or, the affected producers may elect not to sell, directly or indirectly, any quantity of the agricultural commodity produced by the association during that marketing year; or, the affected producers may elect not to sell, directly or indirectly, any quantity of the agricultural commodity to the handler during that marketing year.

(d) If either party makes an election, the other party is not under an obligation to continue bargaining with the party so electing for terms during the marketing period in dispute. Both parties may, however, engage immediately in bargaining for the following marketing year.

(e) If the petition requesting the commissioner to assume supervision over a dispute is presented 15 days or less before the marketing year in dispute, then the commissioner shall exercise his discretionary authority, according to rules promulgated under sections 17.691 to 17.701, in determining which disputes are arbitrable before the start of the marketing year in dispute.

17.698 Basis for mediation and bargaining decisions

All decisions of mediation and bargaining which result from section 17.697 shall be based upon the following factors:

- (a) Prices or projected prices for the agricultural commodity paid by the competing handlers in the market area or competing market areas.
- (b) Amount of the commodity produced or projections of production in the production area or competing marketing areas.
- (c) Relationship between the quantity produced and the quantity handled by the handler.
- (d) The producers cost of production including the cost which would be involved in paying farm labor a fair wage rate and providing them with adequate housing.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The impact of the award on the competitive position of the handler in the marketing area or competing areas.
- (g) The impact of the award on the competitive position of the agricultural commodity in relationship to competing commodities.
- (h) A fair return on investment.
- (i) Kind, quality or grade of the commodity involved.
- (j) Stipulation of the parties.
- (k) Such other factors which are normally or traditionally taken into consideration in determining prices, quality, quantity and the costs of other services involved.

17.699 Time limit upon decisions

The commissioner shall announce his findings of fact and decisions in all cases in which he has assumed supervision during the year previous to the marketing year in dispute by the fifteenth day of the marketing year in dispute. To expedite his decisions, the commissioner may engage the services of the bureau of mediation services, whose recommendations he shall consider in his final determination.

17.70 Violation procedure

Subdivision 1. For the purpose of sections 17.691 to 17.701, the commissioner may receive complaints with respect to violations or threatened violations. The commissioner may make all necessary investigations, examinations or inspections of any violation or threatened violation specified in the sworn complaint filed with the commissioner. If, upon such investigation, the commissioner considers that there is reasonable cause to believe that the person charged has committed a practice in violation of sections 17.691 to 17.701, the commissioner shall issue and cause to be served a complaint upon the person. The complaint shall summon the person to a hearing before the commissioner at the time and place fixed.

Subd. 2. If the commissioner determines that the person complained of has committed a practice in violation of sections 17.691 to 17.701, he shall state his findings of fact and shall issue and cause to be served on the person an order requiring him to cease the violation and shall order further affirmative action as will effectuate the policies of sections 17.691 to 17.701.

Subd. 3. If the commissioner is of the opinion that the person complained of has not committed a practice in violation of sections 17.691 to 17.701, he shall make his findings of fact and issue an order dismissing the complaint.

State Legislation

Subd. 4. Until the record in a case has been filed in a court the commissioner may, at any time upon reasonable notice and in such manner as he deems proper, modify or set aside, in whole or in part, any finding or order he has made or issued, with jurisdiction for such a change specified in additional findings of fact.

Subd. 5. The commissioner may request the attorney general of the state of Minnesota to seek the appropriate temporary relief or restraining order of injunction in district court to insure the enforcement of his findings.

17.701 Rules

The commissioner may promulgate rules necessary for the administration of sections 17.691 to 17.701 in accordance with sections 17.691 to 17.701 and Chapter 15.

6. Ohio Cooperatives Act (Excerpt)

§ 1729.191 (Definitions.)

As used in sections 1729.191 and 1729.192 of the Revised Code:

(A) "Sales Contract" means an agreement between a handler and a producer, negotiated by the producer or by a cooperative acting as agent for a producer, under which the producer agrees to grow or produce fruits or vegetables in this state for sale as raw agricultural products to the handler, and the handler agrees to buy such fruits or vegetables.

(B) "Handler" means a person who acquires fruits or vegetables under a sales contract for the purpose of processing such fruits or vegetables.

(C) "Processing" means changing the physical or chemical characteristics of fruits or vegetables by operations such as cooking, freezing, or canning. "Processing" does not include cleaning, grading, or packaging.

(D) "Cooperative" means any corporation organized under Chapter 1729, of the Revised Code, controlled by and operated for producers, and meeting the requirements of the "Co-operative Marketing Associations Act," 42 Stat. 388 (1922), 7 U.S.C. 291, 292, which negotiates sales contracts with handlers on behalf of its members and is not in direct competition with any handler with which it negotiates such contracts.

(E) "Bargaining" means the mutual obligation of a handler and a cooperative to meet at reasonable times and confer and negotiate in good faith. Negotiations may include all terms relative to trading between handlers and producers of fruits and vegetables. The obligation does not require either party to agree upon price, terms of sale, or any other contract provision, or to make a concession.

§ 1729.192 (Sales contracts for fruits or vegetables.)

(A) Whenever a cooperative has contracts with its members authorizing the cooperative to bargain on behalf of its members for sales contracts for a specified fruit or vegetable, no handler nor cooperative shall commit an unfair marketing practice when the following conditions exist:

(1) The contract obligates such members to produce and sell such fruit or vegetable under sales contracts negotiated by the cooperative;

(2) Such members represent, on the yearly average calculated over the immediate two preceding calendar years, at least fifty-one per cent of the producers who delivered, under sales contracts, such specified fruit or vegetable to the specified facility of the handler;

(3) Such members delivered, under sales contracts, on the yearly average calculated over the immediate two preceding calendar years, at least fifty per cent of the total amount of such fruit or vegetable delivered, under sales contracts, to such facility;

(4) The cooperative, if requested by the handler, presents to the handler copies of the contracts with its members authorizing the cooperative to bargain on behalf of its members for sales contracts for the specified fruit or vegetable which is the subject of the sales contract under negotiation.

(B) It is an unfair marketing practice:

(1) If a handler or a cooperative fails to bargain in good faith with such cooperative or such handler for the purpose of negotiating sales contracts for the specified fruit or vegetable to be delivered to a specified facility of the handler when the cooperative requests such negotiations between the first day of January and the twenty-eighth day of February of any year. The obligation to negotiate in no event extends past the thirty-first day of March for annual plantings or past the thirty-first day of July for perennial plantings.

State Legislation

(2) If a handler enters into a sales contract directly with a producer, pertaining to specified fruits and vegetables to be delivered to the same facility, with the intent to cause the cooperative to fail to meet the conditions set forth in divisions (A) (2) and (3) of this section.

§ 1729.99 Penalty.

(A) Whoever violates section 1729.181 of the Revised Code shall be fined not less than fifty nor more than five hundred dollars for each offense.

(B) Whoever commits an unfair marketing practice as defined in section 1729.192 of the Revised Code shall be fined not less than one hundred nor more than twenty-five hundred dollars for each offense.

**7. Oregon Producers' Cooperative
Bargaining Associations Act**

646.516 Definitions for ORS 646.516 to 646.545. As used in ORS 646.515 to 646.545, unless the context requires otherwise:

(1) "Agricultural commodity" or "commodities" means any and all agricultural, horticultural, viticultural and vegetable products produced in this state, either in their natural state or as processed by a producer for the purpose of marketing such product, including bees and honey, but not including timber, timber products, grain and grain products or seed products.

(2) "Cooperative bargaining association" means an association of producers formed or operated pursuant to ORS chapter 62 with the purpose of group bargaining with respect to the sale of any agricultural commodity or commodities.

(3)(a) "Dealer" means, except as provided in paragraph (b) of this subsection, any person or his agent who purchases or contracts to purchase an agricultural commodity from a producer or his agent, for the purpose of packing, processing or marketing such commodity.

(b) "Dealer" shall not include any organization operating as an agricultural cooperative corporation.

(4) "Producer" means a person engaged in the business of producing agricultural commodities.

646.525 Cooperative bargaining associations authorized. Producers shall have the right to join voluntarily and belong to cooperative bargaining associations.

646.635 Unfair trade practices prohibited. No dealer shall knowingly engage in the following unfair trade practices:

(1) Interfere with, restrain, coerce or boycott a producer in the exercise of the rights guaranteed pursuant to ORS 646.525; or

(2) Discriminate against a producer with respect to price or other terms of purchase of raw agricultural commodities, by reason of the producer's membership in or contract with cooperative bargaining associations; or

(3) Pay or loan money, or give any other thing of value to a producer as an inducement or reward for refusing to or ceasing to belong to a cooperative bargaining association.

646.645 Remedy for unfair trade practices; jurisdiction. (1) In addition to any other remedies provided by law, any producer injured by a violation of ORS 646.535 may maintain an action for damages sustained by such producer.

(2) The prevailing party in any action brought pursuant to subsection (1) of this section shall be allowed, in addition to the costs and disbursements otherwise prescribed by law, a reasonable sum for attorney's fees for the prosecution or defense of such action.

(3) Notwithstanding the provisions of ORS 46.660 to 46.080, the district court shall not have jurisdiction in any action for damages for violation of ORS 646.535.

APPENDIX C
AGRICULTURAL FAIR PRACTICES
ACT OF 1967

Agricultural Fair Practices Act of 1967

Sec.

2301. Congressional findings and declaration of policy.

2302. Definitions.

2303. Prohibited practices.

2304. Disclaimer of intention to prohibit normal dealing.

2305. Enforcement provisions.

- (a) Civil actions by persons aggrieved; preventive relief; attorneys' fees; security.
- (b) Civil actions by Attorney General; federal jurisdiction; complaint; preventive relief.
- (c) Suits by persons injured; federal jurisdiction; amount of recovery; attorneys' fees; limitation of actions.
- (d) Federal jurisdiction; exhaustion of other remedies; State laws and jurisdiction unaffected.

2306. Separability of provisions.

§ 2301. Congressional findings and declaration of policy

Agricultural products are produced in the United States by many individual farmers and ranchers scattered throughout the various States of the Nation. Such products in fresh or processed form move in large part in the channels of interstate and foreign commerce, and such products which do not move in these channels directly burden or affect interstate commerce. The efficient production and marketing of agricultural products by farmers and ranchers is of vital concern to their welfare and to the general economy of the Nation. Because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. Interference with this right is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce.

It is, therefore, declared to be the policy of Congress and the purpose of this chapter to establish standards of fair practices required of handlers in their dealings in agricultural products.

§ 2302. Definitions

When used in this chapter-

(a) The term "handler" means any person engaged in the business or practice of (1) acquiring agricultural products from producers or associations of producers for processing or sale; or (2) grading, packaging, handling, storing, or processing agricultural products received from producers or associations of producers; or (3) contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or (4) acting as an agent or broker for a handler in the performance of any function or act specified in clause (1), (2) or (3) of this paragraph.

(b) The term "producer" means a person engaged in the production of agricultural products as a farmer, planter, rancher, dairyman, fruit, vegetable, or nut grower.

(c) The term "association of producers" means any association of producers of agricultural products engaged in marketing, bargaining, shipping, or processing as defined in section 1141j(a) of Title 12, or in section 291 of this title.

(d) The term "person" includes individuals, partnerships, corporations, and associations.

(e) The term "agricultural products" shall not include cotton or tobacco or their products.

§ 2303. Prohibited practices

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 any producer because of the exercise of his right to join and belong to such an association; or

(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; 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

(d) To pay or loan money, give any thing of value, or offer any other inducement or reward to a producer for refusing to or ceasing to belong to an association of producers; or

(e) To make false reports about the finances, management, or activities of associations of producers or handlers; or

(f) To conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by this chapter.

§ 2304. Disclaimer of intention to prohibit normal dealing

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.

§ 2305. Enforcement provisions-Civil actions by persons aggrieved; preventive relief; attorneys' fees; security

(a) Whenever any handler has engaged or there are reasonable grounds to believe that any handler is about to engage in any act or practice prohibited by section 2303 of this title, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved. In any action commenced pursuant hereto, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. The court may provide that no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Civil actions by Attorney General; federal jurisdiction; complaint; preventive relief

(b) Whenever the Secretary of Agriculture has reasonable cause to believe that any handler, or group of handlers, has engaged in any act or practice prohibited by section 2303 of this title, he may request the Attorney General to bring civil action in his behalf in the appropriate district court of the United States by filing with it a complaint (1) setting forth facts pertaining to such act or practice, and (2) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the handler, or handlers, responsible for such acts or practices. Upon receipt of such request, the Attorney General is authorized to file such complaint.

Cooperative Farm Bargaining

Suits by persons injured; federal jurisdiction; amount of recovery; attorneys' fees; limitation of actions

(c) Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, any provision of section 2303 of this title may sue therefor in the appropriate district court of the United States without respect to the amount in controversy, and shall recover damages sustained. In any action commenced pursuant to this subsection, the court may allow the prevailing party a reasonable attorney's fee as a part of the costs. Any action to enforce any cause of action under this subsection shall be forever barred unless commenced within two years after the cause of action accrued.

Federal jurisdiction; exhaustion of other remedies; State laws and jurisdiction unaffected

(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

The provisions of this chapter shall not be construed to change or modify existing State law nor to deprive the proper State courts of jurisdiction.

§2306. Separability of provisions

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the chapter and of the application of such provision to other persons and circumstances shall not be affected thereby.

APPENDIX D
PROPOSED NATIONAL
AGRICULTURAL BARGAINING
ACT OF 1979

Proposed National Agricultural Bargaining Act of 1979

**96th Congress
1 st Session**

H.R. 3535

To assure fair practices in agricultural bargaining.

IN THE HOUSE OF REPRESENTATIVES

April 9, 1979

Mr. Panetta introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To assure fair practices in agricultural bargaining.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Agricultural Bargaining Act of 1979".

Congressional Findings and Declaration of Policy

Sec. 2. Agricultural products are produced in the United States by many individual farmers and ranchers scattered throughout the various States of the Nation. Such products in fresh or processed form, move in the channels of interstate and foreign commerce, or directly burden or affect interstate commerce. The efficient production and marketing of agricultural products by farmers and ranchers is a vital importance to their welfare, and to the general welfare. Because agricultural products are produced by numerous individual farmers, their ability to market and to 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. Interference with this right, or the failure of any handler of agricultural products to bargain in good faith with a cooperative association of producers as the representative and agent of such producers is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce. Therefore, it is declared to be the policy of Congress and the purpose of this title to establish standards of fair practices that shall be observed by handlers and associations of producers in their dealings in agricultural products, to provide standards for the accreditation of cooperative associations of producers of agricultural products for the purpose of bargaining, to define the mutual obligations of handlers and associations of producers to bargain with respect to the production, sale, and marketing of agricultural products, and to provide for the enforcement of such obligations.

Definitions

Sec. 3. When used in this title-

(a) "Accredited association" means an association of producers accredited in accordance with section 6 of this title.

Proposed National Agricultural Bargaining Act of 1979

(b) "Association" means any association of producers of agricultural products engaged in the marketing of such products, including marketing, selling, bargaining, shipping, or processing as defined in section 15(a) of the Agricultural Marketing Act of 1929, as amended (49 Stat. 317; 12 U.S.C. 1141(a)), or in section 1 of the Act entitled "An Act to authorize association of agricultural producers" approved February 18, 1922 (42 Stat. 388; 7 U.S.C. 291).

(c) "Handler" means any person, other than an association, engaged in the business or practice of (1) acquiring agricultural products from producers or associations for processing or sale; (2) grading, packaging, handling, storing, or processing agricultural products received from producers or associations; (3) contracting or negotiating contracts or other arrangements, written or oral, with producers or associations with respect to the production or marketing of any agricultural product; or (4) acting as an agent or broker for a handler in the performance of any function or act specified in (1), (2), or (3) above.

(d) "Person" includes one or more individuals, partnerships, corporations, and associations.

(e) "Producer" means a person engaged in the production of agricultural products as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable, or nut grower, including a grower or farmer furnishing labor, production management, or facilities for the growing or raising of agricultural products.

(f) "Secretary" means the Secretary of Agriculture.

Unfair Practices

Sec. 4. (a) It shall be unlawful for any handler to engage, or to permit an employee or agent to engage, in any of the following practices, which are hereby defined as unfair practices:

(1) To coerce a producer in the exercise of his right to contract with, join, or maintain his membership in, or to refrain from contracting with, joining, or maintaining his membership in an association or to refuse to deal with a producer because of the exercise of his right to contract with, join, or maintain his membership in an association.

(2) To discriminate against a 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 his contract with an association.

(3) To coerce or intimidate a producer to breach, cancel, or terminate a membership agreement or marketing contract with an association or a contract with a handler.

(4) To offer to pay or loan money or anything of value, or to offer or give any other inducement or reward to a producer for refusing to join or to cease to maintain membership in an association.

(5) To make or circulate false reports about the finances, management, or activities of an association or a handler.

(6) To refuse to bargain in good faith with an association accredited to represent producers, if the handler is designated pursuant to section 6.

(7) To conspire, combine, agree, or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act.

(b) It shall be unlawful for any association to engage or to permit an employee or agent to engage in any of the following practices, which are hereby defined as unfair practices:

(1) To refuse to bargain in good faith with a handler designated pursuant to section 6.

(2) To coerce or intimidate a handler to breach, cancel, or terminate a marketing contract with an association or a contract with a member of an association.

Cooperative Fawn Bargaining

(3) To make or circulate false reports about the finances, management, or activities of an association or a handler.

(4) To coerce or intimidate a producer to breach, cancel, or terminate a membership agreement or marketing contract with an association.

(5) To conspire, combine, agree, or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act.

Bargaining in Good Faith

Sec. 5. (a) "Bargaining" is the performance of the mutual obligation of a handler and an accredited association to meet at reasonable times and for reasonable periods of time for the purpose of negotiating in good faith with respect to the price, terms of sale, compensation for products produced under contract, or other provisions relating to the products that are marketed by the members of such accredited association or by the association as their agent. Such obligation on the part of any handler shall extend only to accredited associations and the products with respect to which such associations are accredited to bargain. Such obligation does not require either party to agree to a proposal or to make a concession.

(b) If a handler purchases a product from other producers under terms more favorable to such producers than the terms negotiated with an accredited association for such product, he shall offer the same terms to the accredited associations. In comparing such terms, there shall be taken into consideration, in addition to the stipulated purchase price and without limiting the generality of the foregoing, any bonuses, premiums, hauling or loading allowances, reimbursement of expenses, or payment for special services of any character which may be paid by the handler, and any sums paid or agreed to be paid by the handler for any other designated purpose than payment of the purchase price.

Accreditation of Associations of Producers

Sec. 6. (a) An Association seeking accreditation to bargain for producers of an agricultural product or products shall submit to the *Secretary* a petition for accreditation. The petition shall: (1) specify the agricultural product or products for the producers of which the association seeks accreditation to bargain; (2) designate the handlers, individually or by production or marketing area or by some other appropriate classification, with whom the association shall be accredited to bargain; and (3) contain such other information and documents as may be required by the *Secretary*.

(b)(1) Upon receiving the petition and any supporting material, the *Secretary* shall give notice of the petition to all designated handlers. Handlers who have been designated individually shall receive personal notice; handlers who have been designated by production or marketing area or by some other general classification shall be given notice through the *Federal Register*. Both the association seeking accreditation and the designated handlers shall have an opportunity to submit written evidence, views, and arguments to the *Secretary*, who may in his discretion conduct an informal proceeding. The *Secretary* shall hold a formal hearing for the reception of testimony and evidence only if he finds that there are substantial unresolved issues of material fact.

(2) The *Secretary* shall accredit such association if, based upon the evidence submitted, the *Secretary* finds-

(A) that under the charter documents or bylaws of the association, it is owned and controlled by producers;

(B) that the association has contracts with its members empowering the association to sell or negotiate terms of sale of the products of its members that are binding under State law;

(C) that the association represents a sufficient number of producers or that its members produce a sufficient quantity of agricultural products to enable it to function as an effective agent for producers in bargaining with the designated handlers. In making this finding, the Secretary shall exclude any quantity of the agricultural products contracted by producers with producer owned and controlled processing cooperatives and any quantity of such products produced by handlers; and

(D) that the association has as one of its functions acting as principal or agent for its members in negotiations with handlers for prices and other terms of trade with respect to the production, sale, and marketing of their products.

(c) The Secretary shall give notice of his decision to the petitioning association and to the designated handlers, together with a concise statement of his reasons. The Secretary shall also give notice of any accreditation to all other associations that have been accredited to bargain with respect to the product or products with any of the designated handlers.

(d) Each accredited association shall submit an annual report to the Secretary in such form and including such information as the Secretary by regulation may require so as to enable him to determine whether the association continues to meet the standards for accreditation.

(e) If the Secretary believes that an accredited association has ceased to meet the standards for accreditation set forth in paragraph (b) of this section he shall notify the association of the respects in which he believes it has ceased to maintain such standards and allow it a reasonable time to answer or to correct the deficiencies noted. Thereafter, if the Secretary is not satisfied that the association is then in compliance with paragraph (b) of this section, he shall notify the association and hold a hearing to consider the revocation of accreditation. If, based upon the evidence submitted at the hearing, the Secretary finds that the association has ceased to maintain the standards for accreditation, he shall revoke the accreditation of such association.

(f) The Secretary may, upon his own motion or the petition of an accredited association or a designated handler, amend his order of accreditation with respect to the product or products specified therein. The Secretary shall give notice of any proposed amendment and the reasons therefor to all accredited associations and handlers that would be directly affected thereby and shall provide an opportunity for a public hearing. Thereafter, the Secretary may amend the order if he finds such amendment will be conducive to more effective bargaining and orderly marketing by the accredited association of the product or products of its members.

Assignment of Association Dues, Fees, or Retains

Sec. 7. If a producer of a farm product voluntarily executes, either as a clause in a sales contract or other instrument in writing, an assignment of dues or fees to or the deduction of a sum to be retained by an association authorized by contract to represent such producer, by which the handler is directed to deduct a sum from the amount to be paid for such product, or for the services of such producer under a growing contract, and on behalf of the producer to pay the same over to such association as dues or fees or funds to be retained by the association, and causes notice of such assignment to be delivered to a handler, then such handler shall deduct the amount authorized from the amount paid for any farm product being sold by any such producer or for any services under any growing contract and, upon payment to producers for such farm product or services, pay said amount over to the association or its assignee.

Mediation and Arbitration

Sec. 8. The Secretary may provide mediation services if requested either by an accredited association or by a designated handler engaged in bargaining with an accredited association and if, in the Secretary's judgment, an impasse in bargaining has occurred. The Secretary shall provide assistance in proposing and implementing arbitration agreements between accredited associations and designated handlers. The Secretary may establish a procedure for compulsory and binding arbitration if he finds that an impasse in bargaining exists and such impasse will result in a serious interruption in the flow of product to consumers or will cause substantial economic hardship to producers or handlers involved in the bargaining.

Administration

Sec. 9. (a)(1) Whenever it is charged that an accredited association or handler has violated or is violating section 4 (a)(6) or (b)(1) of this title, the Secretary shall issue and cause to be served upon the person charged a complaint stating the charges. The complaint shall summon the named person to a hearing before the Secretary at the time and place therein fixed.

(2) Whenever it is charged that an association or handler has violated or is violating any other provision of this title, the Secretary shall investigate such charges. If, upon such investigation, the Secretary has reasonable cause to believe that the person charged has violated such provision, he shall issue and cause to be served upon the person so charged a complaint stating the charges. The complaint shall summon the named person to a hearing before the Secretary at the time and place therein fixed.

(b) The person complained of shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony. The person who filed the charge shall also have the right to appear in person or otherwise and give testimony.

(c) If, upon a preponderance of the evidence, the Secretary is of the opinion that the person complained of has violated any provision of this title, he shall state his findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violation and shall order such further affirmative action, including an award of damages to the person filing the charge, as will effectuate the policies of this title.

(d) The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act, and may cooperate with any department or agency of the Government, any State, territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress; and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose.

Independent Enforcement Authority

Sec. 10. The Secretary may at any time institute an inquiry on his own motion, in any case and as to any matter for which a charge is authorized to be made to or before the Secretary by section 9 of this title. The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion as though a charge had been filed with him, including the power to make and enforce any order.

Proposed National Agricultural Bargaining Act of 1979

Judicial Review

Sec. 11. (a) Any person aggrieved by a final order of the Secretary issued under section 9 of this Act or under section 6(b)(2), 6(e), or 6(f) of this Act, may obtain review of such order in the United States Court of Appeals for the District of Columbia Circuit by submitting to such court within thirty days from the date of such order a written petition praying that such order be modified or set aside.

(b) The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record, shall be conclusive.

(c) Orders of the Secretary with respect to which review could have been obtained under paragraph (a) of this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(d) If no petition for review, as provided in paragraph (a) of this section, is filed within thirty days after service of the Secretary's order, the Secretary's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such thirty-day period. In any such case, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the person named in the complaint.

(e) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

Federal Enforcement

Sec. 12. (a) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of section 4 of this title or in violation of any order of the Secretary, he shall bring a civil action in accordance with paragraph (b) of this section.

(b) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

(c) Any person who violates section 4 of this title or any order of the Secretary issued under section 9 or 10 of this title shall be subject to a civil penalty not to exceed \$500 per day of such violation.

(d) Any person who wilfully violates section 4 of this title, or any order of the Secretary under section 9 or 10 of this title, shall be punished by a fine of not less than \$500 nor more than \$1,000 per day of such violation or by imprisonment for not more than one year, or both.

Civil Remedies

Sec. 13. (a) Except as provided in paragraph (b) of this section, any person may commence a civil action on his own behalf-

(1) against any person who is alleged to be in violation of section 4 of this title or of any order issued by the Secretary under section 9 or 10 of this title; or

(2) against the Secretary when there is alleged a failure of the Secretary to perform any act or duty under this title which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such section or order (including the issuance of a permanent or temporary injunction or restraining order), or to order the Secretary to perform such act or duty as the case may be, and to apply any appropriate civil penalties under section 12 of this title.

(b) No action may be commenced-

(1) under paragraph (a)(1) of this section-

(A) prior to sixty days after the plaintiff has given notice of the alleged violation to the Secretary and to the alleged violator, or

(B) if the Secretary has commenced and is diligently prosecuting a civil or criminal action in a court of the United States to require compliance with such section or order, but in any such action any person may intervene as a matter of right;

(2) under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Secretary.

(c) Any person aggrieved by reason of any violation of, or combination or conspiracy to violate any provision of section 4 of this Act may bring an action in the appropriate district court of the United States without respect to the amount of the controversy, and shall recover damages therefor. Any action to enforce any cause of action under this subsection shall be forever barred unless commenced within two years after the cause of action arose.

(d) The court, in issuing any final order in any action brought pursuant to paragraph (a) or (c) of this section, may award costs of litigation (including reasonable attorney fees) to any party, whenever the court determines such award is appropriate.

(e) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law, except as provided in paragraph (b) of this section.

Investigative Powers of Secretary

Sec. 14. (a) Whenever required to carry out the objectives of this title, including the conduct of any investigations or hearings-

(1) the Secretary shall require any person to (i) establish and maintain such records, (ii) make such reports, and (iii) provide such other information as he may reasonably require; and

(2) the Secretary or his authorized representative, upon presentation of his credentials and a warrant or such other order of a court as may be required by the Constitution-

(i) shall have a right of entry to, upon, or through any premises in which records required to be maintained under paragraph (a)(1) of this section are located, and

(ii) may at reasonable times have access to any copy any records, which any person is required to maintain or which relate to any matter under investigation or in question.

(b) Any records, reports, or information obtained under this section shall be available to the public except that upon a showing satisfactory to the Secretary that such records, reports, or information, if made public, would divulge confidential business information, the Secretary shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18, United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title or when relevant in any proceeding under this title.

(c)(1) In making inspections and investigations under this title, the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath.

Proposed National Agricultural Bargaining Act of 1979

(2) The Secretary, upon application of any party to a hearing held under section 9 or 10 of this title, shall forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Secretary to revoke such subpoena. The Secretary shall revoke such subpoena if in his opinion the evidence whose production is required does not relate to any matter in question, or if such subpoena does not describe with sufficient particularity the evidence whose production is required.

(d) The Secretary, or any officer or employee designated by him for such purpose, shall have power to administer oaths, sign and issue subpoenas, examine witnesses, and receive evidence. Witnesses shall be paid the same fees and mileage allowance as are paid witnesses in the courts of the United States.

(e) In the case of any failure or refusal of any person to obey a subpoena or order of the Secretary under this section, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found or resides or transacts business, upon the application by the Secretary shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as and when so ordered to give testimony relating to the matter under investigation or in question. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

State Authority

Sac. 15. This Act shall not invalidate the provisions of any existing State legislation dealing with the same subjects as this Act, nor shall this Act prevent any State from enacting legislation similar to existing State legislation, except that such similar legislation may not permit any action that is prohibited under this title.

Separability of Provisions

Sec. 16. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

Repeal of Agricultural Fair Practices Act of 1967

Sac. 17. The Agricultural Fair Practices Act of 1967 (Public Law 90-288, 7 U.S.C.A. 2301 et seq.) is hereby repealed effective on the day after the date of enactment of this title: Provided, however, That such repeal shall not affect any act done or any right accruing or accrued, or any act or proceeding had or commenced in any civil cause, before such repeal.

APPENDIX E
AGRICULTURAL MARKETING
LEGISLATION IN ONTARIO

Agricultural Marketing Legislation in Ontario¹

*(Revision of Factsheet "Agricultural Marketing Legislation
in Ontario" May 1973)*

A. Contini, Economics Branch

The Farm Products Marketing Act and the Ontario Milk Act form the legislative basis for the regulation of agricultural marketing whereby Ontario farmers can sell their products collectively. Under the former, commodity marketing plans administered by local producer boards may be established. Powers considered necessary to the effective operation of each marketing plan are delegated to the boards by the Farm Products Marketing Board. At present there are 20 active marketing plans in Ontario covering some 42 commodities. In addition, there are two marketing boards in the dairy sector established under the Ontario Milk Act and supervised by the Milk Commission of Ontario. The support of a majority of producers of a given commodity is required for the establishment of a plan, but once a plan is approved, however, it becomes binding on all producers of that commodity.

In general, the activities of the producer boards are aimed at the following objectives:

1. to ensure adequate prices and incomes to producers of the regulated product;
2. to stabilize prices and incomes from the sale of that product by reducing severe fluctuations between high and low prices;
3. to arrange an adequate supply of quality product to meet the needs of the consuming public domestically and to fill export opportunities;
4. to improve efficiency in the marketing system;
5. to provide uniform terms and conditions of sale for that product, as well as to ensure equity of payment to producers; and
6. to increase demand and expand markets through product promotion and market development.

Marketing Plans

The potential impact of compulsory marketing legislation depends on the powers granted to a particular marketing board and how these powers are exercised. In this respect, the many marketing boards differ considerably; however, all have a common power to collect licence fees from producers. Boards may be classified into three categories as follows:

Promotional-Type Plans

These plans have limited powers and can use the marketing legislation mainly to authorize the collecting of fees from producers for promotional and research purposes. Whereas, the Ontario Egg and Fowl Marketing Plan was in this category in the past, there is no plan of this type at present.

Negotiating-Type Plans

Next, in terms of powers granted are negotiating-type plans which provide for the annual negotiation of minimum prices between producers and buyers and of terms and conditions of sale. There are seven such plans at present:

¹ From "Factsheets," November 1977, Agdex 847. Order No. 77-052. Ministry of Agriculture and Food, Ontario, Canada.

Asparagus Growers' Marketing Board
Grape Growers' Marketing Board (for processing)
Seed Corn Growers' Marketing Board
Soya-Bean Growers' Marketing Board
Vegetable Growers' Marketing Board (includes 13 regulated vegetables for processing)
Potato Growers' Marketing Board (for processing)
Processing Tomato Seedling Plant Growers' Marketing Board

In several of these plans a buyer can choose the producers with whom he is willing to contract for his requirements, but all buyers and producers individually are bound by the terms of a collective contract which is established each year.

Agency-Type Plans

Agency-type plans may exercise broad functions in regard to the marketing of the regulated commodities, including price setting, selling of product directly or through agents and pooling of returns to producers.

In ten plans, the boards establish minimum price after evaluating marketplace conditions and frequently following industry consultation through advisory committees:

Egg Producers' Marketing Board
Turkey Producers' Marketing Board
Wheat Producers' Marketing Board
Bean Producers' Marketing Board
Chicken Producers' Marketing Board
Fresh Fruit Growers Marketing Board (includes peaches, pears, plums, prunes sold on fresh market)
Fresh Grape Growers' Marketing Board
Greenhouse Vegetable Producers' Marketing Board
Tender Fruit Growers' Marketing Board (includes peaches, pears, plums, prunes for processing)
Apple Marketing Commission

It must be noted that for most of the above commodities, the boards establish price in response to marketplace factors. However, price for eggs, turkeys and chickens are established at regular periods by updating data in cost of production formulae.

The minimum price of apples for sale at wholesale and retail levels is established by the Ontario Apple Marketing Commission. The Commission is not strictly a producer board as its membership includes a retailer, consumer dealers and processors, and 12 elected apple producers. In addition to pricing the Commission also undertakes promotional activities.

In three other plans, the boards operate marketing facilities in order to establish price and sell the regulated product by open auction:

Pork Producer's Marketing Board
Flue-Cured Tobacco Growers' Marketing Board
Burley Tobacco Growers' Marketing Board

In addition to selling individual lots through auction the Tobacco Board has recently negotiated with processors on minimum average prices. The Board and buyers agree on a target for the amount of tobacco to be offered through the auction. From this amount the Board calculates the quota for each producer.

The two marketing boards operating in the dairy sector are the Ontario Milk Marketing Board (which controls the marketing and pricing of all Grade A milk and industrial milk) and the Ontario Cream Producers' Marketing Board (which negotiates prices and terms of sale for farm-separated cream).

The highest degree of control exists where boards are given, and use the power to regulate the amount being offered for sale through production controls or marketing quotas. These are mainly applied in the poultry sector, where special conditions call for supply management of broiler chickens, turkeys and eggs. The egg and turkey boards are associated with Canadian marketing agencies that establish national quotas for production. The only other commodities where supply management is practiced are tobacco and milk.

Constraints on Boards' Powers

Although some producer marketing boards have been delegated substantial powers they are subject to definite constraints both from the market place and from regulatory and supervisory bodies. In fact, the Farm Products' Marketing Board and the Milk Commission closely supervise the producer boards under their jurisdiction and constantly review their operations to ascertain that all actions taken by them are within the terms of the respective marketing plan and Act. The Farm Products Marketing Board serves as an appeal body to rule on any order, direction or decision of a commodity board, to ensure equal and fair treatment to all persons affected by the actions of producers' boards. For some commodities, processors have the right to appeal the local board's decision on either quota or price or both. Similarly, the Milk Commission acts as an appeal tribunal for the milk industry.

Impact of Marketing Legislation

The importance of marketing legislation in Ontario agriculture is indicated by:

1. the proportion of total farm cash income received from products sold under marketing plans; and
2. the number of producers associated with marketing boards.

Proportion of Total Farm Cash Income

In 1976, 60% of the farm cash income in Ontario was obtained from products for which a marketing plan was in effect (Table 1).

There are considerable differences between commodity groups. In the animal group, 39% of the farm cash income was obtained through marketing plans. This reflects the absence of marketing plans for cattle and sheep. In the case of animal products, however, the high proportion (94%) is accounted for mainly by plans covering dairy products.

The proportion of farm cash income received from field crops covered by marketing plans was quite high, at 62% Grain corn and potatoes for the fresh market are the only major field crops not covered by a marketing plan.

Less than half (43%) of Ontario's vegetables were marketed under marketing plans in 1976. This figure includes most vegetables for processing, but excludes vegetables for the fresh market. In the case of fruits, the proportion marketed under plans was higher, 81%. because major fruit crops are covered by marketing plans both for the fresh market and for processing.

Number of Producers

The number of producers participating in specific marketing plans exceeds the number of census farmers in Ontario in 1976 (Table 2). This is due to multiple counting as farmers may be members of more than one board. On the basis of information

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available at present it is not possible to eliminate such multiple counting and arrive at an estimate of producers who do not come under any existing marketing plan. It is expected that producers excluded from any marketing board would be mainly those who specialize in beef cattle production and grow only feed grains and forage crops.

Table 1. Estimates of the proportion of farm cash income received from products marketed under marketing plans in Ontario, by commodity, 1976

	Total farm cash income	Products marketed under marketing legislation	
		Value	Proportion of total farm cash income
	thousand dollars		percent
Hogs	286,886	271,000	94 "
Cattle and calves	644,128		—
Sheep and Lambs	4,657		—
Poultry:			
Chickens	112,767	101,500	90
Turkeys	53,357	53,357	100
Others	2,381		—
Total animals	1,104,176	425,867	39
Dairy Products	547,020	547,020	100
Eggs.	108,851	93,600	86
Other livestock or productsa. . . .	26,509		—
Total animal products	682,380	640,620	94
Potatoes	43,627	10,000	23
Tobacco	197,147	197,147	100
Wheat.	80,346	80,346	100
Soybeans.	77,812	77,812	100
Corn, shelled.	153,060		—
Other grainsb	9,056		—
Other crops ^c	112,666	50,500	45
Total field crops	673,714	415,805	62
Vegetables	143,890	61,300	43
Fruits.	58,970	47,600	81
Forest and maple products.	4,176		—
GRAND TOTAL	2,667,306	1,591,182	60

^aIncludes wool, honey, fur farming and other minor livestock.

^bIncludes oats, barley, rye and flaxseed.

^cIncludes greenhouse products, dry beans, seed corn and other minor crops.

Sources: Statistics Canada, Farm Cash Receipts, 1976, Cat, 21-201; Ontario Farm Products Marketing Board; and individual commodity marketing boards.

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Table 2. Number of producers whose products were under the jurisdiction of marketing boards in Ontario, 1976

Commodity Boards	Regulated Producers
Apple Commission	832
Asparagus Board	168
Bean Board	3,300
Burley Tobacco Growers	430
Chicken Producers	816
Egg Producers Board	950
Flue-Cured Tobacco Growers	2,596
Fresh Fruit Growers	2,100
Fresh Grape Growers	1,200
Grape Growers (processing)	836
Greenhouse Vegetable Producers	350
Pork Producers	16,000
Potato-for-Processing	134
Processing Tomato Seedling Plant Growers	20
Seed Corn Growers	290
Soybean Growers	12,000
Tender Fruit (processing)	1,069
Turkey Producers	225
Vegetable Growers (processing)	2,632
Wheat Producers	18,000
Milk Marketing Board	15,535
Cream Producers' Board	3,521
TOTAL	83,004