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NEW DIMENSIONS OF COOPERATIVE BARGAINING

PROCEEDINGS:
22nd NATIONAL CONFERENCE
OF BARGAINING AND
MARKETING COOPERATIVES
JANUARY 7-8, 1978
SAN FRANCISCO, CALIFORNIA

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PREFACE

This report has been prepared by Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture, as a part of its activity of arranging and conducting the conference at the request of bargaining and marketing cooperatives.

These proceedings include speeches at the conference and related information. Opinions expressed here reflect the views of the participants and do not necessarily represent the views or policies of the U.S. Department of Agriculture. Neither does the use of commercial names constitute an endorsement.

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August 1978

A black silhouette of a city skyline is visible at the bottom of the page. The skyline includes several buildings of varying heights and shapes, with a prominent, tall, rectangular tower on the right side. The background is a light, uniform color, suggesting a bright sky or a light-colored wall.

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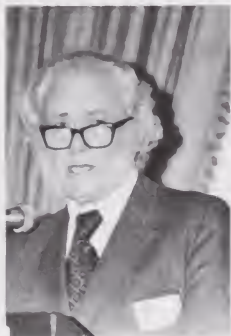
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Bargaining Power Prospects: Political and Economic



Robert G. Lewis



Gerald D. Marcus



Barbara L. Schlei



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Farm Bargaining Power—How and How Much

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Last January, Bill Swank predicted the new Administration, with its "expressed interest in justice and equity, should find fertile grounds for interest and activity with the agricultural bargaining groups."

A lot has happened since the last Bargaining Conference. I believe the Administration has demonstrated its interest in justice and equity in the form of the Farm Bill of 1977, a strong commitment to farmer cooperatives, and an increased concern with the right of farmers to bargain collectively.

Farmers are caught in a serious price squeeze in today's marketing system. Prices of inputs and equipment they use to produce foods have increased dramatically in recent years. Yet prices farmers received for their production in 1976 dropped sharply. Record production in 1977 for many crops drove prices even lower. Marketing and distribution costs are expected to continue their upward trends. Grocery store food prices have been increasing and will likely continue to increase. This is, in part, a reflection of increasing consumer demand for food system services, rather than for the basic raw ingredient. The result, however, is that farmers are squeezed in the middle by the input market on one side and the food marketing and distribution system on the other.

In 1977, farmers received \$182 for products for which they would have received \$100 in 1967. However, today's farmer loses more than that \$82 when he purchases input items. Inputs that cost \$100 in 1967 cost him \$208 today. Discounting for inflation, farmers' realized net farm income in 1977 was the lowest since Depression years, amounting to less than \$11 billion in 1967 dollars. And while the retail cost of the market basket continues to rise and now stands at \$1,940 as an annual average for a typical family, farmers receive only 39 percent of that total. The other 61 percent goes for marketing charges.

Agriculture is crucial to the economy of the United States. Farm exports in 1977 set a new high of more than \$24 billion. That was 5 percent above the 1976 record of almost \$23 billion. Agricultural trade in 1976 contributed \$12 billion toward the national balance of trade.

Farm exports are of tremendous significance to all of us who are consumers of imported petroleum, electronic equipment, and a host of consumer products. We benefit from a strengthened dollar in international financial circles and from the fact that this helps hold down the rate of inflation.

That favorable balance of trade in agriculture is the difference between a relatively stable currency in this country and an otherwise sick dollar and a sick national economy.

If, then, agriculture is central to our national economy, we must recognize that we cannot have a strong agricultural industry without a fair return to farmers. We must, therefore, address the economic plight of our American farmer. There are no simplistic solutions--no single answer--but one important way in which farmers can improve their situation is by uniting in strong cooperatives.

What more can farmers do to ensure they get a fair return for their labor and investment? One clear answer is collective bargaining.

It seems to me there are six steps in an analysis of collective bargaining.

1. Farmers can agree to not sell below a certain price, as long as such action does not unduly enhance price within the meaning of Section 2 of the Capper-Volstead Act.

2. If farmers wish, they can hire someone to represent them in bargaining.

3. If buyers fail to deal with all sellers equally, whether members of bargaining associations or not, such action violates the Agricultural Fair Practices Act.

4. Beyond that, should buyers be required to bargain in good faith with producer associations? If so, how should the good-faith bargaining requirement be enforced? With which producer associations would it be required?

5. Should such a requirement be applicable to all commodities?

6. In what instances should binding arbitration be required?

Clearly farmers can, through cooperatives, marketing orders, and bargaining associations, agree together not to sell their products below a certain price.

Under Capper-Volstead, farmers can organize into a bargaining association to represent them in their dealings with food processors and handlers. If the organization is cohesive, with members having common enough goals and similar production conditions, it would be possible for it to set a minimum price below which members would not sell.

Bargaining activities under Capper-Volstead are subject to the constraint of not unduly enhancing price. We are well aware competitive pressures from other producing areas and from substitute crops will

generally take care of that concern. Further, just because producers try to bargain for a reasonable price does not mean they would be so shortsighted as to attempt to achieve such high prices that they would lose their markets in the future.

Who should do the bargaining? Farmers surely can and perhaps should consider hiring someone to represent them in their bargaining efforts. I am sure many farmers do hire certain experts to advise them in their negotiations. There is certainly no legal constraint on hiring someone to represent producers. Perhaps many producers are much more knowledgeable about the market situation and their own production conditions than anyone they could hire to represent them. That's a judgment they have to make. But the choice is theirs.

If buyers of agricultural products refuse to deal with producers because they are members of an association, such action violates the Agricultural Fair Practices Act. That act was designed to help farmers in their bargaining efforts. It prohibits a handler from discriminating against individual growers because they join a bargaining group. Unfortunately, it is difficult to legally prove that any refusal to deal with a particular grower, or to offer that grower less favorable returns than those offered another grower, was because of association membership rather than for numerous other seemingly plausible reasons. A major weakness of the act is that it does not require a processor to bargain with a grower association. You are all too well aware of instances of refusals to bargain.

Bob Bergland supports the opportunity for agricultural producers to market their products through cooperative action. While producers currently have legislative authorization to collectively engage in certain marketing activities, cooperative marketing cannot be fully achieved because buyers can refuse to negotiate prices and other terms of trade with a producer association. Our intent is to further facilitate cooperative bargaining.

Can this goal be successfully achieved through amending the Agricultural Fair Practices Act of 1967 to make it unlawful for a handler to refuse to "bargain in good faith" with a certified association of producers?

Is There a Demonstrated Need for Such Legislation?

There are those who assert there is no convincing evidence the existing Agricultural Fair Practices Act has failed in its objectives, or that there is indeed a present 'imbalance' in bargaining power between handlers and agricultural producers justifying such far-reaching legislation, or that a redress of such an imbalance would be in the interest of the public.

I am convinced many markets for agricultural products are characterized by an imbalance in the size, numbers, and market power of

participants on each side of the market. Typically, there are considerably fewer, and larger, buyers than sellers in these markets. It is not unusual for a producer to have access to only one or two potential buyers, particularly for highly perishable products such as fruits and vegetables where transportation to distant buyers is not feasible or where limits on handler receiving capacity make it difficult for products to find alternative buyers during harvest.

Much evidence of this imbalance in firm size and market share in agricultural markets exists. Nationally, in nearly every food processing industry, the four largest firms that buy agricultural products account for at least 20 percent of the total value of shipments, and a substantially higher share in many. For example, the largest four firms in sugar beet refining accounted for 66 percent of that industry's business in 1972. Combined market shares for the largest four firms in each industry accounted for more than 50 percent of the business for soybean milling, tomato processing and malt beverages; more than 40 percent for cheese manufacturing, turkey processing and potato chipping; and more than 30 percent for flour milling.

The national situation understates the degree of buyer concentration typically faced by individual agricultural producers who sell in local or regional markets. For example, in 1972, the four largest meatpacking firms accounted for 26 percent of that industry's business nationwide, but the four largest slaughtering firms in each of the 23 major livestock States accounted for an average of more than 62 percent of the market in their respective States. By contrast, it took more than 72,000 of the largest livestock producers to supply this share of the market, nationally, and several thousands within individual States.

The existing market-power, firm-size imbalance has socially undesirable impacts. Most obvious is the equity with which earnings are divided between handlers and producers. Due to size and market power disparities, handlers can often force low, noncompetitive prices and inequitable terms on producers.

Additionally, the disparity between the number of sellers and buyers in agricultural markets impacts upon price stability. Large numbers of small sellers, acting independently, result in greater supply response to a given price change than do fewer, larger sellers who can foresee the impact of their individual action on the market. Similarly, fewness of buyers results in a less price-responsive demand. This exaggerates price instability. It has been clearly demonstrated that price stability is enhanced when several producers act collectively as a single seller when negotiating with a handler. Enhanced price stability, in turn, improves economic efficiency by reducing the uncertainty faced by producers, thus increasing the economic life of their fixed investment, resulting in lower average costs.

Further impacts follow from the difficulty handlers often experience in procuring adequate supplies from a large number of relatively small

producers. Many handlers have come to rely on supply contracts with producers as a means of improving coordination and efficiency. However, once supply contracts dominate an industry, a symbiotic relationship often results between a handler and a given group of producers. This can sharply limit alternative marketing opportunities for those producers, increasing the potential for handlers to engage in unfair practices that result in market foreclosure and inequitable treatment of producers.

The fundamental principle of cooperative marketing by agricultural producers is to provide producers with the means to counterbalance the inherent market power of handlers and thus improve efficiency and achieve equitable treatment. The Agricultural Fair Practices Act, together with mandatory bargaining, would provide the means for producers to effectively engage in collective bargaining as one aspect of cooperative marketing.

As it now stands, the Agricultural Fair Practices Act has been largely ineffective in achieving this end. Just 20 complaints have been filed under that act in its 10 years of existence. Of these, only three have reached litigation. The current act protects the rights of producers to organize voluntarily and prohibits discrimination by handlers against producers because of membership in an association. However, it has failed because the right of producers to negotiate with a handler through their association is not assured. That is, under the existing statutes, the handler has no obligation to recognize a bargaining association as the producers' agent, even though the producers joined the association for the express purpose of having it act on their behalf in dealing with the handler.

Many handlers simply refuse to deal with a bargaining association. This is a common practice among several of the Nation's largest purchasers of processing vegetables, and some handlers of other commodities. By refusing to deal with producers' associations, handlers can essentially render them ineffective.

Other handlers follow more subtle strategies. They may create the outward appearance of dealing with an association while negotiating privately with the individual members, offering individual terms considerably more advantageous in the short run than terms offered to the association. This has the longer run effect of undermining producers' support for the association. Other strategies used to erode producer bargaining efforts include temporary plant closings in areas where a producers' association is gaining bargaining strength, shifting sources of supply to areas where farmers are not effectively organized, or simply threatening to close a plant or shift procurement areas. The major impact of mandatory good-faith bargaining would be to prevent handlers from engaging in these unfair practices with an association of agricultural producers.

Restrictions on Handlers' Choice of Suppliers

There are those who assert that legislating a requirement of good-faith bargaining would restrict handlers' choice of suppliers by forcing them to deal with an association.

It seems to me the intent of such legislation would be to assure fair treatment for a producer who voluntarily elects to be represented in the market by an association. Good-faith bargaining does not force handlers to necessarily come to terms with an association. Handlers and associations would only come to terms when both parties deem those terms to be the best terms achievable. Nothing in this limited kind of legislation should compel agreement, restrict choice, or mandate consummation of a contract.

Encouragement of Monopoly Cooperatives

I have spoken with those who believe that a good-faith bargaining law would encourage the development of monopoly cooperatives.

I agree that the market power of those producers who voluntarily join a bargaining association would be increased vis-a-vis handlers, relative to the market power they would have as unaffiliated individuals. But this does not equate with the creation of monopolistic cooperatives. Good-faith bargaining could result in a more equal distribution of market power among associations, unless a 50 percent or more market share rule was adopted for association certification, as it would be difficult for one association to gain dominance in an industry when handlers have a legal obligation to deal with any association.

Higher Consumer Prices

A major concern I have heard is that mandatory good-faith bargaining would result in higher consumer prices.

It is clear to me that good-faith bargaining would facilitate voluntary collective bargaining by agricultural producers. When effective, this results in more stable prices and improved returns to producers.

But more stable prices do not equate with higher prices any more than with lower prices. They simply mean less price fluctuation, thus less economic uncertainty and greater efficiency. Similarly, higher returns to producers do not necessarily equate with higher prices to consumers. Some income gain is associated with stability related gains in production efficiency. Some may come from higher producer prices, due to the balancing of producers' market power relative to buyers'. However, the extent to which any gain in producer prices is passed through to consumers depends upon the amount of marketpower handlers, processors, and other resellers of agricultural products have in the markets in which they sell, irrespective of the markets in which they buy. Thus, if higher farm-level prices are fully passed on by handlers,

processors, and retailers to consumers, the explanation rests in the structure and distribution of power in those markets, not in the structure of the market for agricultural products.

Additionally, price increases for agricultural products are limited by competition from a vast array of domestic and international agricultural products and synthetics. Further, the elastic supply response by agricultural producers to any upward price movement sharply limits their ability to maintain higher prices.

Beyond these constraints, bargaining associations can do no more than what is permitted under the Capper-Volstead Act of 1922. While Section 1 of that act gives producers the right to market in common, Section 2 protects the public against abuse of this right by prohibiting undue price enhancement as a result of group action. If in any instance the result of mandatory good-faith bargaining is undue price enhancement, that factor would be counterbalanced by the Secretary's responsibility to intercede in the public interest under Section 2.

The Meaning of Good Faith

Finally, there are those who ask, "How can you determine what 'good faith' is?"

Anyone familiar with administrative law knows there is considerable precedent for administrative determination of good faith. Numerous laws, including the entire body of antitrust statutes, require people to behave fairly and free of deceit, that is, in "good faith." The authority to interpret and enforce these provisions is vested in several agencies, including the Department of Agriculture. The process of judicial review assures that these administrative interpretations are appropriately and consistently made.

What Action Should We Take?

Amending the Agricultural Fair Practices Act to require buyers to bargain in good faith over prices and contract terms with grower representatives would improve farmers' bargaining position. But that obviously will not guarantee favorable outcomes for their bargaining efforts. We are aware of the uncertainty surrounding the question of whether this would be a viable solution to the problem. We know that you in this group continue to focus your efforts on ways to improve the bargaining climate.

If bargaining in good faith were required by processors, should it be applicable to all commodities? Is it more crucial for the more perishable crops?

Should bargaining associations, to be certified, represent 50 percent of producers and/or 50 percent of the volume of the produce? Twenty-five percent? If not, should there be any certification?

If we elect a 50 percent rule, then should we mandate that all producers in "the market" be represented by the certified bargaining association?

Finally, should some mechanism be developed to provide for binding arbitration at some crucial time? If so, what should that mechanism be?

I have accepted your invitation to come here today--not to tell you what we should do, but to learn from you what we should do. These are not decisions that can be made in Washington offices. They are decisions that must be made across the farmlands of America and in gatherings such as these. Too many decisions are being made in Washington; too few by the American farmer.

I thank you for letting me join with you in your conference.

Possible New Legislation for Bargaining Cooperatives

Gerald D. Marcus

Attorney

Hanson, Bridgett, Marcus, Milne & Vlahos

For some months, an ad hoc committee of representatives of national bargaining organizations and other groups interested in the success of cooperative bargaining has been working to develop new Federal legislation designed to create a more favorable bargaining climate for agricultural cooperatives.

The need arises because most of us consider existing Federal legislation unsatisfactory. In 1967, the Agricultural Fair Practices Act, which many of us refer to as S109, was adopted. It incorporated word for word certain language from the old Wagner Act, the Magna Charta for collective bargaining in labor relations. The 1967 act prohibits discrimination by a processor against a producer because of his membership in a bargaining cooperative and prohibits discriminatory conduct by a processor against a cooperative.

In the intervening years, relatively few cases have been prosecuted by USDA, which administers the act, and there are even fewer cases in which processors have been found to have violated the act.

The reasons are known to all of us. The scope of the Agricultural Fair Practices Act, unlike the old Wagner Act, is very limited. Enforcement machinery is inadequate, so USDA, for practical purposes, leaves the job of investigation to the complaining cooperatives. Perhaps most important, evidence of a violation is extremely difficult to obtain. It is, for example, unlikely that a grower who has terminated his membership in his cooperative because he was induced to do so by a processor in return for a term contract, financing, or some other consideration, will prove to be a willing witness for the injured cooperative or indeed a witness at all.

Some processors now seem convinced bargaining cooperatives have produced more orderly marketing, both in terms of establishing prices and terms of sale and matching supply with demand. Yet other processors are engaging in open warfare that appears aimed at the very existence of cooperatives. Certainly, it is an understatement to say that the farmer has hardly achieved equality of bargaining power with his customers in the marketplace. This is evident from the generally unsatisfactory returns the farmer has received, particularly during these past years of inflation.

In the past several years, various new legislative approaches have been directed toward improving the legal climate in which bargaining cooperatives function. In one form or another, a bill commonly referred to as the "Sisk Bill" has been introduced in Congress. The essential contribution of this bill would be to provide for the accreditation of bargaining cooperatives and require that processors and such cooperatives bargain in good faith.

A much more comprehensive approach is that of the Michigan Agricultural Marketing and Bargaining Act, which became effective in 1973. In addition to the most comprehensive form of the Sisk Bill, this act provides that accredited associations represent all producers in the bargaining unit, both members and nonmembers; that all producers in the unit must pay marketing service fees to an accredited association; and that while mediation between the association and the processor is optional, arbitration is compulsory unless, within a prescribed period of time, a processor has elected not to purchase the commodity from the association or the association has not elected not to sell to the processor.

At this time, a preliminary draft of a proposed Federal bill has been prepared by the ad hoc committee, and it is premature to speculate about its final form. Certainly, many serious policy issues remain to be resolved, most of which center on whether more, if not the full scope, of the Michigan act should be incorporated in it.

However, certain features in the present draft undoubtedly will be retained.

Among these is the imposition of the duty to bargain in good faith upon processors and cooperatives.

For several years, we have all accepted the premise that bargaining cooperatives would benefit substantially by a law requiring buyer and seller to bargain in good faith. But you undoubtedly have wondered what this concept really means. What would it add to the bargaining process? More particularly, what would it compel processors to do that some may not be doing now?

Undoubtedly, as is true with the Michigan act, the ultimate definition will necessarily be broad with the refinement to be left to the administrator and the courts.

For example, the definition contained in the present draft provides:

"Bargaining is the mutual obligation of a handler and an accredited association to meet at reasonable times, and for a reasonable period of time, for purposes of negotiating in good faith a contract with respect to the price, terms of sale, compensation for commodities produced under contract, and other provisions for the commodities that such accredited association represents. Such obligation on the part of any handler shall extend only to an accredited association that represents a reasonable number of 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."

Inevitably, attention will be drawn to the body of administrative rulings and court decisions that now exist concerning this concept, namely, those that interpret the National Labor Relations Act. For just as the provisions of S109 are taken from the National Labor Relations Act, so was this concept of bargaining in good faith.

The development of this concept in labor cases may help, by analogy, to answer our questions, although, of course, significant differences exist between collective bargaining in labor relations and bargaining between processors and cooperatives over the price and terms of sale of agricultural products.

It is interesting to note that the original Wagner Act provided that it was an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees...." This act reflected a congressional desire to impress on employers that they were obligated to treat collective bargaining seriously by providing for exclusive representation of employees in any given bargaining unit and by making failure to bargain an unfair labor practice. The emphasis was simply on getting the parties together. Senator Walsh explained this when the bill was debated in Congress:

"All the bill proposes to do is to escort the elected employees' representatives to the door of the employer and say 'here they are, the legal representatives of your employees.' What happens behind those doors is not inquired into, and the bill does not seek to inquire into it."

Under this language, so long as representatives of both sides sat down in a room together, it was difficult if not impossible to establish a violation. Employers soon found that where unions were weak and did not have the economic strength to strike, they could talk them to death.

Consequently, some years later when Congress adopted the Taft-Hartley Act amending the Wagner Act, labor was able to persuade Congress to include a provision that imposed a duty on both employer and employee representatives to "meet... and confer in good faith with respect to wages, hours, and other terms and conditions of employment...." The duty to bargain in good faith is qualified by the provision that "the obligation does not compel either party to agree to a proposal or require the making of a concession." This language, incidently, is almost identical with that embodied in the Michigan statute and in most drafts of the Sisk Bill, including the draft of our bill.

The National Labor Relations Board and the courts, in reviewing board decisions, have found it difficult, if not impossible to enunciate a definitive definition of "good faith." Two broad problem areas arise from the duty to bargain in good faith: One is to define it and the

other is to prove a violation. Both problems arise from the fact that the concept is subjective in nature, reflecting as it does a state of mind more than an objective state of affairs.

It has been easier for the Labor Board and the courts to agree on what is not bargaining in good faith. One court has defined this as a "desire not to reach an agreement with the union." (NLRB v. Reed & Price Mfg. Co., 1st Cir. 205 F2d 131, 134, Cert. Denied 346 U.S. 887 (1953).)

And, in fact, the Labor Board and the courts have inquired into the actual bargaining conduct of the parties and the substance of proposals made.

Certain acts or refusals to act are now generally recognized as violating the duty to bargain because they cannot be reconciled with the desire to reach an agreement. These per se violations include:

1. The refusal to meet or to condition bargaining for other than legally sanctioned reasons.
2. The refusal to execute a written agreement.
3. A unilateral change in wages or conditions while under negotiation.
4. The refusal to turn over information requested by the other party as an aid to intelligent bargaining.

The refusal to sign a contract is illustrated by a Supreme Court case 1/ in which a roofing subcontractor joined a multi-employer bargaining unit for the purpose of negotiating a contract. After the union and the employer representative reached an agreement, the subcontractor withdrew from the employer bargaining unit and refused to sign the bargaining agreement. The court held that the act of refusing to sign the collective bargaining agreement was not bargaining in good faith.

Perhaps of particular interest to bargaining cooperatives is the rule that the refusal to turn over information might be held to be evidence of bad faith. In the classic case on this point, the company and the union were 7.5 cents an hour apart in wage negotiations. The company took the position that its offer was the highest possible wage consistent with financial stability and sustained competitiveness.

The union asked to have a CPA examine the company's books and the company refused. The union then asked that the company submit "full and complete information with respect to its financial standing and profits," which it refused to do. The Labor Board held that "when an employer seeks to justify the refusal of wage increase upon an economic basis, as did the respondent here, good-faith bargaining under the act requires that upon request the employer attempt to substantiate its

economic position by reasonable proof." The Supreme Court sustained the Labor Board. 2/

In a more recent case, the Supreme Court dealt with the duty (to) disclose as an incident of the duty to bargain in good faith. 3/ There, the union requested information about the company's purpose in removing machinery from its plant. A collective bargaining agreement was in effect in which the company had agreed not to subcontract out work that would result in layoffs or failure to recall members of the bargaining unit who would normally perform the work. The union feared the removal of machinery might be a part of a violation of this agreement and wanted the information to aid it in preparing its grievances for the arbitration procedure set out in its contract with the company. The Supreme Court unanimously agreed with the Labor Board that the employer had violated the bargaining in good faith requirement. It based its decision on the "probability that the desired information was relevant and that it would be of use to the union in carrying out its statutory duties and responsibilities."

While this case would seem to indicate that the test is whether or not the information desired is relevant, one court has modified that to provide "a refusal to supply requested information must be examined in the light of all the circumstances to determine whether the refusal constituted lack of good-faith bargaining." 4/ In other words, the law now appears to be that a refusal by an employer to disclose relevant information without acceptable justification constitutes a per se violation of the duty to bargain in good faith.

While it does appear as if the Labor Board and the courts have from time to time seized on one or more of the so-called per se violations as the basis for finding a failure to bargain in good faith, in many cases where no per se violation exists, bad faith has been found by looking at all of the circumstances surrounding the bargaining.

One commentator explains it as follows:

"Good faith was added as a requirement to Section (8)(D)'s duty to meet and confer to prevent a party from coming to the bargaining table and 'going through the motions' while actually intending to subvert the collective bargaining process. When a party possessed of such an intent manages by good fortune or clever design to avoid conduct to which the (Labor) Board gives per se treatment, 'the usual mode of proving bad faith' is by inference from the substantive provisions of the parties at the bargaining table." 5/

Surprising as this approach might have been to Senator Walsh, who promised that the Government would never inquire into what went on during closed door bargaining sessions, it appears to be the only reasonable method of enforcing the Federal labor law.

Cases dealing with violations on the basis of the entire bargaining process examine individual instances of conduct in the context of the

labor-management relationship in which they have arisen. Conduct that taken alone would do nothing to raise an inference of bad faith may, when considered with all the circumstances, become evidence of bad faith.

Predictably, much legal wrangling has occurred over what kinds of evidence the court may consider relevant to prove a violation where one of the per se factors is not present. The determination is always made on a case-by-case basis and consequently, cases in this area do not form clear lines of authority.

Nevertheless, several key factors are considered as relevant in the labor relations field and that may very well be relevant in agricultural bargaining. These include:

1. The bargaining conduct of the parties generally.
2. The statements by the parties.
3. The bargaining history of the parties.
4. The previous record of the parties in terms of unfair labor practices.
5. Substantive bargaining proposals.

Undoubtedly, the duty to bargain in good faith when combined with the approach of the Michigan type of legislation becomes most meaningful, because the bargaining cooperative is the exclusive bargaining representative for all of the producers, as is the union for all labor in the bargaining unit under the labor act. Moreover, the parties know, usually, that compulsory arbitration lies ahead if they do not resolve their differences.

The absence of the additional provisions of the Michigan act do not, however, render the good faith concept meaningless by any means.

Probably, whether the statute spells it out, the administrator and the courts over a period of time will find certain types of conduct as evidence per se of a violation. This certainly should include the refusal to meet, the refusal to execute a written agreement once an oral agreement had been reached, and, very likely, the refusal to turn over information that would be relevant to the negotiations. In this respect, I understand that while the Michigan board has not promulgated any comprehensive rules defining good faith, it has decided that failure to submit an offer by either side once bargaining commenced would support a finding of failure to bargain in good faith.

In addition, the administrator and the courts would certainly feel free to examine the overall bargaining of the parties, possibly bearing in mind the same factors as are now considered in labor relations. We would not, however, expect that the law developed for labor relations

would be transferred on a wholesale basis into the agricultural arena. What is unfair in agricultural bargaining will depend on the unique characteristics of this field.

We know, of course, that essential differences exist between collective bargaining in labor and bargaining for the sale of agricultural products. We have a harvest season that for most commodities is short, and bargaining cannot extend over such a protracted period of time as it can in labor. It is substantially easier for labor to strike than for the farmer to withhold his products from the marketplace, although recently some farm groups have urged more extensive use of this weapon by farmers. Moreover, there is the practice of industrywide bargaining by employers in labor relations, whereas, under the antitrust laws, processors may not legally bargain as a group with agricultural bargaining cooperatives.

However, even though the precedents developed in the labor field may not be adopted on a wholesale basis in agricultural commodity bargaining, it is a safe bet that an administrator and certainly the courts will consider that body of law.

And I think it is fair to say processors and cooperatives will be cautious about disregarding the law--and that as cases develop over a period of time, there will be a substantial improvement in the amount and quality of commodity bargaining.

I would like now to speak briefly about some aspects of proposals to incorporate in the draft bill provision for mediation and arbitration in the event bargaining in good faith fails to produce agreement between the bargaining parties.

These proposals involve serious policy considerations that you will surely recognize from just some of the questions that must be resolved:

1. Should there be mediation prior to binding arbitration? A mediator has no authority to make a binding decision but is an impartial third party, sometimes called the honest broker, who attempts to bring the negotiating parties into agreement.

2. If mediation fails, should there be further provision for resolving the differences? One possibility is a factfinding third party or parties, such as is used in railway labor disputes. The findings are not binding on the parties but tend to clear the air. Another possibility is binding arbitration. Here an impartial third party has the power to resolve the differences between the parties.

3. If there is binding arbitration, we turn then to a number of questions: Who shall arbitrate? A special board created as under the Michigan legislation? The Secretary of Agriculture or his nominee? A person selected from a panel of specially qualified persons?

What shall be arbitrated? Price? Terms of sale including tolerances, allowances such as for hauling and loading? The quantity of a product to be sold and delivered to a given handler?

Must the price and terms of sale be binding on all producers in a given bargaining unit? Michigan has resolved this by defining bargaining unit, providing for one bargaining representative for that unit and providing further that every producer in the unit is bound whether or not he is a member of the accredited association.

Should all producers in a bargaining unit contribute financially to the accredited association--both members and nonmembers?

What should be the method of the arbitration? Traditionally, a hearing is conducted with each side introducing relevant economic data and urging its proposal be adopted.

Once again, we might turn to the field of labor relations where there has been experimentation with a new method sometimes called Final Offer Selection or Last Best Offer or Either-Or Arbitration.

Under this plan, the arbitrator is limited to a choice between the final offers submitted by each side, and he has no authority to make any other award.

The principal rationale for this plan is to encourage each side to make its final proposal--one it believes can be best justified on the basis of available data. Because the arbitrator has no authority to compromise by splitting the difference between proposals, some believe this plan encourages more realistic negotiating. They argue that conventional arbitration has a "chilling effect" on the incentive of parties to negotiate their own agreements and tends to discourage realistic negotiations because both parties know the arbitrator is likely to reach a compromise result.

In other words, so the argument goes, each party has an incentive to maintain an extreme position in the hope of getting a more favorable split. One writer describes conventional arbitration as having a "narcotic effect upon the parties, transforming them into arbitration addicts who habitually rely upon arbitrators to write their contracts." 6/

On the other hand, the proponents of Final Offer Selection argue, "because of the mutual fear that the arbitrator may select the other party's offer, both parties should develop even more reasonable positions...(which) should result in the parties being so close together they will create their own settlement." 7/

Conventional arbitration has been written into some cooperative-processor contracts and invoked here in California in past years by raisins and prunes and possibly others. Such arbitration had been used in the Northwest, I believe. Undoubtedly the industries involved are in the best position to evaluate the process and whether Final Offer Selection would represent an improvement.

We wrote Final Offer Selection into some California cooperative-processor contracts last year, but it was not invoked.

There has been some experience with Final Offer Selection in Australia and here in the United States in baseball salary arbitration and in Oregon, Wisconsin, Massachusetts, Michigan, and Iowa in the public sector.

This method, also, has its disadvantages, 9/ although a writer who has recently conducted a study of the experience in the United States has concluded that it "seems to be doing a reasonably good job of inducing negotiated agreements, either prior to impasse or during the impasse process."

I raise these questions--and there are others, also--not to suggest that any presents an unsolvable problem. My purpose, rather, is to indicate some of the ramifications of the proposals so they may be understood and intelligent decisions reached by you producers and you representatives.

Of one thing you may be certain: whatever the final form of our proposed legislation may be, we must be prepared to support it in Congress--and particularly before the House and Senate Agriculture Committees. Our case must be made by presentation of carefully developed data, and we must have the support of the existing bargaining associations such as you who will be so significantly affected, as well as the support of the major national farm organizations. With so few Congressmen and Senators who consider agriculture a primary or even a major constituency, I believe it would be fatal to appear before Congress with our house divided or a significant portion of our people giving only lip service to the bill presented.

Footnotes

- 1/ NLRB v. Strong 393 U.S. 357 (1969)
- 2/ NLRB v. Triutt Mfg. Co. 351 U.S. 149 (1956)
- 3/ NLRB v. Acme Industrial Co. 385 U.S. 432 (1967)
- 4/ International Woodworkers v. NLRB D.C. Cir. 263 F2d 483 (1959)
- 5/ Gorman, Labor Law 481
- 6/ Peter Feuille, "Final Offer Arbitration and the Chilling Effect," 14 Industrial Relations 302, 304, (October 1975)
- 7/ Peter Feuille, "Final Offer Arbitration," 32 The Arbitration Journal 203, 204, (September 1977)
- 8/ Charles Feigenbaum, "Final Offer Arbitration: Better Theory than Practice," 14 Industrial Relations 311, (October 1975); Armed Zack, "Final Offer Selection - Panacea or Pandor's Box," XIX, New York Law Forum No. 3 (Winter 1974)
- 9/ Peter Feuille, "Final Offer Arbitration," 32, The Arbitration Journal 203, 220, (September 1977)
- 10/ Kenneth A. Housman, "Final Offer Selection: An Arbitration Technique," Personnel Administration (January-February 1972)

Enacting Legislation Takes Committed Support

*Dean Simeral
Vice President, Public Relations
Ohio Agricultural Marketing Association*

The major concern, for the many who are involved with the legislative process, is the problem of indifference. If you know the legislative process, you know indifference is more damaging than the opposition.

In any important piece of legislation, you anticipate and expect another point of view. If that opposition and point of view, concerning your proposal, comes from those whom you would expect to oppose your proposal, you can deal with that. The more serious problems are opposition from those you would not expect and the problem of indifference. Those two are the most damaging aspects in getting legislation to be seriously considered by Congress. It is possible to overcome both of those problems, but we'll have to work at it.

One thing that causes indifference is the strategy Congressmen use. At times, they seem to act stupid instead of smart. We assume at times that they are a little bit lacking, but instead they are brilliant individuals. They know precisely what they are doing.

The reason they discover considerable indifference in their own Congressional district is because they ask questions. And one question that is asked their constituent who speaks to them of the importance of a piece of legislation is: "Mr. Constituent, how does this affect you?" And that constituent consistently says, "Well, it doesn't affect me." That is all that needs to be said.

When the Congressman knows the constituent doesn't really care, he really doesn't care. Knowing that his constituents will not measure his action on that particular piece of legislation, he then doesn't really care whether that piece of legislation passes or not.

One of our challenges in getting legislation is to attempt within the agricultural community to overcome the problem of indifference. The reason we have this indifference in many Congressional districts is because most of the agricultural community has not experienced or felt the need for marketing legislation.

First, we must be sure that someone in agriculture is not opposing the legislation. As I said earlier, opposition to legislation that is difficult to overcome in the legislative process is that opposition that comes from circles that you are not anticipating.

In addition, any opposition that comes from the agricultural community is difficult for Congress to deal with. Let's be certain the legislation is applicable to those who have interest in it covering their commodity. Then we should appeal to the balance of the agriculture community to take the attitude that because numerous pieces of legislation have passed through Congress (some of which those interested in bargaining couldn't really care less about, but have strongly supported), we now expect others in agriculture to show interest, enthusiasm, and support for legislation we so thoroughly need.

We are advocating agricultural bargaining legislation in Ohio. We have 132 members in the Ohio General Assembly. As of this date, unfortunately, we have only six legislators who can be identified as advocates. The balance of the legislators have gotten the message from their constituents: "You should pass a piece of legislation that at least says in the title 'Agricultural Bargaining.'" But that is the only commitment of 126 legislators. It is going to be relatively simple to pass legislation that has a title that says 'Agricultural Bargaining.' We have been successful in getting the agricultural community to be supportive of some type of bargaining legislation. If it were not for the six legislators who were advocates, the extent of the legislation would be a title and a number and the content almost worthless.

One of the real challenges in moving any significant legislation is locating the right sponsor. The sponsor, I believe, is all important. The sponsor needs to be an individual who will do more than just accept the bill handed to him and introduce it. He needs to be someone who participates in drafting the bill so it becomes his proposal as much as possible. The bill must become one he is proud of. It is one he is dedicated to, and he consistently works to see that it is seriously considered by the legislature.

The sponsor needs to be someone who participates in identifying other legislators who could cosponsor the bill. There is nothing so deadly as a cosponsor or sponsor who introduces the bill because someone has asked him to do so. This is distinguished from the individual who is introducing a bill to which he has personal commitment and feels the legislation is seriously needed and justified.

So I would encourage, as we look around the Halls of Congress, that we do not jump at the first offer of the person who says: "Sure, I'll introduce it." First, we should check to see if he will measure up--not only as an individual who has conviction and commitment but likewise will develop strategy and has some power. Remember, there are 535 Congressmen and they have varying degrees of power. Unfortunately, we are not likely to convince the Speaker of the House or the President Pro Tem of the Senate to be the sponsor. We normally identify these two as having the most power. Nevertheless, individual Congressmen have far more power and influence than others. We need to give our major attention to finding the Congressman with power, interest, and determination to be the prime sponsor.

I have less concern and would use less energy to locate cosponsors. Cosponsors tend to do little more than introduce the bill. Although it is important to impress the public and Congress with the support that supposedly exists at the time the bill is introduced, little else can be said for cosponsors.

Farm Bureau policy for 1977 and that which has been recommended by the Policy Development Committee for 1978 provides the framework for the American Farm Bureau and the States to be strong advocates of this type of legislation.

This organization, like most organizations, will give its attention to the subject matter that phone calls or letters from the country show are the pressure points. Several States will have little or no interest, so the organization will have to give attention to generating interest that is lacking in these circles of agriculture.

The last point I want to make is that most of you in attendance will find the opportunity to talk to your Congressman about this legislation. My guess is that the bulk of those Congressmen will say to those who make the contact: "I don't serve on the committee that considers that bill. Therefore, let's talk about it when it is scheduled to reach the floor or the House for consideration." What he is doing is fooling you and you probably will let him get away with it. One of the things legislators do so effectively is convince their constituents that they are working on their behalf. The old excuse of "I don't serve on that committee" is one of their favorite tricks or means to escape dealing with that subject at that time. What he fails to share with you is that he is the most effective lobbyist in Washington. The few hundred individuals in Washington identified as lobbyists are not nearly as effective at their jobs as is a Congressman himself.

Every Congressman can, and will if you insist, participate in the legislative process, even though he is not a member of the appropriate committee. He knows every member of the committee and there is some member on that committee who probably listens to what he has to say. He can check with the members of that committee concerning the piece of legislation to see how it is progressing. Thus, he will have the opportunity even sooner than he expects to support this legislation.

This legislation can be enacted. We who are so interested in this legislation must not allow ourselves to be put off. It can be enacted if our legislator knows he is going to be measured not by just that one vote for passage but by his effort throughout the process in support of that legislation.

Let's Stop Fighting and Build Cooperatives Together!

*Robert G. Lewis
President
National Farmers Union*

The state of agrarian discontent has an important bearing on our discussion of bargaining legislation and bargaining and organizing farmers.

USDA's December report on agricultural prices indicates the parity ratio for 1977 was 66 3/4 percent. This is worse than for any of the years under the Ford-Nixon Administrations. As a matter of fact, it is the lowest in history except for 1931 and 1932. Farm prices have never had less purchasing power since Franklin D. Roosevelt was elected President.

I know the validity of the parity formula is often questioned. We could spend a long time debating the issue.

One of the criticisms concerns the reduced number of farmers. The number is down to one-half of what it was in the 1930s, maybe even a little less. The President's Council of Economic Advisers shows net income per farm was \$7,630 for the third quarter of 1977. If you wonder what has happened to the dollar in the past 10 years, \$7,600 in 1977 is only \$4,080 in dollars of 1967 value. That is the average income per farm, with about half as many farms as we had in the 1930s.

Total borrowing by farmers this year will be \$16 billion and total net income will be \$19 billion or \$20 billion. Farmers are borrowing more than three-fourths as much as they are making in income. Farmers are borrowing money to cover their losses. Few farmers are borrowing to expand their operations in the expectation of a profitable market for expanded production.

Despite this financial situation, we are told we must keep our grain price cheap in the United States so we can meet competition in the world market. As it is, our farmers are getting prices as low as the lowest prices of any farmers in the world. Other farmers in the great exporting countries--Argentina, Australia, and Canada--are stuck with the prices we forced onto the world market because we export more than half of the grain and oilseeds in world trade.

It is the U.S. price support policy that makes the world price for farm commodities. Everyone else who is not dependent on that world price--in this whole world, rich and poor countries alike--is paid better than farmers in the United States.

This "ability to compete" is in striking contrast to the way some other sectors of our economy are faring with their economic difficulties. Take steel for an example. Steel does have a very real problem in meeting its competition. Our steel industry can't make it. Our steel industry just cannot cut the mustard. The New York Times reported a little while ago that the average wage for the steelworker in the United States was \$12.22 an hour. The average wage in Japan is just a shade more than half of that. It is \$6.31 per hour. The average 100 hours of labor in the steel industry in the United States produces 8 1/3 tons of steel and 100 hours of labor in Japan produces 9 1/2 tons of steel. So the Japanese steelworkers are getting half as much as ours and not because they are less productive, because they are more productive.

Just a few months ago, the Secretary of Agriculture recommended to Congress that price support levels for basic commodities be set at a level that would yield for farmers \$2.67 per hour for their labor. And, of course, the reason given is that we have to keep our prices down so we can stay competitive in the world market.

I have never heard the Secretary of Labor advocating to the steelworkers' union to keep its wages down to \$2.67 per hour so our steel prices can stay competitive in the world market. I have heard nothing like that. We are not likely to hear that either!

The Secretary of Agriculture also recommended in these price support hearings a return of only 1 1/2 percent on investment from the farmer's land.

Well, I haven't heard the Secretary of Commerce tell the investors in steel companies they should only expect only a 1 1/2 percent return on their investment so our American steel companies can "stay competitive."

On the contrary, we are getting some kind of price support system, or a "variable duty" system, to protect our steel industry and our steelworkers. Nobody knows just how it is going to work because the latest report I read in the New York Times last week--last Sunday--was that it has not been clarified. Some kind of target price will be set and American producers will be protected against imports at that support price or that target price. This will protect the labor rates of our steelworkers and the returns on the investments of steel companies. This is to enable our steel companies and steelworkers to raise their incomes, even if they can't "meet the competition."

That's a striking contrast to the way agriculture is being treated. What is the difference?

I think we know what the difference is. Steelworkers are organized. Investors in steel companies are organized--in steel unions and steel corporations, respectively. They have power--power in the marketplace and power in the economy and power in the Government. They have power to influence what the Government does.

Farmers have organizations all over the place--but we are the most poorly organized farmers in any advanced country. We are organized to death, and yet we don't have enough organized power to shake a stick at Government and other sectors of our economy.

Farm prices averaged parity or more in every year of President Truman's Administration, but since then the relationship of farm prices to other price in our economy has gone steadily down. The continual reduction of the real take of farmers served to keep overall "inflation" almost at a standstill for more than a quarter of a century. Farmers took continually less and less and less so others could get more and more and more. Now American society perceives farmers as the slowest goose in the barnyard. So it is farmers who get plucked to make it soft for everybody else.

This is the way it is because we are not organized.

We are at a turning point in farm policy at this moment in history. The "bargaining bill" we have discussed at this conference is only one indication. Recent experiences of the Farmers Union and the Farm Bureau illustrate how far we have come, or should have come, toward a turning point in farm policy.

I don't suppose any two farm organizations in the world have greater differences of view than the Farm Bureau and the Farmers Union of the United States. We agree on some things. We maintain cordial relations between our leadership and among our farmer-members in farm neighborhoods.

But we do have great differences of opinion.

I think you would agree it is time we wake up both in the Farm Bureau and in the Farmers Union.

We have had different dreams in our two organizations about which is the better road to prosperity for the farmer.

Now the time has come when we have to quit dreaming. We have got to wake up and quit pulling against each other. We must start working together to organize farmers into nationwide, unified farmer-owned and farmer-controlled associations so we can exercise the kind of power in our economy and our political life that other groups of productive people do.

Let us review some of the recent history that has brought us to this turning point in farm policy.

It appears to me that the Farm Bureau has been dreaming blissfully that some day a free market would bring supply and demand into balance, so farmers would recoup all their losses in all the bad years and be

well off. Not so long ago that long-awaited day arrived. Supply fell short of demand and prices started going up. Farmers started to feel good. The dream of the "free market" as being the road to prosperity for farmers seemed to be coming true.

Then farmers were rudely jolted by the export embargoes of 1973, and the export restrictions under some other name in 1974, and another kind of export embargo under some other kind of name in 1975. Now, there is a standby embargo with the Russians that will run until 1981.

If there is anyone who still is dreaming that the free market is going to bring prosperity to the farmers, they need urgent medical attention for a severe case of Rip Van Winkle syndrome.

There is no doubt in my mind that as soon as farm prices start going up--up to anything close to enough to cover farmers for their years and years of losses--there will be export restrictions of one kind or another. Whether it is done by a reserve system that dumps stocks to break the prices, or export embargoes, or whatever, a way will be found by whatever Government that is in power--Republican or Democrat--whatever Administration is in power will find a way to keep the lid on American farm prices.

Slide over, if you are on the mourners bench now with the Farm Bureau because I am right there with you. I am as embarrassed as you are. We in the Farmers Union have been rudely shocked awake from our dream, also. Ever since the end of President Truman's term, which about marks the beginning of my work with farm policy, we in the Farmers Union have felt that if we could just get the right people elected to office, we would have parity prices or something like it.

Now the Carter Administration has shaken us awake.

Nixon farm policies, without substantial change, are being followed 12 months after President Carter has been inaugurated. The purchasing power of farm prices is lower than it ever was in the past 25 years.

Now both our dreams are gone. It is time we both shook ourselves awake and came to grips with reality.

The real facts of life are that farmers have got to get organized into powerful nationwide bargaining and marketing associations that can match the power of business and the power of organized labor in our society.

I declare here and now, just as Sadat in Egypt said he would go to Jerusalem to talk peace in the Middle East, Bob Lewis is ready to go to Chicago to talk of organizing farmers with the Farm Bureau.

Now I am not proposing merger of any farm organizations. There are honest differences between us, and the individual's right to differ about things is a precious right.

But farmers need to be able to work together on those things they can agree about. Notwithstanding those things they choose to differ about, I think we shall all be surprised to find out how much farmers can agree about when it comes to the nuts and bolts of marketing their products.

What I propose is a simple thing--a thing that can begin to change the farm policy landscape overnight.

Both Farm Bureau and Farmers Union have organized cooperatives among farmers in every corner of this country through a wide variety of means. Both Farmers Union and Farm Bureau provide, by one method or another, that members of cooperatives we start should pay their dues in our own organizations. This is called "maintenance of membership."

I contend to you that the function of the general farmers' organization is an important, valuable, and essential function for farmers of America. It deserves your respect and it deserves your support.

But this procedure often results in duplication, competition, and conflict. This is wasteful. We have cooperatives fighting with each other, instead of getting farmers to work with each other. Farmers Union is fighting for its dues and its life, and Farm Bureau is doing the same.

The worst of it is that it makes it impossible to conceive of putting American farmers together--of putting farmers together like they are in Germany, Norway, France, Japan, and any other advanced country.

What I propose is that we join our strength and our resources and work together to organize unified farmer cooperatives for each need farmers have. Then let each individual farmer decide which organization will get his dues. Let the farmer decide which organization he wants to join. Let's both work together to get farmers together in a unified cooperative system that can give farmers of this country the power they deserve.

We can and should find ways to accommodate existing cooperatives, and the other farm organizations, also, into a coherent and unified farmer-owned and farmer-controlled marketing system. This would give farmers for the first time their rightful power in our economy and their rightful influence over their lives.

Now may be the last chance history allows American farmers to pull themselves together to save their individual lives financially, and to preserve our great system of family farming.

Our members out on the farms, our children, our grandchildren, and history itself will not forgive us if we fail to grab the opportunity of this moment to get the farmers in America organized at last.

Lettuce Producers Organize, Survive FTC Challenge

Richard V. Thornton

President

*Grower-Shipper Vegetable Association
of Central California*

Central California Lettuce Producers Cooperative is an organization of lettuce shippers in the Salinas-Watsonville area of California. These shippers produce about 80 percent of the lettuce consumed in the United States in the 7-month period between April and November.

In 1972, the Central Valley Lettuce Producers Cooperative was incorporated. The purpose of the cooperative is to engage in any activity in connection with the production, marketing and selling of farm products of members. Members maintain their own field and sales organization, and prior to the formation of the cooperative, no orderly marketing of produce or exchange of information existed between shippers.

The price of lettuce varies considerably according to production and is governed completely by supply and demand. Each carton holds 24 heads of lettuce and about 350 to 400 cars a day are shipped, with each car containing 1,000 cartons of lettuce.

The purpose of the cooperative is to exchange information on acreage, production, shipments, etc.

Some of the cooperative sales practices now in effect are:

1. No brokerage paid by the shipper to on-the-spot buyers. Many of the eastern receivers and chain stores had their buying representatives in California inspecting lettuce and buying for their account. Many assessed the sellers a 10 cents per carton charge. Cooperative members agreed they would not pay the 10 cents brokerage to any representatives of eastern receivers.
2. No market decline protection at the date of shipment. The lettuce market will vary from day to day. It takes about 5 days to reach the eastern seaboard by truck and 9 days by rail. If shipments increased during that time, there could be a corresponding decrease in price. Cooperative members agreed to eliminate the market decline protections, and the f.o.b. sale price agreed between the seller and the buyer at the time of sale remained constant. The cooperative members also agreed they would eliminate the practice of shipping f.o.b. acceptance arrival, which meant no f.o.b. price at all.

3. No unsold car or rollers. In times of heavy production and poor market, a shipper with a car of unsold lettuce would bill or consign the shipment to a receiver, let's say in Boston, Mass. This would give the shipper 9 days in which to sell that car of lettuce while it was rolling across the country. If it could not be sold at the end of 9 days, it was abandoned to the railroad for freight charges, the railroad would sell the car at reduced prices, thus affecting the f.o.b. market in that area. Cooperative members agreed to no unsold rollers.

4. Each Monday at 5 p.m., all members of the cooperative provide the cooperative a list of 30, 60 and 90 day accounts receivables. These lists are then coordinated into a master list and sent out to the cooperative members showing the amount of accounts receivables by city and individual company.

5. The cooperative prepares weekly estimates of production. Each Wednesday and Friday, members turn in their estimate of acreage, yield, volume, and daily shipments for the next week. The cooperative will know the volume of the coming week and be able to set floors and ceilings accordingly. Without a knowledge of prospective shipments, the difficulties of arriving at a price of merchandise can be appreciated.

6. The cooperative sets floors and ceilings for the price of lettuce. Members would meet every Monday, Wednesday, and Friday, review the prospective tonnage, and estimate the various factors such as the weather, availability of trucks and rail cars, and then set a floor for the sale of a carton of lettuce.

The cost of production for a carton of lettuce is between \$3.15 and \$3.25 per carton. The cooperative would attempt to set the floor for the sale of a carton of lettuce at or just below production costs depending upon the volume. This would mean that members of the cooperative would not sell the lettuce for less than the cooperative floor and the purpose of setting floors was to ensure a reasonable return to the grower of the cost of production.

There were also times when the cooperative set the ceiling for the price of a carton of lettuce below the established going market price. The theory was that it was better to maintain a good market for a longer period of time than have a skyrocket price that would not last. There were instances where cooperative members were selling lettuce below the price received by noncooperative members. Noncooperative members would sometime sell their lettuce below the floor price set by cooperative members.

In June 1974, a complaint was issued by the Federal Trade Commission, alleging the cooperative violated Section 5 of the Federal Trade Commission Act, by illegally agreeing among themselves on the price for which cooperative members would sell the lettuce they produced. This complaint was heard on March 13, 1975, by the Administrative Law Judge who held that the cooperative primarily served as a meeting ground for lettuce producers to come together and agree on a pricing policy. He recommended the issuance of a cease and desist.

order. This decision of the Administrative Law Judge was appealed to the Federal Trade Commission.

In the interim between the complaint and the recommendation by the Administrative Law Judge, a decision was rendered by the U.S. District Court, Northern District of California, in a case brought by a Northern California Supermarket on practically the same basis. The supermarket alleged that the shippers conspired to increase the price of lettuce to the supermarket. After a lengthy trial, a decision was rendered in the favor of the cooperative. In the judge's decision, 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 Federal Trade Commission, after its hearing on July 1977, voted 5 to 0 in favor of Central cooperative, saying the Capper-Volstead Act applies squarely to this case and issued the appropriate order vacating the order issued by the Administrative Law Judge and dismissed the complaint. 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 cooperative presently has 19 members out of 35 lettuce shippers. The cooperative does not and has never shipped, handled, harvested, or grown lettuce in its own name. It does not negotiate with buyers of lettuce and members have their own production and sales program. Members sell directly to buyers and payment is billed and collected by each member. Members retain the trademark under which they did business prior to the formation of the cooperative. The cooperative is simply a method to ensure a partial return to the grower for the cost of production. The floors are generally fixed below the cost of production. It maintains a reasonable market that is used to limit losses and is not intended or used as a profitmaking organization, which would be completely self-defeating by resulting in increased production.

Sugar Beet Producers Ponder Impact Of New International Agreement

*Richard W. Blake
Executive Vice President
American Sugarbeet Growers Association*

The U.S. sugar beet industry has been in the depths of a serious economic depression. Like most other farm commodities, prices for sugar beets have dropped precipitously in the past 3 years to a point where the industry faces an uncertain future. Our production has dropped from a high of more than 4 million tons of sugar to slightly more than 3 million tons. We see very little likelihood of a significant turnaround in the next 8 to 12 months.

As most of you know, the domestic sugar industry for years operated under and within the guidelines of specific sugar legislation known as the Sugar Act. During those years, 40 to be exact, the industry remained on a comparatively stable basis. Both the producers and processors were able to achieve fairly predictable returns, which for the most part, provided a modest profit to both the grower and the sugar company. It was in this atmosphere that producers were able to bargain, in most instances, successfully with the beet sugar processors. In many ways, our industry is unique in that there are only a few buyers for our product and, with minor exceptions, there is only one processing company with which the bargaining association negotiates.

The beet industry has had grower marketing associations for a number of years; some have been in existence since the mid 1920's. Producers as a whole generally accept and rely on the association to bargain with the processing companies. The basic purchase contract finally negotiated becomes a master contract for the company area. The only major difference in the master contract for a company area, as between growers, is location of the producer with respect to the factory receiving his sugar beets--in other words, some freight participation.

With respect to the various beet sugar companies, while not speaking for them, I believe they accept the bargaining associations as a legitimate and proper vehicle in establishing contract terms. Certainly on occasion the beet processors may wish they could offer a contract without having to go through the negotiating process. But I believe in the main they respect the right of the growers to have a single bargaining agent. There have been occasions during negotiations where the talks have been broken off and attempts made by the companies to go around or over the heads of the bargaining associations to the members. This maneuver has generally resulted in failure, recrimination, and considerable loss of acreage to the detriment of both parties.

While I am not that well acquainted with bargaining associations outside the beet industry, the main leverage we have is the determination and willingness of the grower members to support the efforts of the association. In fact, I have the distinct impression that the members for the most part are stronger in their position than are their representatives who actually do the negotiating. This, I believe, is understandable as the average grower does not have the time nor the opportunity to study market conditions and the various issues involved in drawing up the complicated type of contract we have in the sugar beet industry.

The basic contract we have in our industry is known as a participating type contract. Growers and processors share the actual net returns after all selling costs have been deducted from the gross selling price. The division of the net returns has, over the years, been the major issue in our negotiations. At the present time, the division of return gives the growers slightly more than 60 percent and the processor slightly under 40 percent.

We have on various occasions and through the years given serious consideration to changing the contract from a participating type contract to one that provides for a predetermined price per ton, similar to other commodities. However, for various reasons, we have always returned to the participation type contract, believing that over the long run growers would receive a higher total return than they would have received from a negotiated single payment.

In the years between the demise of the Sugar Act in 1974 and the new loan and purchase program passed by Congress last July, the industry has been in a serious economic decline. As I mentioned earlier, our production dropped off by more than 25 percent--in some areas considerably more. During this period, significant actions resulted in the organization of a cooperative and the successful purchase of a major beet sugar processor, American Crystal Sugar Company, by the growers of the Red River Valley of Minnesota and North Dakota; the construction of three other cooperative processing companies in the same area; and the negotiation of longer term purchase contracts in two other major producing company areas. These actions have altered the general pattern of yearly negotiating sessions in those areas except for minor provisions not affecting basic pricing terms.

Under the cooperative, the grower members have agreed to a basic 5-year contract which is, as I understand, a requirement of their lending institution. As a cooperative, those producers are assured of their fair share of the net returns. So in an area that produces between 25 and 30 percent of the beet sugar, a significant portion of the industry is no longer involved in negotiating price. In the other two areas, 3-year contracts have been negotiated and could very possibly be a forerunner of long term contracts for the entire industry.

I personally believe a great deal can be said in favor of longer term contracts if they are negotiated properly. Annual negotiations

have on occasion resulted in serious confrontations, breakdown of relationships, and generally resulted in last-minute agreements that fail to provide a basis for sound production planning.

One of the major problems we have had in the past 3 years is a market that fails to produce an adequate return for either the growers or the beet sugar processor. The United States became a free market for sugar in 1975 when Congress failed to enact a new sugar program in 1974. The United States became a dumping ground for any homeless sugar produced anywhere in the free world. Because our domestic industry supplies only about 55 percent of the Nation's requirement, the pricing and political policies of various exporting countries have established price levels in this country. Because these countries have excess production and need hard currency in many instances, they have saturated our market at depressed prices--the market we depend on for our financial wellbeing.

Domestic Sugar Atmosphere

The atmosphere or situation in which we find ourselves as domestic sugar producers may emphasize some of the overriding concerns we have for the future.

The Carter Administration, in announcing its sugar policy in early 1977, declared this country would put its full emphasis and all of its influence behind an effort to reach an international agreement on sugar. While this announcement was greeted with a certain amount of skepticism by many people in our industry, it was felt that an agreement, if it contained certain safeguards, might serve as a vehicle to bring world supply and demand into proper balance. The United States had been a member of previous agreements with the exception of the last one negotiated in 1968. However, during the period of membership in the agreements, the United States did have specific domestic legislation that shielded domestic producers from the generally depressed world market.

At the beginning of 1977, it was clear the supply and demand situation was completely out of balance and a worldwide sugar depression was imminent unless steps were taken to adjust production patterns and provide some price protection to producers and of course a quid pro quo for consumers. For importing countries such as Japan, Canada, and the United States, to be interested in any negotiated instrument, there had to be protection against extremely high prices and stability of not only price but of supply.

The negotiations in the spring of 1977, covering a period of 6 weeks, failed to achieve success for various reasons, due in part to the U.S. delegation proposing changes that would necessitate the holding of substantial stocks by exporters and financing arrangements for such stocks. In addition, Cuba appeared to be intransigent in its demands on price and export quota rights. Another factor was the failure of the European Economic Community to have a satisfactory mandate to negotiate terms.

The failure of the negotiations in the spring was an additional price depressing factor and forced the U.S. domestic producers to turn to Congress for some type of legislation. As general farm legislation was moving through Congress in July, we opted for an amendment to the farm bill as being the quickest and best opportunity to give our hard-pressed producers a measure of support. The amendment passed by Congress mandated a price support program for sugar beets and sugar cane. The amendment was fought bitterly by the Administration, consumers, cane sugar refiners and industrial users. The lesson to be learned in this, at least as far as I am concerned, is that if you have a story to tell and are willing to work against difficult odds, there are people of stature in Congress who will listen and support a reasonable proposition.

The amendment was designed to complement a new international agreement when and if one was negotiated. Agreement was finally achieved on October 7.

Without any doubt, this new agreement contains the most sophisticated regulatory mechanisms yet written into an international commodity agreement. Sugar was the first commodity to be negotiated under the UNCTAD integrated commodities program and therefore had an international importance far greater than previous negotiations. If an agreement could not be concluded on sugar, a commodity that had previously been managed under an agreement--albeit somewhat questionable--then the chances of negotiating for other commodities would have been greatly reduced.

If any country had to be named as the primary beneficiary, it would be Cuba that outmaneuvered and "outbrinked" everyone at the conference. Whether the price had to be paid for its cooperation is a question that will be debated for some time. The United States, while giving on some points, did realize certain gains with respect to stocks and financing, in addition to a minimum and maximum price range.

A major disappointment to U.S. sugar producers was the adoption of the floor price of 11 cents per pound. While it equates to the minimum support level in the amendment to the farm bill, it does not have an indexing factor that would reflect inflationary forces. We do not object to the maximum price figure of 21 cents, as consumers should have protection against prices above that level and could, if exceeded, result in severe consequences similar to the backlash from the price levels reached in 1973-74. However, if the price continues to be less than 11 cents or does not exceed that level, domestic producers will be in serious straits, because only our most efficient producers could exist at that price and even then not for long.

The industry does face one serious problem in its attempt to achieve returns that most producers believe they need to produce at capacity. This has to do with a new competitive sweeteners, high fructose corn

syrup. While there have been corn sweeteners available in limited quantities for some years, a major technological breakthrough occurred in the early 1970's that resulted in the successful development of a corn syrup product directly competitive with our liquid sugar. When prices of sugar reached record highs in 1973 and 1974, the expansion of this product was significant, and it is a product that can be produced somewhat cheaper than sugar from beets or cane.

At the present price levels, neither industry is profitable. However, it is my understanding that the corn people would be able to make some profit at the minimum levels, and any significant increase in sucrose prices would make them highly competitive and additional expansion would take place. The question is: "Would it come out of the domestic sugar producers' or foreign producers' share of the total sweetener market?" Obviously, from our standpoint, we believe it should come from reduced imports of foreign sugar.

This is a brief overview of the situation facing the domestic sugar producing industry. Despite the poor track record of international commodity agreements, I believe with firm leadership and goodwill the new sugar agreement can be made to work over the long term, although, because of huge surpluses, the agreement entered into force on January 1 at a time of weak prices.

However, we shall seek continuing domestic legislation to supplement the new agreement to protect producers if the new pact does not achieve its primary objective of maintaining stable prices within the midpoint of the negotiated range. At the present time and until the agreement achieves price levels equal to or higher than provided by domestic legislation, the Administration is mandated to use the amendment to the farm bill to protect domestic producers.

By having some price guidelines, a better atmosphere should be created for our bargaining associations to negotiate with their processing companies. We are a fairly unique industry in that our prices are established principally by the price of imported sugar, and a minimum price objective becomes extremely important. Both the producer and the processor have undergone a severe economic crunch in the past 2 years, and we are hopeful that a turnaround will occur in the not too distant future. If not, the future will continue to be unsettled, a situation that is not in the interests of either the producer or the consumer of sugar.

Food Losses: Weather—Yes; Labor—No

Ronald A. Schuler

President

California Canning Peach Association

My assignment is to discuss what has been done and what can be done to prevent the loss of perishable food products due to strikes between handlers and workers at harvesttime.

My subject--FOOD LOSSES: WEATHER--YES; LABOR--NO sums up the feelings of most growers throughout America. We understand the forces of Mother Nature and what she can do to the crops we grow and handle. But we don't understand premeditated waste caused by labor--strikes to which farmers are not a party, yet which directly affect the farmer's ability to achieve compensation for his production. My remarks are not intended to be antilabor in nature. I am not advocating the downfall of labor unions or criticizing their fundamental objectives. But I do want to comment on the need for corrective action. I am referring to the innocent third parties victimized by labor stoppages during harvest--the farmer, the people who work for him, the industries that supply him, and ultimately the consumer who wishes to buy the products grown by him.

I must emphasize that I am not talking about field labor, because in that case, the farmer, through his own negotiations, at least has some control over his own destiny. But when the farmer is the third party with no voice in negotiations, he can lose a year's production--which could result in the loss of his entire life's investment. We must take steps to reduce the impact on the individual farmer, the people we represent. We must seek national legislation--our only true hope.

To set the stage for my comments, I want to recall for you the reasons for the particular concern of producers of California's processing crops. Just 18 months ago, a California cannery workers' strike took place. At that time, a new 3-year contract was signed that will expire just 18 months from now, and we could possibly be subjected to a repeat performance of a damaging, disastrous strike by cannery workers.

During that strike, farmers in California lost 1.5 million tons of tomatoes with a farm value of \$70 million; 75,000 tons of cling peaches, valued at \$8.6 million; 30,000 tons of apricots with a value of \$4.5 million; and 30,000 tons of pears valued at \$3 million--a total unharvested product loss of nearly \$90 million just to the farmers involved.

Let's review the strike of 1976. On July 20, work stopped at 10 a.m. in all canneries covered by the contract. Keep in mind that in anticipating the walkout very little harvest was conducted on July 19 or even July 18, so that the canneries would not have carryover fruit on the lines when the workers left their jobs. The settlement came on July 27, but by the time the contract was ratified by the workers, it was August 2 before the plants were back in full operation. In all, we had 8 days of strike and 3 days of ratification, totaling 11 days; plus 4 days of less-than-full operation before and after the actual strike. Consequently, growers with commodities ready for harvest were faced with a harvest shutoff of between 11 and 15 days.

In reviewing production schedules for cling peaches for 1973 and 1976, it is interesting to note that the yields per acre for the 2 years were almost the same. Both years had yields of 13 tons per acre. In 1973, this low yield was the result of adverse weather during the spring; in 1976, we had the strike. It is also interesting to note that the total annual hours worked in California was 34,000,752 in 1973, and 34,000,753 in 1976. In 1975, more than 39 million hours were worked. With the loss of 5 million working hours, did the workers really gain by a strike?

From our viewpoint, canning industry strikes at harvesttime end in inflationary settlements. After the 1976 strike, the increase in wage rates for California cannery workers was 9.5 percent with no cost of living adjustment. In 1977, the second year of the contract, the increase was 10.4 percent; in 1978, it will be 9.2 percent. The national average for union wage settlements in 1976 and 1977 was 8.2 and 8.4 percent, respectively. Each 1 percent adjustment of wage rates roughly costs the canning industry 5.5 cents per hour in additional wages, which is about \$2 million for each 1 percent increase.

The strike and settlement affect the growers I work for in the following ways:

1. It caused further decline in canned fruit production due to inevitable higher prices on supermarket shelves.
2. It caused increased difficulties in competing in foreign markets, with a resulting loss of volume for U.S. producers.
3. It caused continuing downward adjustment of our production to the reduced demand, therefore reducing supply.
4. It caused growers to seek new labor-saving devices to reduce costs to survive. Needless to say, as labor costs in the canneries continue to escalate, canners are forced to do the same thing or curtail their operations.

I had an opportunity to review the fringe benefits of cannery workers, including those required by law. The nationwide average for all workers in 1973 was 32.7 percent of the payroll, or \$1.54 per payroll hour. In 1975, it increased 39 cents to \$1.93 per payroll

hour. Out of every dollar paid in wages in the California canning industry, 39 cents is paid in fringe benefits. Since 1966, fringe benefits for cannery workers have risen 215 percent from 67 cents to \$2.11 per hour. I might note that the hourly wage has increased from \$2.61 to \$5.40 during the same 10-year period.

I have presented results both in terms of the actual farm loss and the escalating costs that we as negotiators must bargain against in our efforts to achieve a reasonable return for the farmers we represent. Many of you may say that it is not your concern, but I ask you to take a minute to think about it. Any handler, any processor who has to: (1) pay more in wages probably will want to pay less for the products for which you are negotiating; and (2) if the product costs more, it will not be as competitive and demand will lessen. And when a strike occurs as the result of the inability of handlers and unions to come to agreement, perishable product is lost--lost forever.

Many of you are involved--Northwest canners are under a single collective bargaining agreement. Some creameries are regionalized with one union contract for a specific number of plants in a certain area. Milk is very perishable from the standpoint of the limited hours it can be stored, and how many storage facilities are available? It does not store well in the cow!

Those of you who ship into the fresh market are also involved. With single or multiple plants in certain geographic areas under a union contract, you must ask yourselves what can be done to assist the farmer who has worked all year to produce his crop with the full expectation of delivering it only to find his handler or processor shut down because of a labor disagreement.

Collective bargaining alternatives other than strikes or lockouts are available. We want to encourage the use of these alternatives and hope that employers and unions in our industry can enter into contractual agreement utilizing one or more of them.

I will outline a few of these to you and add that discussions are underway now between California Processors, Inc., which is the negotiating body for most California canners, our handlers, and the Teamsters cannery workers' union to find a means of reaching a settlement. Examples of these alternatives are:

1. Experimental Negotiating Agreement. In the steel industry, workers entered into a 1973 agreement with a new concept called the Experimental Negotiating Agreement (ENA). This concept calls for the use of voluntary arbitration as a terminal negotiating vehicle to come to agreement without resorting to work stoppages. The right to strike is retained by the union for local plants on local issues such as the parking lot, the lunch rooms, and coffee breaks. All company-wide issues are committed to arbitration. This has worked so successfully that it has been extended in the steel industry contract until 1980.

2. Early Negotiation. Here again, the steel industry has employed a technique of starting talks for new contracts far in advance of the contract date. The agreement voluntarily to arbitrate unresolved differences dictates an early start for contract talks.

3. Strike-Work Agreement. This approach has been used by the Dunbar Furniture Corporation and the Upholsterers' International Union, an affiliate of the AFL-CIO. The agreement is intended to permit production as usual during a labor dispute through an unusual set of financial arrangements, which make it desirable for parties to settle the matter as promptly as possible. The theory behind the agreement is that some customers are lost permanently to other suppliers during a strike or lockout with resulting loss to the company and the employees. The collective bargaining contract is reinstated and continues in force for the entire strike work period and all employees continue to work. It works by requiring one-third of each employee's salary, in addition to an equal amount paid by the company, to be placed in a trust fund each week. If an agreement is reached within the first 4 weeks, all parties get their money back. If agreement is reached between the fifth and sixth weeks, only 75 percent of their money is returned. With the agreement in the seventh week 50 percent of the money is returned and in the eighth week, only 25 percent is returned. After the eighth week, no money is refunded, at which time a strike or lockout may come about. However, if no written notice has been given to either party of either a strike or lockout, the last labor agreement will be automatically renewed.

4. Final Offer Arbitration. This has come about because, considering that conventional arbitration is less costly than strikes, there is little incentive to avoid it, and it becomes a tool used habitually to write labor contracts. Even some of our farm bargaining approaches have been to look at conventional arbitration as a solution, instead of bargaining in negotiations. Final offer arbitration envisions a winner-take-all situation, because the arbitrator must select one or the other final offer. Both parties are then induced to develop more reasonable positions in hopes of winning the award, and these mutual attempts to win approval should result in the parties being so close together that they will create their own settlement.

5. No Strike and Binding Arbitration. This is a concept used by airlines for establishing a negotiating timetable and for using National Mediation Board services. Only economic issues are subject to binding arbitration and the contract provides that there will not be a strike or lockout while both sides complete negotiations of all remaining issues, whether economic or noneconomic. It provides a detailed, lengthy timetable for negotiation with limits on the number of issues in the opening package. This starts 120 days prior to the end of the contract. If there is no agreement within 75 days, a mediator comes to ensure there are ongoing negotiations that appear to prevent a crash settlement before expiration.

6. Mediation and Arbitration, called Med-Arb. The Med-Arb has a dual role in that while acting as a mediator, this individual also has in reserve the authority of an arbitrator. He is part of the negotiations, and both parties seek to convince him that their position is reasonable and acceptable. The process encourages direct negotiation between the parties with supervision by the Med-Arb.

We applaud these industries for the alternatives they have developed to strikes or lockouts. But again, as producers and as producer-representatives, we can only encourage our handlers and the unions to move in this direction. Our real effectiveness lies in the area of legislative intervention, and we are actively seeking and drafting legislative approaches at this time.

Our efforts to contact Congressmen to author legislation have been frustrated by an age-old problem: too many people believe they are not affected. They think it is a particular California concern. They are wrong. The problem affects producers of all perishable commodities.

It is an understatement to say that pursuance of this issue is not politically popular. However, we feel that times and the political winds are changing. I say this because recent USDA reports indicate 40 percent of the rise in food expenditures during the period 1973-77 can be attributed to labor costs. No doubt, 1977 will go down in history as the first time the marketing bill for labor exceeded the farm value of the total food bill. It was recently reported in a Roper survey that 65 percent of Americans (10 percent more than just 4 years ago) now believe that labor unions are too powerful.

We now have before us two drafts of legislation: one by a California Congressman and one by the National Council of Farmer Cooperatives. Both seek to establish procedures that can be taken to prevent the loss of perishable products. Let me highlight these two pieces of legislation. Neither has been introduced, but both are being reviewed at the present time.

"The Agricultural Emergency Labor Disputes Protection Act of 1977"--obviously, now 1978--proposes that, in the course of collective bargaining between an employer and a union, whenever there is a contemplated or threatened strike or lockout affecting a cannery or processing operation, both parties shall give written notice of the intent to strike or lockout to the Secretary of Agriculture and the Secretary of Labor at least 30 days prior to beginning such strike or lockout. At least 7 days prior to the expiration date of the collective bargaining agreement, either the union or the employer may petition the Secretary of Labor and the Secretary of Agriculture to jointly appoint an arbitrator who is empowered to hear all aspects of the contract dispute between the union and the employer. If a petition is filed, the arbitrator must direct that a hearing be held within 20 days of his appointment, unless a later date is officially agreed to by the union and the employer. After a hearing, the arbitrator must issue a decision within 21 days of the close of the hearing or receipt of briefs, whichever occurs later. The arbitrator also has the authority to

petition any U.S. district court for injunctive relief to carry out the terms of this statute in the circumstances he deems just and proper. In his decision, an arbitrator must decide all contract dispute issues that were submitted to him for resolution and arbitration. The decision of the arbitrator is final and binding on the parties except that the aggrieved party may petition the U.S. court of appeals for review. The appeal is limited to deciding whether the award was arbitrary or capricious. The statute does provide that after the appointment of an arbitrator, all strikes, lockouts, stoppages or interruptions of work are prohibited.

To make this legislation meaningful to farmers, it should be amended to provide that farmers or other injured third parties, as well as the employer or union, may petition the Secretaries of Labor and Agriculture to require mandatory arbitration.

The other proposed legislation, developed in meetings with various agricultural groups, is entitled "Perishable Food Protection Act of 1978." It is the purpose of this act to make available a range of flexible procedures to be utilized and emergency action to be taken to prevent the interruption of operations or services that are essential to protect perishable food from spoilage because of actual or threatened strikes or lockouts. For the purpose of this act, the term "perishable food" means food that is intended for human consumption and which quickly deteriorates in quality if not harvested or processed in a timely manner. This proposed legislation provides that the Secretary of Agriculture will submit a report to the Secretary of Labor who may then initiate one or more of the following actions:

1. He may issue an order for work to continue or resume for a specified period not to exceed 60 days.
2. He may issue an order for partial operation, effective for a certain period of time not to exceed 180 days, specifying the extent and condition of partial operation that must be maintained.
3. He may direct each party to submit to him within 3 days a list of all resolved and unresolved issues in the dispute and request that within 5 days each party submit to him a final offer covering each of the unresolved issues.
4. He may invoke a 60-day period of mediation by giving written notice thereof to opposing parties and the Federal Mediation and Conciliation Service.

Basically, the two approaches I have outlined for you are the results of the discussions from the report presented to you in Puerto Rico last January.

A third legislative approach that deserves serious consideration is to amend the Taft-Hartley Act to provide that injunctive relief may be sought by any injured party. As you know, the act presently provides

that only the President can seek such relief and only in instances of a national emergency. In this regard, the act should be amended also to provide that an injunction could be issued whenever a strike or potential strike threatens the loss of a substantial quantity of food in any section of the country. And when grounds for an injunction exist, the injunction should not be limited to any arbitrary time limit as is presently the case.

We intend to continue to move forward in seeking legislation, but from a very practical point view, as each day passes, any opportunity to get a bill passed in Congress before 1979 diminishes. Barring obtaining relief through the legislative route, we intend to use every means to encourage both processors and the unions to resort to some of the alternatives to strikes and lockouts that have been used successfully by other groups. We do not intend to stand still and again be forced to watch the crops rot in the fields while employers and unions argue.

We ask all of you represented here for your support as we move forward with this legislation. If you believe this does not affect you, you may be right today. But in the long term you will be affected, because the more strikes we have in the food industry, the more losses we incur--the greater the cost of the market basket. Those of us closely involved with farming can understand and accept Mother Nature's attacks on our food supply and our income, but we cannot, nor should anyone, tolerate manmade losses brought about by strikes at harvest-time.

Farm Bargaining Legislation: The Michigan Experience

Noel W. Stuckman
General Manager

Michigan Agricultural Cooperative Marketing Association

I gave the first report on this topic at a National Bargaining Conference in January 1972 under the topic of "The Development of State Bargaining Legislation." Someone from Michigan has reported on various aspects of our State act each year since that time at these annual conferences.

Our association, the Michigan Agricultural Cooperative Marketing Association (MACMA), is a statewide, multicommodity bargaining and marketing association that has been in operation since 1961.

MACMA is composed of 11 separate commodity divisions. We have four fruit divisions including the Michigan Processing Apple Growers, Red Tart Cherry Growers, Grape Growers, and Michigan Plum Growers divisions; three vegetable divisions including the Michigan Asparagus Growers, Kraut Cabbage Growers, and Potato Growers; two feeder livestock divisions, the Direct Marketing Division, and a Michigan Certified Farm Markets Division, whose members are operators of roadside farm markets. A total of 2,600 producers hold memberships in the 11 divisions.

Bargaining and ancillary marketing and informational services are conducted by the seven fruit and vegetable divisions. Each division has an elected marketing committee that represents the membership in negotiations with handlers. The total value of fruits and vegetables negotiated between these MACMA divisions and processors exceeded \$75 million in 1977.

The Michigan Agricultural Marketing and Bargaining Act, commonly known as P.A. 344, came into existence because of need. The necessity of an act to provide a legal basis for effective bargaining became evident through the experiences of our association and several other fruit and vegetable bargaining associations that preceded the formation of MACMA.

We found that some processors refused to negotiate with us even though our members produced large portions of processors' raw product requirements. We had the free rider problem where nonmembers received the benefits of negotiations without cost or obligation. Sometimes processors with which we were negotiating made fee deduction an issue in the negotiations and used it as a lever to lower price. We encountered all kinds of practices by processors to discourage membership in the association. We found that often there was no way to resolve an impasse

in negotiations when fruit had to be harvested, or when annual crops had to be planted. We deal with biological processes that cannot be stopped until price and terms of trade are established. In the fruit crops, we lost most all of our bargaining power once the fruit was delivered to the processors without a price and put into their cans. Producers and their organizations came to the conclusion that farm bargaining legislation was the answer to these needs.

MACMA, an affiliate of the Michigan Farm Bureau, worked in support of Farm Bureau policies favoring the enactment of farm bargaining legislation in the late 1960's. We realized that the Federal Agricultural Fair Practices Act of 1967 wasn't going to provide much of a legal basis for effectively dealing with the buyers of processing fruits and vegetables. We supported the various Sisk Bills in Congress in the early 1970's.

Michigan Farm Bureau policy in 1970 supported the enactment of a comprehensive State farm bargaining act including the concept of a majority rule, which later became known as the exclusive agency bargaining concept. A bill was drafted in 1971 and was passed by the Michigan Legislature in 1972, with an effective date of March 1973.

The bill was bitterly opposed by those who buy what farmers have to sell, particularly by the fruit and vegetable processors, as the scope of our law is limited to those commodities. The active and effective support of farmers and their organizations convinced the Michigan Legislature of the need for the act. Our Legislature is dominated by legislators from the urban areas, but they support the rights of farmers to organize and bargain collectively. They were not persuaded by the opponents' arguments that food prices would increase or that processors would leave the State.

Briefly, PA 344 provides for:

--rights of farmers to organize for bargaining purposes;

--establishes a five-member Agricultural Marketing and Bargaining Board appointed by the Governor to administer the act;

--permits the establishment of bargaining units on the basis of the utilization of a commodity, minimum size of producers to be included, and geographic area of the State;

--enables associations to become accredited upon application to the board if they meet certain standards, the primary one is having 50 percent of the production and 50 percent of the producers in a bargaining unit as members;

--requires processors to recognize accredited associations and bargain with them in good faith;

--authorizes accredited associations to represent all producers in the bargaining unit, both members and nonmembers;

--requires all producers to pay marketing service fees to an accredited association; and

--provides for mediation and arbitration.

An innovative feature of arbitration is the final offer selection procedure by a three-person joint settlement committee.

P.A. 344 has gone through the Michigan Legislature twice. The Legislature again expressed its support for farm bargaining legislation when we were forced to go back to it with a bill to repeal a September 1, 1976, expiration date that was included in the act when it was originally passed in 1972. Again, the processors were present with extensive and vocal opposition. The Legislature removed the expiration date by overwhelming votes of 32 to 4 in the Senate and 98 to 2 in the House of Representatives.

The Agricultural Marketing and Bargaining Board has established seven bargaining units to date. Five MACMA divisions have been accredited to represent producers in the bargaining units for processing asparagus, processing red tart cherries, processing apples, potatoes for freezing, and kraut cabbage. No associations have applied for accreditation for the processing plum and pickling cucumber bargaining units.

Details of the experiences of accredited associations operating under the provisions of the act would be far too lengthy for me to cover. Negotiations have been conducted under all kinds of crop and market conditions during the 4 years of asparagus negotiations, 3 years each of apple and kraut cabbage negotiations, and 1 year each of red tart cherry and potato negotiations. During these years, about 200 agreements were reached through negotiations between accredited associations and handlers.

In 15 instances, arbitration proceedings went through to completion, with 11 joint settlement committee awards made on asparagus grades, 3 awards on processing apple prices, and 1 award on kraut cabbage price. In several instances, handlers opted out, as provided in the act, and did not purchase from producers in bargaining units.

Although our experiences with the Michigan farm bargaining act have been confined to only a few years, we have operated under a wide range of conditions. The 1975 crop year was one of large crops, excessive inventories carried over from the previous year, and resultant raw product prices below many producers' costs of production. The 1976 and 1977 crops were short, there was little carryover, and several record high raw product prices were established.

Accreditations of the five associations under P.A. 344 provisions each have resulted in lawsuits being filed in the State courts. The

first suit was initiated by the Michigan Cannery and Freezers Association against MACMA and the Agricultural Marketing and Bargaining Board early in 1974 in opposition to the accreditation of the Michigan Asparagus Growers Division of MACMA. That suit moved through three levels of State courts from a county circuit court where it was first filed to the Michigan Court of Appeals to the Michigan Supreme Court, all on appeals by the processor group of a jurisdictional decision by the circuit court judge.

The Michigan Supreme Court received the suit early in 1975 without any decisions by the lower courts on the contested issues in the case. The Supreme Court heard oral arguments by the three attorneys representing MACMA, the Bargaining Board, and the Michigan Cannery and Freezers Association in October 1975. In August 1976, the Supreme Court remanded the suit back to the county circuit court for the "development of a factual context."

In September 1977, more than a year after the remand, a trial or hearing was held in the county circuit court. Thirty witnesses appeared during the lengthy 11-day trial. Witnesses questioned during the non-jury trial included producers, processors, agricultural economists, and persons who have had experiences working under the provisions of the act. The witnesses focused particular attention on the conditions that led to P.A. 344's enactment--the imbalance of bargaining power between growers and handlers, farm numbers and trends, the effect of the act on producers, processors, and consumers, and evidence that the act alleviates problems in the Michigan fruit and vegetable industry.

The circuit court judge has not yet made any decision on the case. We expect his findings of facts and conclusions of law to be forthcoming at any time. His decisions will then go directly to the Michigan Supreme Court along with the transcript of the trial, exhibits, briefs, and other documents. The final decision rests with the Michigan Supreme Court. We hope its ruling will be made sometime during 1978.

The extensive litigation has focused on the asparagus suit, which contains most of the significant allegations made in the various other lawsuits that remain dormant in the lower courts awaiting the outcome of the asparagus suit.

Cases involving processing apples and kraut cabbage rest in county circuit courts. The Michigan Court of Appeals has the potato and red tart cherry suits with stays placed on the accreditations of those two MACMA divisions making them inoperative since 1975. Most of the parties involved in these other lawsuits appeared as witnesses in the September trial on the asparagus suit, which enlarged the scope of experiences under the act as related by the testimony of these witnesses in the trial.

The scope of the allegations contained in the asparagus suit and also in the other suits is broad. These allegations include: that the act violates the State constitution by exceeding the State police power;

is contrary to the guarantees of due process of law; permits legislative power to be conferred on private individuals; that the act is inconsistent with the Federal Agricultural Fair Practices Act and violates the United States Constitution; that the accredited associations do not meet the requirements of the Capper-Volstead Act and their actions are in violation of the Sherman Antitrust Act; and that the Agricultural Marketing and Bargaining Board did not comply with the Administrative Procedures Act in bargaining unit and accreditation procedures.

The most significant thing about this long battle in the courts is that after nearly 4 years of litigation, no court has yet ruled that any provision of P.A. 344 is unconstitutional. The litigation has been costly and time consuming to the parties involved. The experience gained by associations and handlers working under the act is being considered by the courts. Decisions by the courts will be precedent-setting and will be a major determinant of the future of farm bargaining legislation, most certainly in Michigan and maybe even nationally.

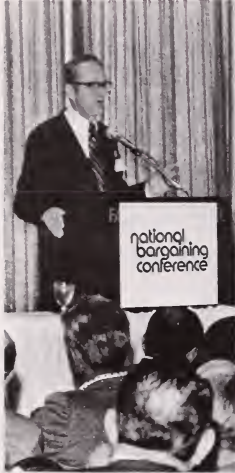
Our experience with the Agricultural Marketing and Bargaining Act reinforces our belief that P.A. 344 establishes an open, orderly, and fair procedure through which producer associations and handlers can find prices and other terms of trade.

Price discovery is a mutual problem of producers and processors. P.A. 344 provides a regulated price-discovery marketplace. It is a proper role of Government to assure that the parties involved and the general public that all transactions are above board and all of the factors of supply and demand come into play in price determination.

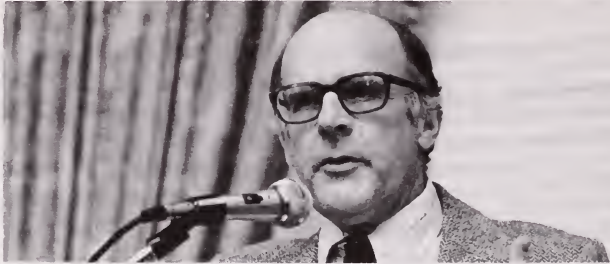
In summary, the primary point in the Michigan experience has been in getting the Michigan Legislature to enact the law, operating under the provisions of the act, persuading the Michigan Legislature to remove an expiration date after the act had been in existence for 3 years, and defending the act in the State courts against extensive litigation initiated by the processors.

Mechanics of Bargaining

Glenn Maddy



Ralph B. Bunje



Gary E. Hanman



Hank Vander Pol

Tips on Selecting Directors

*Glenn Maddy
County Extension Agent
Ohio Agricultural Extension Service*

Information in this paper is based on my observation and experiences in agricultural bargaining as a county agent in Ohio. For 23 years, I have been the agricultural adviser to the Fremont Beet Grower's Association, an organization of 450 beet growers marketing beets to the Fremont plant of the Northern Ohio Sugar Company, a subsidiary of the Great Western Sugar Company. Many of our sugar beet growers also produce tomatoes and pickles for processing.

With the good results obtained in sugar beet bargaining, 8 years ago our tomato and pickle growers, with our assistance, organized the Fremont Pickle and Tomato Grower's Association. This membership is made up of about three-fourths of the producers of pickles and tomatoes for the Fremont, Ohio, plant of H.J. Heinz Company. I also serve as agricultural adviser to this bargaining association.

In 1975, we helped organize producers of cabbage for kraut selling to the Fremont Kraut Company, again in Fremont, Ohio, and the Norpac Company, Port Clinton, Ohio. This marketing organization is made up of 22 of the 24 producers of cabbage for these two factories. Some growers in the same organization have contracts with both companies. This organization is not separate like the other two but is part of the cabbage division of the Ohio Agricultural Marketing Association, an affiliate of the Ohio Farm Bureau Federation, Columbus.

One of the more important elements in the whole bargaining process in agriculture is the type of directors or the kinds of directors who represent a commodity or an association in bargaining. They must be the type of person or farmer who has the ability to serve well in the bargaining process.

Processors or buyers of agricultural products look favorably upon the men who represent growers and are guided by their decisions. Therefore, the stronger the men are, the better the terms are in the bargaining negotiations.

Some types of leadership and requirements needed by directors or trustees representing a commodity in the bargaining process are:

1. The farmer should be recognized in the commodity he represents. His recognition can be in one of the areas of either size of operation or outstanding yield, or if possible, both high production and a good

size operation. This adds a little bit of "clout" or "power" to the board of directors he represents to the processor. If your board consists of a number of these individuals, then they do add considerable power in the bargaining process and command respect from the processor.

2. A farmer must believe in and have faith in the bargaining association. This may take some training to have him become informed on what his job actually is. I often think many farmers serve on bargaining associations due to the prestige they may have in the commodity or in their community but not know their duties. Perhaps there should be training programs held by the National Bargaining Conference or the extension service or the Farm Bureau on the duties of a bargaining association director.

3. He should be willing to put his duties on a board of directors above other priorities. One good friend of mine, who has served in the bargaining process in the areas of tomatoes, sugar beets, cabbage and pickles, said a director should go to "all" meetings concerning his board.

4. The director should keep fellow growers informed, that is, between the bargaining sessions during negotiations and during year-round activities. By associating with fellow farmers, he is able to get their input into the bargaining process and he can tell them what is going on with the processor. He can get their feelings on what he should be doing.

5. The director should be nominated and elected from the floor at the annual meeting. I realize this is seldom done anymore. But with the boards I work with, we have found that through this method of selection you do get "outstanding" people serving on the board of directors. This is a democratic process, although time consuming. I realize, of course, that not all areas or all groups may be adequately represented, but if a certain group or area feels it is not being represented it can do some 'politicking' and get representation on the board. Of course this depends on the constitution and bylaws. Do not have a nominating committee that tries to be democratic, because this has many difficulties. It may make the annual meeting operate more smoothly, but is it truly more representative? Beware of the "professional" board member and the "Good Joe" on many boards. Do they really represent the producer-member?

6. Don't limit the term of directors. It takes many years of experience to become an 'effective' bargainer representing a commodity. If you want to set a limited number of years, I would suggest 18-21 years and not 6-9 years, which many of our cooperative and bargaining boards have at the present time. The bargaining experience in agriculture is quite new and it takes a lot of learning. Let's not limit this good experience gained by directors to just training new directors. With short term board members, the employees in time will do the bargaining due to board members' "lack of experience."

7. Pay board members' per diem expenses and mileage. The day of the "free" board member is over. Many farmers have given much time to agriculture; and because they represent a commodity, don't take advantage of them. This is one of the costs associated with selling the product. So pay should be comparable to that of production credit boards, bank boards, cooperative boards, and so forth.

8. If a director does not grow a crop, he should be replaced immediately. This should be in your constitution and bylaws. Nothing detracts from the "power" of a board of directors than having a director who does not grow a crop. Whether you have 5 directors or 12 directors, you're going to limit their power and effectiveness by having a member or members not growing a crop. Replace him just as soon as it's known he is not growing that crop that particular year. He should resign and let the board know. Change the constitution and bylaws if necessary.

9. Do your homework. What I mean is, get your own farming operation going smoothly so you can leave responsibilities with your fellow workers. Also, in serving on a bargaining board do your homework with your wife and with your children. It's important they know what you're doing, so you do not get into too many stress conditions with those close to you when you have to leave your farm, especially during a time of harvesting a crop.

I have attempted here to cover some of the observations made over the years on some of the types of leadership required on the part of the board of directors for selling an agricultural commodity. Now I would like to discuss the actual bargaining process. This again is based on observation and working with the different boards.

1. Time to be spent is of utmost importance. You are going to have to put in much time, because usually the processor only has one or two commodities to buy. You may have many commodities to sell but the most important time you can put in is the selling of the product. You may market your crop in 2 or 3 days and then take 120-150 days to grow the crop. Don't jeopardize the income from the crop by not putting in sufficient time in the negotiations.

2. The bargaining process should take place in a neutral setting. This adds dignity to the bargaining. This should be done in a motel or hotel or in some public building away from either the farm or the processor's plant.

3. Know the costs of your own farming operation and use them. Often processors will tend to beat down a farmer by saying he doesn't know his costs, and these are some figures provided by the university or the industry or some outside source. Use your own costs and stick by them. They are better than anyone else's.

4. Become knowledgeable of the industry in which you're participating. Know the industry's costs, returns, and profit picture. Understand supply and demand to the best of your ability. Find out if

the processor is making money, then perhaps you can get part of this for your members. Know the entire position of the processor concerning supply, factors in production, and problems

A situation developed where the processor in our local beet industry needed beets from a distant area to operate its factory efficiently. If the local board hadn't understood the needs of the distant group, I'm sure we wouldn't have the beet industry in Ohio today. Otherwise, there would not have been enough beets for the company to operate economically. So you're not only representing yourself but all growers throughout the production area, and sometimes, the industry itself.

5. Have the whole board or committee in on the negotiations for a particular processor. If a board represents growers for several processors, just have the members selling to that particular processor do the negotiating. The more people representing farmers, the more farmers and producers you're going to have informed. My own feeling is that it is not too many to have 15 or 20 people in the negotiating process. One of the problems that bargaining associations have had is not keeping their grower members informed. What better way can you have than to have them in the actual selling or bargaining process?

During the negotiation season, there should be no individual contact between the processor and the president or employee of the organization, assuming the president or employee speaks for the entire organization. Any contact should be made formally between the processor and the entire board. We have often had some undesirable experiences where the president in representing the board tried to make some progress with the processor. Usually there is dissension brought about and some hard feelings if this is done. The processor should meet with the entire board.

6. If possible, deal with the person on the processor's side or group who can make the decision. As many of you know, you usually deal with the field personnel or the outside personnel who have to go back to the company or to the processor and discuss it.

7. You may think I'm out of place by mentioning this, but watch the consumption of liquor during negotiations. A friend, who has been in negotiations, says that if he had his way there would be no drinks during bargaining.

8. Forget the nasty remarks during the negotiations. The same should be true for the processors. If there is anything that sticks in the minds of either the processor or the grower, it is some nasty or uncalled-for remark made by the opposite side during negotiations.

9. Have all members approve or disapprove the contract, not just the board. If the board does approve the contract, then go to the total membership. As I've mentioned earlier, the big difficulty in the bargaining process is not having the growers involved or informed.

10. An employee of a bargaining association, whether it be the manager or the executive vice president, the secretary, or whoever the employees may be of the association, should provide information but make no decisions. They are the educational arm or information gatherers for the marketing association and should usually not be involved in the debate during the negotiations. A participating board is much stronger for the total membership than one individual or employee doing the bargaining.

Many processors have said they wanted to deal directly with their farmers and not have a third person or organization being involved. So have the grower producers do the bargaining and have their employees provide accurate up-to-date information needed in the bargaining process.

11. When a grower enters the bargaining process, he feels he must plant the crop. I realize a big power tool growers have is "strike" and not grow. But my observation has been that strikes move the entire industry or factory and growers' association backward. In our experience in Ohio, when there have been strikes, the bargaining association loses membership; the company develops bad feeling and its costs increase; and growers become dissatisfied with their bargaining association and, almost at all costs, come to an agreement. Striking is your power but realize the damage that can be caused by not reaching an agreement.

If the board or entire membership makes a decision and accepts the contract, then the farmer himself can make the decision whether to grow the crop at the agreed terms.

Canadian Vegetable Producers Obtain Term Contracts For Production Security

Hank Vander Pol
Chairman
Ontario Vegetable Growers Marketing Board

Marketing boards have been a reality in Ontario's agricultural community for many years. They operate under Provincial legislation.

The concept of agricultural marketing boards originated in the early and mid-1930's when a Federal act was passed to allow setting up of marketing boards in Canada. For constitutional reasons, this particular approach did not suffice, and by 1937 the Provincial Legislature in Ontario and similarly in British Columbia passed Provincial legislation to allow marketing boards for agricultural products to be established in those two Provinces. Ontario's legislation is most commonly called the Farm Products Marketing Act. It has been amended many times, even as late as December of last year. It and its predecessors have allowed the marketing of agricultural products in Ontario to be brought under marketing boards of many types.

Twenty-one marketing boards are operating in Ontario for agricultural commodities. These 21 marketing boards represent 60 percent of the dollar value of all the agricultural commodities produced in the Province of Ontario. This represents about \$1.6 billion of product moved through marketing board channels and produced by 83,000 growers.

The Ontario Vegetable Growers' Marketing board, which I represent, represents some 2,500 producers of 12 vegetables for processing. Our particular marketing board is the second oldest in the Province of Ontario and represents the most diverse group of commodities in Ontario. Basically, four types of marketing plans operate in Ontario:

1. Promotional Plans authorize collection fees from producers so they as a board may conduct various types of marketing promotions and do market research for producers when required.

2. Agency Plans allow price setting by the particular marketing board representing producers. In Ontario, eggs, turkey, wheat, dry edible beans, and chickens have agency plans. Prices are established in relation to market demands. In the case of eggs, turkeys, and chickens, refined cost of production formulae are maintained and are updated by computer facilities to assist these boards in their pricing actions.

3. Auction Plans operate an auction service for producers of a particular crop. The main example is the tobacco industry in Ontario.

Both flue-cured and burley tobacco products are auctioned through a dutch clock auction facility that brings together the buyer and the producer of the particular tobacco commodity on a regular and ongoing basis throughout the winter.

4. Negotiating Plans allow for annual negotiation of minimum prices between producers and buyers as well as terms and conditions of sale for the particular commodity for which prices are negotiated. The Ontario Vegetable Growers' Marketing Board provides growers input into the negotiation of price and terms and condition of sale for 12 vegetables for processing. Each year, we establish negotiating committees composed of six members representing growers and processors for each particular commodity. They sit down in the winter to determine price, terms, and conditions of sale for that crop for the coming year. Once these terms and conditions and prices have been established, they are the standard for the Province and all producers and processors of any one of the commodities is required to abide by these terms and conditions. There are no exemptions other than for the processors who are vertically integrated and grow their own commodities. Vertical integration is mainly a concern to growers in the pea and sweet corn for processing markets.

Contract Security for Growers

Over the past several years, many growers of vegetables for processing, especially tomato growers, have expressed increased concern over their inability to plan for any period of time because contracts for these crops are on an annual basis. This concern is a result of ever-increasing costs of doing business, especially in the areas of fixed capital investment for housing of itinerant labor, new machinery, and the like. Another reason for this concern has been the relative deterioration of viable alternative crops.

Many growers of vegetables express a genuine concern about their ability to be in the vegetable-producing business the next year. They fully recognize vegetables are a profitable enterprise and as such they are very concerned about maintaining their particular status in this industry. For several years, our board has had resolutions at annual conventions to the effect that it ought to make a conscious effort to develop a production control system for vegetables to assure growers long run participation in the industry. One of the pragmatic problems our board has faced is the unpopularity of any type of production or marketing control quotas in the food supply system. This type of control has been severely criticized by the consumers' associations in Canada, as well as by many Government agencies that feel this type of control in the hands of producers unreasonably enhances price. That is an issue I would prefer not to belabor beyond saying arguments can be put forth on both sides.

With this type of background, our board sat down to try to develop some form of alternative system that would allow our growers the type of

security they required vis-a-vis the continued operation of their business in the vegetables for processing industry. The first step in this process was to consult with the farm products marketing board, which is the Government agency supervising all marketing boards in the Province of Ontario operating under the Farm Products Marketing Act. For there to be any change in a regulation of board or in the plan that our board operates under, it is necessary for us to get approval of this particular supervisory board. The concept of contract security was discussed with this particular board, and the principle was accepted as being a feasible alternative to quotas. At this point, the committee of our board saddled with the responsibility of putting this plan into effect called on our processor contemporaries to discuss the particular proposal with them and ask for their comments. It took close to 9 months of active negotiation with processor representatives to come up with a plan that is acceptable, reluctantly, it is fair to say, to them. It is our opinion this particular plan effectively gives the kind of security our growers have asked for and similarly does not burden the processors and their industry unduly to the point that we as a board are restricting the orderly transition of the industry to larger more efficient units of production at the raw products level.

The backbone of the contract security proposal is a 3-year term contract that growers must have offered to them by their processor for a pro rata share of that processor's annual requirements. What this means is that a grower is entitled to his fair share of his processor's requirements in any given year provided he has lived up to his particular part of the annual contract related to the terms and conditions of sale of that commodity for that year. Processors must offer these term contracts to growers, however, if both parties mutually agree with a representative of our board, they may be allowed to waive this term contract agreement. But it should be stated that if some of the growers for a particular processor waive this arrangement and others do not, then if there is a cut-back in acreage requirements or product requirements for a given year, then those growers automatically have their contracts terminated and their acreage is absorbed by those growers that have term contracts.

The whole plan is based on a base-year concept, which in this particular instance is 1976. New and additional acreage, or tonnage required, can be distributed at the processor's wishes to whomever the firm desires. The benefit of this kind of arrangement is that it allows for an orderly transition to new growers without burdening the industry with the cost of quotas or production controls or some form of an allotment system.

The contract security regulation of our board also allows processors to move, for reasons of their own, from production area to production area as long as all growers in that particular production area are treated the same. The regulation also allows for growers and processors, if they mutual agree, to waive the growing of a particular crop for any given year. The reason is that some crops like peas must be rotated in our particular part of the country. And there are cases

where growers do not have the land base available to rotate every year. Therefore, from time to time they must take a year off from growing a particular crop on their farm.

If there is a violation of the regulation, there is in the regulation a specified form of arbitration to allow resolution of most conflicts that might arise from the application of the particular regulation.

After 1 year of operation of this particular regulation, it is fair to say that with only minor exceptions processors have lived with the regulation and have tried to apply it as equitably as possible to their own particular situation. Until this point, there has been no need to change the rules of the regulation to plug loopholes. However, it is fair to say that it's likely loopholes will appear and that these will have to be dealt with. The processing industry has considered this particular alternative as being the most desirable in assuring some form of continued orderly supply for them and a continued orderly market for the grower who has done a responsible job of producing vegetables for a period of years.

It is unreasonable to expect that all growers or all processors will be satisfied with this type of arrangement. We still have a component within our grower community that wants quotas or production control, I suspect mainly as a form of a retirement fund, rather than as a form of security of livelihood.

Similarly, in the processing end of our industry, some processors would like to disband the marketing board and all the regulations that go with it under the pretense that the board creates an environment that is not competitive on an international basis.

Marketing boards are around and will stay around for many years to come in Ontario's agricultural community. Suffice it to say that the majority of the processors in the industry recognize that as far as raw product prices are concerned they are not required to compete with their fellow processors. Suffice it to say also that growers of commodities are assured that as long as they make only reasonable demands from the marketplace, they will be assured of a market for their commodities at reasonable prices.

Ontario's marketing legislation has stood the test of time despite the fact that significant challenges have been made. As recently as last summer, a group of dissident sweet corn growers challenged the legislation, and in fact got a supreme court ruling in their favor. As I said earlier, the act has been amended as recently as December 1977, and the amendments at that time were directed specifically at plugging the loophole that these growers had found and exploited.

The main concern of marketing boards ought to be the commitment from the legislators that they are in fact reasonable entities to have in the economy of a Province or State or Nation. Marketing boards would be

ineffective in Ontario were it not for a real commitment by the Government of the Province to see to it that these boards do have the proper type of legislation to operate under. This does not mean absolute autocratic authority to dictate to the industry or to society as a whole. What it simply means is a system of enabling legislation that allows for more orderly marketing of agricultural commodities with sensible external supervision and monitoring.

Dairy Bargaining Is a Multidimensional Exercise

Gary E. Hanman

*Executive Vice President and General Manager
Mid-America Dairymen, Inc.*

How we market milk today is somewhat conditional of what has existed in the past. So let's go through a brief review.

Milk, compared to other agricultural commodities, is almost universally produced throughout the United States. It is an agricultural commodity with relatively long supply response to price change. In other words, when prices go up and the market signals a need for more milk, it takes at least 3 years before we get more milk. That's the biological nature of milk production. It takes 3 years before a dairy farmer can bring into production a milk cow resulting from a breeding program designed to increase his milk flow.

On the demand side of the milk industry, we really have two markets, about equally divided. We have a fluid milk market and what I call a hard goods market--butter, nonfat dried milk, and cheese.

These two markets have different demand curves. They respond differently to different changes in price. Dairy cooperatives and their farmer-members strive to increase demand in both of these markets--through dairy product advertising and promotion, nutrition education, and product development through United Dairy Industry Association and American Dairy Association. We have also attempted to modify the quantity of supply offered for market by dairy farmers through various "base plans." These base plans have been administered under terms of Federal Milk Orders, and in some instances have been cooperatively administered. But in both cases we haven't been very effective in controlling supply.

So most of our bargaining activity really has been centered on the fluid market. One-half of our total market is fluid milk, so that's where we have really concentrated our efforts.

Dairy farmers in the early 1900's recognized the demand for fluid milk was relatively inelastic, and increases in price would not cause proportional decreases in sales. So our first attempt to bargain was to take advantage of this inelastic demand through a classified system of pricing--where we attempted to obtain higher prices in the fluid market than could be gained in the market for hard goods. Early attempts to enforce a classified system of pricing through joint action were relatively ineffective, primarily due to the inability of cooperatives to control the supply of milk offered to fluid milk users.

Accordingly, in the early 1930's, cooperatives turned to the Federal Government. When the Agricultural Marketing Agreement Act was passed in 1934 and amended in 1937, that legislation provided for Federal milk orders. These Federal orders established not only prices based on how milk was used but also provided a system for segregating these markets. This is the system we refer to as our classified system of pricing under Federal orders.

Our next attempt through the years to do something about prices occurred in 1949. We were able to get a price support bill passed by Congress and signed by the President. This legislation authorized the Secretary of Agriculture to establish a support price for milk, and that these prices would be paid to farmers through purchases by the Commodity Credit Corporation for hard goods that were in surplus and could be stored. CCC would step into the market and take butter, nonfat dried milk, or cheese, helping us level out peaks and valleys in demand and supply. This basic legislation provides some underpinning for the entire pricing structure of milk throughout the country.

In the 1940's and the 1950's, we saw that on the fluid side half of the people we supplied with fluid milk were really destroying our own local market concept by consolidations, merger, and acquisition of operations in distant markets. We saw the development of large regional dairy chains such as Sealtest, Carnation, Pet, Fairmont, and others. Together with improvements in the economy, better roads, better refrigeration, and probably more important than all the others--one-way packages including plastic coated paper and then later plastic bottles . . . these developments really showed us we didn't have local fluid markets . . . that we really had to become national on the fluid side as well as on the hard goods side.

Reacting to this change in our markets in the early 1960's, dairy cooperatives formed federations or common marketing agencies so groups of cooperatives could bargain with handlers that had become regional or national in scope.

The two federations I am familiar with are those in the Midwest -- Associated Dairymen and Great Lakes Southern Federation. These federations of fluid milk cooperatives attempted to bargain with handlers.

As a result of some successes in these bargaining activities, and the need by farmers belonging to these cooperatives to share the benefits as well as the cost of surplus milk, some of these cooperatives went one step further and merged, actually creating new cooperatives out of these federations. So we had a series of mergers and consolidations in the late 1960's. Out of those grew Associated Milk Producers, Mid-America Dairymen, Dairymen, Inc., and an expanded program at Land Q'Lakes, Inc. Just recently as of January 1, we have Milk Marketing, Inc., in Ohio.

All this activity really is an effort to broaden the base of the fluid milk cooperatives so they have a counterbalancing bargaining position with the people they are trying to bargain with on the fluid side, and be as multimarket in their approach as the fluid milk handlers are. Together with that, these cooperatives are also trying to build a base for handling Grade A milk that can't be bottled, as well as the manufactured milk that moves off the farm. Not all dairy farmers' facilities are eligible to produce Grade A milk for fluid. Some of them produce manufacturing grade milk. Through these mergers, these cooperatives have developed another part of their cooperative in manufacturing and marketing these hard goods, produced from surplus Grade A and nongrade A milk.

This is the background that led us to where dairy cooperatives are today. Intermixed or interwoven throughout has been the heavy or fine hand of Government, depending on which way you look at it.

First, we know the Government of the 1930's and the Federal orders, then came the Government of 1940's and the price supports. We are talking now about some bargaining legislation to enhance our bargaining position. We are involved also in the international situation as are the people in sugar. Worldwide, we have a surplus of milk and dairy products, and dairymen in other countries would like to sell products to the United States. We are concerned about Government import quotas and regulations that would give some of our markets away to foreign countries. We are concerned about the wholesomeness, such as the Food and Drug Administration proposal to change the formula for ice cream so ice cream manufacturers would not have to use domestic sources of milk but could use imported casein instead.

What I'm saying is that cooperatives today bargain in the fluid milk market, we bargain in hard goods market, and to some extent we bargain in Government.

To relate how these bargaining requirements apply to a cooperative, I shall outline some of the ways we bargain at Mid-America Dairymen.

We are a regional cooperative whose development parallels the historical development of dairy cooperatives. Mid-Am is a good example of how cooperatives bargain today. We have a lot of large fluid milk plants distributing milk to major markets. Handlers may call on us to deliver 30 to 35 million pounds of Grade A milk per month. But they don't want it 7 days a week as our farms produce it; they want it 5 days a week because of provisions in union contracts. So, it's up to us to handle that 2 days' production, put it in our plant, silo, or holding tanks, and then deliver it based on their 5-day needs. On Wednesday, they may want nothing and the next day they may want 1 1/2 million pounds. Further, they'll generally want it on their schedule--unload one load at 6:00, one load at 7:30, 8:30, 9:00, 10:00, etc.

Many handlers look to us to supply their total milk needs. All of the costs associated with that milk supply are ours. We handle all of the member relations and quality control and supply problems connected with supply and handling. We have 186 fieldmen working for Mid-Am traveling to dairy farms throughout our area working on quality and delivery problems. We run our own quality control laboratories. We do all the volume determination, do all the butterfat testing work, and establish the price basis for selling members' milk to handlers. We do all the payroll work for members and write all the milk checks.

So the handler basically has said: We want a supply; you go get it from your members. And we have gone to our members with this field service program to get it. Last year, 1977, throughout Mid-Am this field service program and this guaranteed supply cost Mid-Am, our members, about \$13 million or 26 cents per hundredweight on our volume. That's what it cost us to have that market assurance capacity. Therefore, we must price our milk to get cost recovery. Because we are dealing with all handlers in the major market, we can do it more efficiently than if each one was trying to do it individually. We collect a fee from handlers for providing this guaranteed market assurance, called overorder premiums or in some instances called a service charge. Last year, 1977, we collected about 28 cents per hundredweight on the average throughout Mid-Am for all of the milk supplies to handlers. This did generate margins as far as Mid-Am was concerned--about a \$1 1/2 million to \$2 million saving for us.

In Wisconsin, 40 miles east of the Twin Cities, we move milk directly to Miami, Fla., in 24 hours. Yet there is only about a 1 1/2 degree rise in temperature for milk from the time it leaves Upper Midwest until it reaches its destination in Florida. So if we think we have a local market, we're just kidding ourselves. And we're not the only one moving milk long distances because of roads, technology, and so forth.

So it seems to me that if you're going to bargain, first you've got to have regional cooperatives affiliated on a large basis so you have agencies in common to guarantee handlers a sufficient supply of milk and be on a competitive par with them.

We're just like the fruit and vegetable people from Michigan who have to compete with alternative supplies. We don't have it all. Mid-Am has only 6 million pounds of milk, less than 5 percent of national production. So we are not any way large when you look at the total. These alternative milk supplies exist and they will move because better technology is there. So we have to have pretty good information relative to what prices are around us. Our ability to bargain somewhat depends on what somebody else is going to sell for, plus the cost of freight to get it there.

We perhaps have gone through the transition of most of the dairy cooperatives in trying to determine whether a cooperative is a bargaining cooperative or an operating cooperative. We used to

characterize a cooperative as either operating or bargaining. If it were bargaining, it bargained basically with fluid milk handlers. If it were operating, it ran plants, and bargained on the hard goods side. Over time, with technology, mergers, and loss of the local market concept, most of us have become a little bit of both--bargaining and hard goods manufacturers. This certainly is true of Mid-Am.

So in structuring Mid-America Dairymen, we have recognized this dual function in our operating structure. We have in Mid-Am really three operating groups. Our profit and loss statements are set up that way; our costs are assigned that way. We have the bargaining market function of Mid-Am; which is for Grade A and all fluid costs associated with procurement. Quality control, and even Government relations, is cost-centered against that fluid side. People in the fluid group must cover their own costs. And when they don't sell their milk for Class I, or fluid handlers, they sell through Mid-America Dairymen manufacturing.

We operate 20 major manufacturing plants throughout the Midwest, making a full line of hard goods, all the way from baby foods, butter, nonfat dried milk, cheese, dehydrated cheese, etc. That is a bargaining function in itself. There is inhouse bargaining in Mid-Am between the operators of the fluid milk side and the operators of the manufacturing side of Mid-Am. They bargain with each other on what Grade A surplus milk is worth. So some of the producers' milk check comes from those manufacturing plants. The people who run the manufacturing plants are required to have a profit on sales. They're rated on effectiveness to handle all the milk members want to produce. That's the only responsibility that group has is to run these plants. After they have made something out of milk--butter, powder, cheese, or whatever--it's marketed through another group of people called Mid-America Farms, the hard goods marketing arm of Mid-America Dairymen. They pay the manufacturing group of Mid-Am market prices for dairy products produced. They pay weekly settlement prices (which are market prices), stand their own costs, and if they want to speculate and store and hope the market will go up, that's their prerogative. They must cover warehousing, transportation, sales, and marketing costs, etc. They are responsible also for bottom line profit.

So we have within Mid-Am this bargaining effect. We have inhouse bargaining between fluid and manufacturing, inhouse bargaining between manufacturers and the hard goods marketing arm, and on the fluid side we bargain with others who bottle. I think it's significant that some dairy cooperatives have gotten large on the bottling side. They are in fact also bargaining with themselves. Dairymen, Inc., is an example.

We think the effort with Government is really bargaining. In the 1970's, I spent some time in Washington, D.C., trying to do something about the plight of the farmers. Imports were flooding us. Prices were low. We were up there beating the halls just like the sugar beet growers were this last time. We wanted some improvement in price levels. We found labor was heard but not seen. Looking around, we

found some of these people who had been elected to Congress had looked to labor and other groups for financial support when they were candidates for office. So we went back home at Mid-Am and asked our members if they would be willing to put some money in a voluntary action program, just like labor. And they did, surprisingly. On the first call, better than two-thirds of those dairy farmers we called on gave \$100 a year. So we started a political action program called ADEPT. That program opens some doors so you can be heard. I think the farm bill we've got puts milk in relatively good shape. I don't hear of very many dairy farmers being involved in the American agricultural strike movement. Not many dairy farmers are involved because they realize they've got a pretty good deal right now.

We are involved in negotiations concerning ice cream. This matter is an example of having some political clout in getting Kennedy of Food and Drug to change his mind on the recipe for ice cream.

We have the same general experience in our Government relations the sugar people have had. If you talk with some of these urban Congressmen, they realize that in the long run they're going to have to have a viable domestic agriculture if they're going to have food on the table. And so you will get a receptive audience from people who live in the cities. Don't anybody tell you farmers can't talk to urban Congressmen. But you've got to be realistic.

I have to believe the true strength of Mid-Am and most of the fluid milk bargaining cooperatives stems from our manufacturing facilities. We have a commodity we must market every day. It's perishable. We've got to do something with it, either sell it or smelt it, they say. So unless we can convert that fluid milk, that perishable commodity, into something we can store, we really have no marketing power.

Dairy farmers through cooperatives have invested huge sums of money in brick, mortar, and stainless steel in plants to do something with this fluid milk they can't sell. Farmers in Mid-Am have invested more than \$40 million in plants.

Just the fact we can divert the supply and make it into something we can store gives us added market strength. Our true ability to bargain is our strength in these plants. We have alternative use for that product using facilities owned by the cooperative. Any successful cooperative venture in milk bargaining will rest on these plants. That's how we bargain and why we bargain in Mid-Am. We basically bargain today because of programs developed over the past 50 years. And these developments probably will speed up over the next 10 years.

Cooperative Commodity Organizations and Bargaining: A Book I Was Going to Write

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There has long been a need for a "How to Do It" book on commodity bargaining. I had planned to write that book shortly after I retired as president and general manager of the oldest commodity bargaining association in the United States. I felt a book on the nuts and bolts of commodity bargaining would have a good audience. It now appears I won't write that book. The limited market and no financial rewards overcame the gratifications that would be associated with being an author.

I have given much thought to what such a book should contain, and my thought processes have stimulated some ideas I would like to share with you.

Cooperative bargaining for commodities has become an important and valuable tool for many farmers. It has grown from a few associations in the 1920's to many groups today. It is an acceptable and recognized form of price discovery for farm products. Its recent growth has been stimulated in large part by the concentration of buying power among the commercial handlers, processors, and retailers of food and fiber. It has become the farmer's means of equalizing his power with the enormous economic leverage of industrial processing conglomerates and the nationwide food chain systems with their billion-dollar annual sales.

Cooperative bargaining has become a sophisticated system that calls for skilled management and well-advised farmer-directors. A book on cooperative commodity bargaining should describe what it is. Surprisingly, there is no standard definition. It is more than price bargaining alone. Many commodity organizations are not involved with price negotiations that would, in my book, qualify as cooperative commodity bargaining associations. During the past 2 years, I have worked with the producers of grapes and citrus to form commodity associations. Price bargaining was not one of their activities, yet their work was directed toward establishing a better climate for the prices and terms of sale of their commodity.

For many years, the California Tomato Growers Association did not bargain for price, yet they were a most effective vehicle for enhancing grower prices through information on markets, on crop potential, on labor supplies, and developing uniform grade standards.

Common threads identify cooperative commodity associations, such as the need to achieve reasonable returns to growers and fair terms of sale, whether price bargaining as such is involved. Winegrape growers in California, for example, have long been offered market price or reference price contracts for their grapes. For years, the processors failed to finalize their prices or terms of sale until some 7 months after the harvest. Imagine the opportunities for mischief, and the benefit to the processors of working on grower money, and the hedging that the processor could do to protect him from his competitor.

I have found that each commodity is influenced by different factors. Each has its own fingerprints. No two commodity prices are influenced in exactly the same manner. A case in point is peaches grown in California. Cling peaches have but one market--a processor. Freestone peaches are marketed to fresh shippers, to dryers, to frozen packers, and to processors.

What is a surplus in one commodity may be diverted to another market for another commodity. The number and the extent of market control held by individual handlers and processors varies from commodity to commodity. The variables and the complexity of the market in fruit, nut, and vegetable crops are among the reasons that many of the commodities have made use of market orders and agreements.

A fresh vegetable grower-shipper has a completely different marketing style than grapes, for example. These differences in market characteristics that influence the prices growers receive is why direct price bargaining may not always fit each commodity. A cooperative commodity organization, however, can be highly effective. It can be structured in such a way that grower returns can be enhanced or stabilized, or generally improved.

There is, in fact, a great need for cooperative commodity organization. Our Government structure is such that it is not equipped to deal with an individual citizen, whether he is a farmer, or manufacturer, or truck operator. The same is true, but to a lesser extent, with the buyers of farm commodities. An unstructured market is always the first one to be exploited. The arbitrary "take it or leave it" buying philosophy that exists in an unstructured commodity market makes the farmer a captive with little to say about his business. This need has existed for many years, but with the growth and concentration of power in the hands of fewer and larger buyers, the need is even greater today.

This, added to the farmer's declining political clout and the rise of consumerism, often led by self-annointed leaders with little or no knowledge of the business of food and fiber production, makes it imperative that producers organize themselves into cooperative commodity organizations.

The need for organization was recognized 63 years ago, when the Sherman Antitrust Act was amended by Section VI of the Clayton Act, which ostensibly assured labor and agricultural associations of the right to act without antitrust violation. Later, in 1922, the Capper-Volstead Act made it clear that the elimination of competition between individual producers, which occurs when they act together through cooperative association, would not, in and of itself, violate the antitrust laws. This was intended to resolve any doubt regarding the right of agricultural producers to act through their cooperative associations to handle and market their products.

If there were a need 50 or 60 years ago, there is even a greater need today; particularly, when recent administrations have appeared to be unwilling or unable to control the effective oligopolies in food processing and retailing. More and more, farmers are forming cooperative commodity and bargaining associations. The farmers' strike is a manifestation of this need by farmers to deal with their marketing and price problems through their own organizations.

There are fewer and fewer "general practitioner" types of farmers. Today they are specialists with sizable investments in specialized machinery to deal with one type of crop.

The grain farmer has little in common with a fruit grower except as to the method to improve his returns, to have better economic tools at his disposal, and better ways to use such tools, and better strategies and better tactics that have proved to be effective.

Both recognize the days of Government help are numbered. Both find they must rely on their own commodity institutions and organizations for muscle in the marketplace, for know-how, and for creating a good climate for the business of farming.

Both believe they have the legal climate, but are they maximizing the legal tools they now have? Both need to improve their positions. The unfair agricultural practices law needs to be strengthened. The Government's "cheap food policy" must be dealt with. Both need to make better use of group action by commodity.

No book on cooperative commodity organizations would be complete without reference to the important roles that people play--members, directors, and management. A successful organization is always associated with (1) strong membership support, (2) intelligent and able directors, and (3) skilled management. Weakness in any of these three essentials can spell failure.

It has been my pleasure to work with some outstanding men as directors--intelligent, no-nonsense types, who provided the essential leadership that led to success for the organizations.

What makes a leader? Here are the qualities I feel he must have: (1) integrity; (2) the ability to communicate; (3) intelligence; and (4) the willingness to devote time and energy to his position.

There is no greater handicap to a cooperative organization than a director or leader who is unreliable, who can't be trusted, or whose commitments are not honored. An inability to communicate can lead to misunderstandings and confusion. A low level of intelligence can be ruinous. Having a person on a board or a committee who doesn't understand or fails to comprehend slows down action and delays decision. Even more important are the frustrations created among his associates who resent the delays and the endless reviews needed to bring along a slow thinker. Directors or staff people with ego problems can often prove to be embarrassing. They will often remain on the job solely because of its prestige. They let it be known that defeat or removal is a grave personal insult. This inevitably results in hurt feelings and needless enmity that can blemish a record of many years of devoted service.

God bless the humorist who can insert a bit of humor at a tense moment. I have served farmers and farmer boards of directors for 33 continuous years. The most rewarding experiences have been with the people I have worked with. It has been a rich and fascinating experience in human relations.

Good leadership is essential if a cooperative commodity association is to succeed. The basis for success is easy to identify. Successful associations anticipate and recognize changes that will affect the organization. They have the ability to adopt and implement needed new programs and maintain the ones that work. They have the ability to impose the needed disciplines and do so when necessary. They are profit oriented--both long and short range.

Failure of an organization has its roots in poor management, poor leadership, lack of member support and no discipline. The inability to compromise differences between farmers often leaves more blood on the floor than the price bargaining with the customers.

I looked forward to writing a chapter on negotiation. Negotiation is an art. Recently, we have been exposed to some masterful negotiations in connection with the Mid-East problem. Not everyone is a good negotiator. This would be a long chapter, and I can only cover some highlights of this most important facet of the business of price negotiation.

Three basic considerations must always be present. First, there must be a willingness and a desire to reach a conclusion, to bargain in good faith, by both parties. If it is apparent that one of the parties is not prepared to negotiate, then obviously no results can be obtained. Some processors have employed the tactic of refusing to bargain in good

faith with responsible organizations. This tactic needs to be denied to such buyers through legislation that would require good faith bargaining with responsible commodity associations.

Second, the bargaining association must establish and maintain integrity and credibility. The negotiating process is enhanced if the other party has confidence in the ability of the association to live up to its commitments and to follow through on its statements. When the objectives of the association are credible, the chances of success are improved.

Third, a superior knowledge of the issues will often be the major factor in achieving an objective. Good negotiators have special skills that are natural, just as some people are natural musicians. There is a difference between haggling and negotiating.

Here are some of the qualities needed by a good negotiator. He must have:

1. Personal integrity;
2. Planning skills;
3. Knowledge of his subject;
4. Ability to think clearly under stress;
5. General intelligence;
6. Ability to read and send signals;
7. Ability to communicate both ways;
8. Ability to perceive and exploit power;
9. High aspirations and achievements.

On the subject of power--this factor is so often not understood and is frequently either badly abused or poorly used. First of all:

Power must be fully understood and perceived with respect to both the seller and the buyer.

Here are some important points to remember about power:

1. Power is relative; seldom does one party have complete power.
2. Power is like a two-edged sword--it can cut both ways. (Remember the saying: "He who lives by the sword, dies by the sword.")
3. Power may be very real or apparent--it's how it is perceived that counts.

4. Power is always limited.
5. Power can often be used without action.
6. Power exists only to the extent that it is recognized or accepted.
7. Power is easily abused, and when exploited can backfire with disastrous results.
8. Use of power entails risks.
9. Power relationship change, often with great rapidity.

An essential consideration in any negotiation is the proper use of strategy and tactics. Careful planning is extremely important when considering strategy and tactics. The important factors would include the following:

Timing--This is one of the most important to be considered. A careful analysis will often reveal there is an optimum time for negotiation to take place.

I have found that a propitious time for negotiation is not always a suitable time for the members. Careful planning and good communication can help alleviate this problem.

Patience--That's what the guy lacked who after a deal was made said: "If I had only waited a few more days." Or: "If I had only made a move when it first came up."

Use of Alliances or Associates--It is often surprising to find that you have many friends who have a mutual interest in the success of your negotiations and who are ready and willing to help.

Use of Decisionmaking Authority--Careful planning will help in deciding if your group or negotiator wishes to exercise its decisionmaking authority, or defer it to a larger group.

Threats--Idle threats with no intention or no ability to follow through turn negotiations into haggling.

Signals--The ability to accurately read signals and give out signals is extremely important. Reading body language, identifying subtle changes in strategy or position, are an integral part of the negotiating process.

Finding the Real Bottom Line--The negotiating process is largely involved with making this important discovery. Leaving something on the table (unless it is a strategy move) can be a devastating experience. If the other side has left something on the table, it is often best left

without comment. The toughest people to deal with are those who have been stung by their inability during a prior session.

Know the People and the Organization with Whom You Deal--Being able to think in the other person's terms depends on the knowledge of his aims, ambitions, and position in his company. If you win, don't rub it in.

Concessions and Trade-offs--Good planning will provide a guide for the trade-offs required and needed when concessions are made.

The Place for Negotiations--The location for negotiation can be mighty important. The atmosphere needs to be good and conducive to good feelings. The type of accommodations, the color scheme of the room can have a subtle but significant influence in reaching a satisfactory conclusion.

When agreement is reached, get out. Negotiations are often a severe strain. Prolonged discussions after a deal has been made can often result in more harm than good.

Bargaining and price negotiations place a premium on good communication. I had intended to devote a good deal of my efforts to describing this most important need. There are many constituencies that a bargaining association must be concerned over. The members, the trade, the customer, the public, and the Government agencies directly and indirectly concerned with our activities. Each requires a little different treatment. Telling your story accurately to each can be the lubricant that leads to smooth negotiations.

We must remember that everyone wants a fair advantage. You, the customer, and the trade; each may have a different perception of what is fair advantage. Farmers can achieve a fair advantage by using good communications, good planning, skillful negotiations, and a superior knowledge of their product and its markets--all with good patience.

I find it rather difficult to discuss the subject of cooperative commodity and bargaining activities without commenting on the farmers' strike. I think that people who organized this effort deserve a vote of thanks for bringing to the attention of the American people some of the problems faced by U.S. agriculture. They have successfully conducted a series of media events that got attention from the press. Such demonstrations are nothing new. Two hundred years ago, some New England farmers and merchants put on a demonstration with some tea in Boston Harbor that led to a change in the course of world events. More recently the people who were opposed to the Vietnam war had a major impact on American policy and virtually drove the President from office.

I have talked about the importance of tactics and strategy, and here's an example of a successful tactic. I am not aware of the planning that is associated with the effort. Many western farmers who

don't grow the basic crops are wary over an objective that seeks 100 percent of parity. They like the idea of receiving parity price, but today's Government is so structured that the trade-off associated with Government payments may be surrendering more freedom than they are worth.

They ask: "Would payments be made to farmers that will be based on other things than farmers' productivity? Would they be used to start or to seek a new social scheme? Besides, is it practical to expect the American taxpayer to pay the bill?" Are there enough urban Congressmen who would vote to do that? Frankly, I doubt it.

The politicians are responding with clucks of sympathy and understanding. They are receiving the signal that farmers are frustrated and angered, but I haven't heard anything beyond a clucking noise. If I think like a politician, I'll conclude that this will all go away and that farmers won't strike, they can't afford to, and besides, they've never been together on anything yet.

But the momentum has been started. We've received some attention. I would hate to see it dropped. It is always harder the second time if you haven't succeeded the first time. I believe American farmers are frustrated. But the real enemy of the American farmer isn't the lack of Government policy at 100 percent of parity. The real enemy is the cheap food policy of our Government. A policy that permits and encourages and abets increases in wages, petroleum, steel, chemicals, transportation, energy, everything but farm commodities; a policy that finds the Department of Justice accusing cooperatives of unduly enhancing prices; a Department that for years has been unwilling or unable to control the effective oligopolies in food processing and retailing. Here's a quotation from a Department of Justice submission to the House Judiciary Committee: "These changes, particularly in today's context of rising food prices, suggest the need for Congressional re-evaluation of antitrust immunity for cooperatives to determine, among other things, the degree to which the activities of cooperatives enhance food prices, to determine whether some size limitation should apply to cooperatives so they do not dominate national or regional food markets, and to determine the effect of vertical integration by members of cooperatives in the processing as well as the size and functions of individual members."

That's a manifestation of a cheap food policy just as is the Department's recommendation that the marketing power of milk cooperatives and milk bargaining associations be tempered by amending the Capper-Volstead Act to prevent further mergers or to bring about antitrust actions against milk cooperatives.

Further evidence of tilt against agriculture can be found in the action of the Federal Trade Commission criticizing the closeness of marketing cooperatives and State and Federal agencies such as marketing orders and advisory boards. The FTC action brought against Sunkist

seeks to weaken its marketpower. Citrus growers in California and Arizona will tell you it isn't sufficiently strong to achieve prices that can return cost of production to California-Arizona producers of citrus.

This is a costly and unfair burden to impose on these growers who are trying to help themselves through cooperation and self-help programs, which at one time were a part of the basic agricultural policies of our Government. Westerners are aware of the anti-agricultural policy of the Government when they see the efforts of the Department of the Interior to institute a land reform movement by undertaking to impose a 1902 acreage limitation law that has never been successfully imposed since it was passed. It makes as much economic sense as it would to require all farmers to go back to the use of horses for drawing farm equipment.

Added to these examples of the tilt against agriculture are the myriad costly nonproductive rules and regulations being imposed by the big brother crowd, like OSHA, EEOC, EPA, CPSC, FDA and BTAF. It's small wonder farmers are frustrated. There is even some evidence the Department of Agriculture has become lukewarm in its handling of marketing orders and agreements. The Secretary is now fighting off the vultures from Interior and FDA who want to take over historical USDA functions. The State Department has an historical record of an anti-agricultural bias. Research funds at State universities are drying up and a new direction toward social issues is taking the center stage in our land-grant colleges. The zealous regulators, the bureaucrats, and Government agencies have an ideological animus against the private sector, production agriculture in particular. They believe that a planned economic system would create a superior way of life. They particularly detest the individualism so characteristic of the American farmer.

Yes, I believe we have much to demonstrate and protest about, and it all boils down to the cheap food policy of this Government. I believe that is something agriculture can reverse. It's an issue that is vital. It's an issue every farmer and his allies in the food system understands. Most important of all, it's something a politician can do something about without increasing taxes, without passing new laws. Farmers and their allies make up a stronger constituency than those Americans who see profits as a rip-off and who have the ideological bias against the private sector that has made America great.

I liked what Arthur Burns had to say in a speech he recently made at Founders Day at Gonzaga University. He said "Profits being earned by American business are at an unsatisfactory level. It is both striking and disturbing, I believe, that profits get relatively little attention these days from economists. I have the impression that the economic profession has almost forgotten that ours is still predominantly a profit-motivated economy in which to a very large extent whatever

happens or doesn't happen depends on perceived proper profit opportunities. Certainly the preoccupation in the Nation's capital tends to be with other matters. The slightest hint, for example, or emerging trouble for the economy, will promptly unloose a flood of fiscal and monetary proposals virtually all predicted on the notion that what is crucial is Government manipulation of aggregate demand. Seldom does anyone pause to ask a compellingly obvious question--namely, whether lack of confidence in profit opportunities on the part of our profit-oriented businessmen and investors may not be the essential cause of difficulty."

Let's make sure the response to the farmer's strike, if any is made, does not result in further Government manipulation, when what we really need is a change in attitude and policy combined with a sympathetic and understanding execution of regulations in the place of the often arrogant and thoughtless bureaucratic administration with its biases against our agricultural system.

Bargaining Association and Processing Cooperative Relationships



Bruno A. Filice



Robert E. Collins



John H. Kautz



Jack L. Sullivan

Cooperative Saturation Near In the California Processing Industry

*Bruno A. Filice
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As background, I shall first describe California Cannery & Growers and our relationship with the bargaining cooperatives with which we are closely associated.

California Cannery & Growers was founded in 1958 when a group of growers led by the California Canning Peach Association, as well as other bargaining groups, purchased two large independent California canners to process and market yellow cling peaches, pears, freestone peaches, apricots, cherries, figs, tomatoes, spinach, and asparagus. Sales were \$53 million. Since that time, three additional independent canners were purchased and, with internal expansion in California and Wisconsin, sales are planned to rise to about \$240 million in the current fiscal year.

We are a single-pool cooperative composed of about 800 active grower members in California and Wisconsin. In other words, all the net proceeds above the established raw product value are pooled and allocated to all the commodities on an equitable basis.

We have a board of directors consisting of 25 people, 20 of whom are grower members elected by the membership. We have five at-large directors elected by the board of directors. One of the at-large members is our president and chief executive officer. Professional management is structured along the usual corporate lines, with a president and chief executive officer and supporting vice presidents, all of whom are professional managers.

Wisely, the original board of directors set a measure for success for the cooperative at earning an average of at least 15 percent above raw product value. Since 1958, we have averaged about 17 percent--eliminating the cyclamate disaster that the industry suffered in the late 1960s.

In addition to canning the major fruit and vegetable commodities in California and Wisconsin, we manufacture our own cans through a jointly owned can manufacturing company with Tri/Valley Growers. We also operate trucking and cold storage facilities.

We are the largest fruit and vegetable canning cooperative in the world--and we intend to continue to grow.

We recognize--and strongly support--the bargaining cooperatives that represent our commodities. In fact, we strongly encourage our members to belong to these groups. To this extent, we pay the dues of those Cal Can members who belong to the bargaining associations. And, until recently, we were the only canning cooperative that followed this practice.

We have this close relationship with the California Canning Peach Association, the California Canning Pear Association, the California Freestone Peach Association, the Apricot Producers of California, the California Asparagus Growers Association, and the California Tomato Growers Association. All of these are sturdy, viable bargaining cooperatives doing a splendid job for their grower members. And, about 90 percent of our members are active members of these bargaining cooperatives.

The bargaining effort in Wisconsin is just now getting off the ground floor and has not been as effective as in California. A great deal of additional work has to be accomplished, I feel, before this effort becomes viable and effective. We are supporting this organizing effort in Wisconsin.

Many times I hear these questions asked: Why should a member of a processing cooperative belong to a bargaining cooperative? What good does it do?

Our position is that it is important that our members have this dual membership. Both groups need the strength in numbers, as well as the financial backing this supplies. Support of bargaining cooperatives is the sure way our growers have of assuring themselves a fair market price for their crops, as we see it. Many other programs need the full support of all growers of a given commodity. Programs such as legislation, marketing orders, export policies, labor relations, and so on; programs aimed at reasonable tonnages to meet demand from year to year--all these need full grower support in each commodity. Only through the strength of numbers will objectives be met--year to year.

And now for my assigned subject. This topic, "Saturation of the Processing Industry by Cooperatives," does not reflect accurately the true situation nationally. The food processing industry is not yet truly saturated by cooperatives. In some areas, and in some commodities, however, that situation is now being approached.

California is one of those places. We have three cooperatives canning fruits and vegetables in this State. Another is now being formed.

Once that fourth cooperative is operating in 1978, more than 40 percent of California's canned cling peach tonnage will be handled by grower-owned cooperatives, 60 percent of the canning spinach, nearly 60 percent of the apricots and pears for canning, 25 percent of the tomato tonnage, 35 percent of the asparagus, and about 85 percent of the freestone peaches that wind up in cans.

In all but tomato and asparagus tonnage, the grower-owned cooperatives would at least dominate, if not saturate, the industry in our State.

What effects flow from such a situation? That is my subject today, and I wish that I could be more specific in my reply. One thing is sure. We all agree that those effects are substantial, even critical, to processors, to the bargaining associations that deal with these commodities, and to the growers whose strongest influence on their market prices arises from their support of these associations.

Perhaps the best way to examine the potential effects is to raise certain questions.

It has often been said that cooperatives arise in response to adversity. There is much truth in that. California Cannery & Growers, as just one example, was formed because growers saw the number of customers for their products shrinking. They could foresee the time when small surpluses of tonnage might have a devastating effect on raw product prices. Growers wanted to be assured of a home for the crops. They wanted more control over the processing and marketing of these crops. Their answer was to form a processing and marketing cooperative.

The same type of influence is at work today. Marketing of canned fruits and vegetables has not been attractively profitable for the past 2 years. Emphasis is on cutting back, not on growth, and growers are worried over finding outlets for their crops. Again, their answer is to seize the initiative for themselves, to assure themselves of those outlets by actually owning them.

But, we must ask: Will the formation of additional cooperatives by itself correct the ills that have led to this development? Not necessarily.

We need an expansion of the market for canned fruits and vegetables. We need a commitment from growers and processors alike to bring production into line with potential demand. We are, unfortunately, in an industry so competitive that even a small oversupply can have drastic effects on market levels. Having more processing cooperatives is not a panacea.

I raise another question. Will the newly formed cooperatives be truly market-oriented? Or will they succumb to the temptation to let production dominate? It takes hardheaded management, backed by a strong board of directors, to maintain that needed balance. If a new cooperative proceeds to process all that its members can grow--rather than all that the cooperative can sell at a reasonable return--it may well affect markets adversely, produce ruinous competition, and in the end cause its own grower members serious harm.

In my view, a new processing and marketing cooperative must make its commitment to market orientation. It must demand of its members a high quality product delivery. It must marshal the resources to support a strong marketing effort.

The last thing we need in the processing business is new cooperatives if they are going to be weak factors in the marketplace.

On the other hand, the introduction of a stronger entity created by grower capital can be a strengthening factor. It can benefit growers by creating competition for their produce--if, that is, they are high quality producers. It can establish greater stability in the marketplace by virtue of its own stronger planning and marketing functions.

Growers, themselves, as members of a processing and marketing cooperative, have a responsibility to their organization. Some are willing to recognize it, others are not. You have heard growers described as "co-op minded." Within cooperatives, that means a grower who understands that the total organization must be considered in policy decisions. Sometimes those decisions will be tough ones demanding sacrifices by the members. Members have to realize that their cooperative cannot long survive if it pays more for its produce and gives its members extra-special concessions that its competitors do not. At times, members may have to cut back their own production. This is not the type of action they will have foreseen when they joined--but once in, the long range view has to prevail, and the cooperative interest must be served.

This raises another question. Will formation of additional processing cooperatives tend to put a stronger base of planning under annual plantings? Will it help to cut down or eliminate the speculative plantings that so often gum up the bargaining process and contribute to uncertainty in the marketplace? My answer is: Yes, they can have that effect, and in so doing can be a very beneficial factor.

A strong, well-financed cooperative with good management and the support of its growers can be a very positive factor. One of the other kind can produce headaches for everyone.

But the points I have been making so far do not bear directly on the question you have posed, that is: What effect will it have on bargaining cooperatives if the processing cooperatives take over the business?

There is no doubt that the amount of tonnage usable in the bargaining process is diminished by formation of additional cooperatives. It also diminishes the number of processors involved in the bargaining and, thereby, adds clout to those--particularly the large ones--who remain.

That raises an additional question. What percent of a commodity must be outside the cooperatives if bargaining is to be effective? And how much of that outside tonnage must a bargaining association control? I suspect the answers are not that easily expressed in generalities. Each State and industry will have its own problems.

Let us say that formation of additional processing cooperatives reduces the influence of a bargaining association--then what? Does the association then seek some means of including the input of the cooperatives? Does it perhaps attempt to corral within the bargaining process all the various uses of the crop--if that crop has multiple outlets? Suppose a fruit can be canned, frozen, dried, or shipped fresh--and a very high percent of the crop is controlled by cooperatives? Where then does the bargaining association turn? No doubt, at this point, we have more questions than answers. Perhaps there is merit in the thought that all uses could be included within one bargained price based on like quality--with consistent premiums or discounts for variations from a base. At least one association faced with having only one commercial canner to make a price--and he handling only 15 percent of the canning tonnage--has turned toward this process in an effort to establish a broader base for bargaining.

This is an important issue to some of our growers within California Cannery & Growers and has been discussed by our board of directors. I wish I could tell you that we have done more than recognize the potential difficulties. We have no stock solution. We do recognize the problem now developing. As a processing cooperative, we can also recognize the possibilities for mischief on the part of one or two commercial cannery who may control the last small percent of outside tonnage.

It is important whether a processing cooperative is a single-pool operation, or whether it maintains separate pools and, thus, reacts individually to the situation in each separate crop. While cooperatives do not take part directly in the bargaining process--and this is the reason for your asking me to address this subject in this way--we do, nevertheless, influence the industry situation--which in turn affects the results you may obtain by bargaining. A cooperative contracts for commercial, as well as membership, acreage in the field. Its directors are often members of bargaining associations. What influence a cooperative may have on third-party grading and other industry decisions will affect bargaining. A single-pool operation, because of its diversity, is less susceptible to annual ups and downs, thus tends to be more stable in its approach.

How about the subject of establishing the price for a given commodity within a processing cooperative? How does California Cannery & Growers currently operate in this regard? This is perhaps one of the most important relationships between a bargaining cooperative and a processing cooperative.

Our policy is that the bargaining cooperative should bargain for its members a reasonable price for the commodity with the commercial processors--year in and year out. This should also include all appropriate tolerances and conditions for the delivery of the crop--especially those conditions that are of economic importance to the grower. Once the reasonable price is bargained for, the processing cooperative should then do all possible to return a profit to its grower members--over and above the established raw product value bargained for by the bargaining cooperative. I want to re-emphasize this again. The bargaining cooperative should successfully bargain for a reasonable price for its growers with the commercial processors. The processing cooperative should then market the processed products of these commodities at a profit for its grower members. We strictly follow the practice of using the bargained for price as our established raw product value for a given commodity.

On one or two occasions, we have had to deviate from this policy and only because additional pricing information indicated that the bargained-for price was not being followed by a substantial majority of the tonnage represented. In the absence of a bargaining cooperative in a commodity, we then use the statistical mode of the prices paid by the commercial canners for the purpose of establishing raw product value.

This is the key distinction between the objectives of our two groups. We feel strongly that this is the only way equity between the various commodities we process can be maintained for the purpose of dispersing earnings from a single pool. Furthermore--and of great importance--it eliminates any possibility of people questioning the motives of a processing cooperative in marketing their products because it places all of the basic cost ingredients on a competitive basis with their commercial competitors. In other words, the costs of the cans, the labor, the fiber cases, the labels, and the added ingredients--as well as the raw product. This truly meets the intent of the Capper-Volstead Act and places our policy motives beyond question. I recommend this course of action for all processing cooperatives whether they be multiple-pool, or single-pool such as California Canners & Growers.

Perhaps the situation developing today may require some modification of the traditional relationship between processing and bargaining cooperatives. However that may be, today's processing industry needs both the strong processing cooperative and the strong bargaining association. I feel that this will remain the case for the foreseeable future.

Bargaining and Processing Cooperatives Can Help Themselves by Helping Each Other

*Robert E. Collins
Chairman of the Board
Pacific Coast Producers, Inc.*

I have served several cooperatives over the past 30 years, as a member, on the board, or as president. As a founding member of the California Canning Pear Association, it was my good fortune to have served on that board for more than 20 years, a good part of it as president.

Because of this experience, I have been able to attend most of these sessions from their beginning. It is a source of interest to me to see the growth, both in number of people in attendance and in the depth and breadth of the programs. Forty people would constitute a good crowd at the earliest meetings, and the agenda consisted mainly of complaints about the previous year's crops and prices.

Many changes have occurred in bargaining cooperatives and in all agriculture since that time. This forum has made an extremely valuable contribution to growth and understanding of farm bargaining in permitting us to exchange ideas.

I would like to briefly review some of this period we have passed through as a background to discussing the value of bargaining cooperatives in the agriculture we see ahead of us. The pressures from this period are still with us and are a motivating factor in the future direction of cooperatives.

Since those early meetings in the 1950's, the number of farms has diminished from 5.4 million in 1950 to 2.75 million in 1976. Population on these farms fell from 23.5 million, or 15.3 percent of the total population to 8.3 million people or only 3.8 percent of the population in the same period (this contrasts with roughly 85 percent of the Chinese people on the farm and 33 percent of the Russians). At the rate we are disappearing, if we were whales or furbish louseworts, we would be considered an endangered species, but as producers of the food supply, this seems to be of little concern.

Most of you will recall that period of the 1950's to the 1970's. This was the long 20 years when farm prices remained almost constant, with the last 5 years of the 20 being 5 percent lower than the first 5 years (the middle 10 years were even lower).

In the early 1970's, that long flat line on the chart was broken by what at best, in retrospect, could be called a moderate rise. It was sparked by several factors, notably grain sales to Russia and a fear of

world food shortages. This set off the most intense scrutiny and review of agriculture and all its functions that I have witnessed in my time. The public attitude changed almost overnight as higher prices were reflected in the stores. Consumerism became a holy cause, and politicians reacted in attitudes and actions that have affected our lives since that time.

Meanwhile, back on the farm, after that brief flurry, farm prices have subsided back to their previous level of low or breakeven prices. This, however, had gone mostly unnoticed by the consumer groups that were so vocal. Unfortunately from the farmers' viewpoint, prices never go down at the retail level as rapidly as they seem to rise.

In fairness, however, I must say there has been an increasing awareness by the general public that all is not well on the farm. And I think we should give much credit to the various agricultural organizations and agricultural public relations people for keeping our story in the papers and on the air. The investments we have made in dues over the years to these organizations is a long range investment, and I really think we are realizing some benefits in terms of public awareness that we have not before enjoyed. The farm strike, also, is telling a story even though there seems little likelihood of results of any magnitude from it.

What has this review of the past to do with farmer bargaining? One more set of statistics brings it all into focus. The farmers' share of the consumers' food dollar is continuing to shrink from 47 percent in the 1950 period to the present 38 percent. This almost ties the record low of 1964, and Economics, Statistics, and Cooperatives Service of USDA is predicting it probably will drop to new lows in the next 10 years.

This thought alone should show the continuing need for agricultural bargaining power and this leads to the question of the value of a bargaining cooperative to a processing cooperative. Unfortunately, some growers seem to feel a sort of adversary competition exists between a bargaining and a processing cooperative.

This question is pressing on us in California, particularly in the fruit and vegetable processing industries. There was little about which to be concerned in 1929 and 1932 when Turlock Cooperative Growers and Tri/Valley Growers were formed. But as they merged and in 1958 the big California Cannery and Growers entered the field, the first realization of a problem began to be discussed. With the founding of Pacific Coast Producers in 1971 and now the forming of Glorietta Foods as a cooperative out of the National Can operation, the level of concern as to the role of the bargaining cooperative is high.

In some California canning fruits and vegetables, these cooperatives will pack well over half of the total crop. This places the bargaining cooperatives in what they feel to be a weak position and places in the hands of one or two large noncooperative firms an inordinate amount of bargaining power when it comes to negotiating terms and prices.

The need for strong representation of the commodities is apparent to those bargaining cooperative members who sell to noncooperative firms. But the need is almost equally great to producers of that commodity in the processing cooperatives because returns of each pack are pooled together in our single-pool cooperatives. This means that a weak field price on the outside will reflect in a lower price than economically justified being used by the canning cooperative to establish returns to the growers of that crop.

Aside from the prices negotiated and almost equally important from a member's viewpoint are the terms, tolerances, and conditions for delivery. These also have important price implications that may not be of equal concern to a board of directors of a processing cooperative as they are to the member growers of that commodity. It is important that the values and terms used in the single-pool price determinations represent the best information of the true economic value of that product, not an opinion by a board of directors.

It is my opinion, although one not universally shared, that the processing cooperatives should pay their fair share of the service charge to support bargaining cooperatives. These processing firms were put together by growers in desperation over their lack of ability to receive a comparable return on their production to that of other parts of the economy. It would seem a poor practice indeed to abandon the organizations that have specialized in this field and represent the only force working full time for a price on their particular product.

This is not to say, however, that there should not be changes in these bargaining organizations. It seems obvious with the diminishing of "open tonnage" that at some point a new means of 'price discovery' will be needed. This is being done in several types of cooperatives in the East at present where the cooperative dominates the industry. The complex makeup of the food markets in the grocery trade presents a problem in working this out; however, work in this field is already well started by University of California economists and others well known to these gatherings, and we hope to have a chance to hear some of their ideas at this meeting.

In looking ahead, it appears that at some time in this trend of lessening open tonnage, it will become too expensive for each commodity to maintain an individual bargaining unit and consolidation will be necessary. This is already done by many of the groups represented here today and has been discussed by others.

However, in looking at the needs of a future bargaining group in serving an industry made up mostly of cooperatives, it may be that future bargaining groups will need to develop the abilities and knowledge to negotiate the division of the cooperative sales dollar among the various grower groups in the absence of an established field price. This is an area with which I am not familiar and I would look forward to other comments on it.

This has to do with groups that make up a kind of secondary market to the bargaining cooperatives. This market is the grocery stores, the chains, and the institutional markets to which canners sell. I am sure in other types of cooperatives there is a comparable structure of processor and retailer.

As chairman of a canning cooperative, I have had the chance to get acquainted with some of the buyers for the large chains, and I have been very much interested in their reactions to the things growers do in their organizations. This was highlighted this past season with the drought when statements were being issued by grower groups of all types.

Buyers point out a part of their job is to keep informed and abreast of the supply situation on the hundreds of products they must buy. This is difficult at best for a man tied to a city desk most of the day, but they do have access to more of your reports than you may realize. They complain that they have no way nor time to check these out in most cases and are caught in a maze of conflicting statements in the interplay between grower and processor jockeying for a position of advantage as crops develop. On occasion they state they are victims of bad information as growers attempt to dress up a poor market situation to enhance pricing. After an experience or two of this, they take the position that because they have no way of knowing the true picture the safest thing to do is withdraw from the market, withhold promotions and any of the other things that may be costly if a mistake is made.

These are the men who sit on the throttle of the movement of our products, and their decisions can make or break movement in national markets. I would suggest you get acquainted with these people. They have things to say to us and we need to hear them. Above all we need to realize the importance of responsibility in our statements and actions because these can reach out beyond their intended target and hit something that can damage us. A line of communication with them is important. Have them in for a board meeting and let them know what you are doing and why.

Summing up these remarks, I would point out that farm numbers are declining; population left on the farm is declining; and the farmer's share of the consumer food dollar is declining to new lows.

With the decline in farm numbers has come bigness, and with bigness has come a great national concern for the family farm. The meaning of a family farm to farmers is vastly different than that seemingly understood by most of the other 96.2 percent of the population. This view seems to limit family farms to the small self-sufficient, labor-intensive units of 100 years ago. There is little concern as to how these units can compete with the chainstore enterprises that sell them the equipment, fuel, fertilizer, finances, and other needs of a farm.

However, among the 3.8 percent farm population, there is also an understanding of the family farm, and I think most of us like the idea of being family farmers in the sense that we control as much as possible

of our own destiny. The size of some of these operations may not be in agreement with the image that others have of family farms. But when we can once more deal with Henry Ford as a family car-maker and John Deere as a friendly farmer tractor-maker, or Mr. Long at his family drug store, then the family farm of American history will once more be able to compete in the market. But until that time returns, it would seem to me to be in the best interests of both the farmer and the rest of the Nation, if there is really an interest in stopping the steady decline in farm numbers, to encourage agriculture to make the maximum use of cooperatives. And it is my feeling that this may well come about as both parties, in their desperation to find some kind of inexpensive farm program, will finally turn to aiding us in the use of our cooperatives.

To me this makes a lot more sense than trying to preserve the farm population through payments and support prices in a kind of evolutionary arrest--as a sort of zoological specimen--and reminder of our rural past.

In a similar manner, if farmers are sincere in the desire to build bargaining power and secure a larger part of the consumer dollar, the use of cooperatives is a way of accomplishing it. Because the bargaining cooperative is a proved means, and the one organization working fulltime on the price of our products, it has an important function even in a future where there is little or no open price. The means of price discovery may change but the need for strong representation by farm commodities will remain.

And finally to the bargaining cooperatives, I would say: become better informed on your market and take a buyer to dinner--you might like him.

Why Bargaining Associations Are Important To Processing Cooperatives

*John H. Kautz
Chairman of the Board
Tri/Valley Growers, Inc.*

Before I became chairman of the Tri/Valley Growers, I was both a director of California Tomato Growers Association and of the Canning Tomato Advisory Committee. Because my primary canning crop is tomatoes, the principal thrust of my remarks will be directed to the inter-relationship of the Tomato Association and the cooperatives.

While most growers are aware of the pricing activities of the bargaining associations, there are many other areas where grower commodity organizations are of extreme value. California Tomato Growers Association has been formally bargaining for price for only the past 4 years, although it was organized 31 years ago. Its membership has increased since price bargaining has been added to its services, but it represented about one-half of the growers in the State prior to that time. All of this means, of course, that a lot of tomato growers, including myself, felt the other services offered by the association were of sufficient value that we were willing to pay for them. I might add that the tomato association is financed by its members who pay a maximum of 15 cents per ton per year to carry on the work of the association.

The California processing tomato story is a dramatic one in that the industry has gone from hand harvest to total mechanization and bulk handling in just 17 years. This has brought about dramatic changes in the tomato processing industry, both in volume and in methods of handling at the plant. Probably nothing represents the interdependence of the growers and the processors of a commodity more than those changes that have taken place so recently in the California tomato industry, because it was extremely important to work together to bring about this revolution.

Going one step further, and recognizing the need of the industry to continue to work together, the Association in 1969 undertook the formation of the Canning Tomato Advisory Committee (composed of five growers and five canners) where the problems of mechanization and bulk handling could be worked out. The work of the committee and its research programs is financed through assessment of both growers and canners. This unique committee has been tremendously successful in revising methods of inspection, setting standards for State rejection of loads, and in general, providing a forum where mutual problems can be resolved. The new tomato industry standards agreed upon by the committee mean another ton or two per acre of tomatoes can be

successfully processed without reducing quality. As any grower knows, that extra ton or two is often the difference between profit and loss to the grower. Beyond that, the extra tonnage per acre provides the California tomato industry as a whole with the opportunity to remain competitive both in United States and in world markets.

The association has been of importance to me as a grower as well as a cooperative member in its work in standardizing terms of delivery. Because the cooperative competes with the profit companies for markets, it is important we all start from the same base, both in price and in delivery terms. The fine print in the contract can often mean as much or more than the base price when it comes to computing the profit. The Tomato Association has negotiated reasonable quotas for deliveries at the peak of the harvest season, which have not only increased my opportunities for delivering maximum tonnage but also have caused the entire canning segment of the industry to become more responsible in its contracting practices.

Tri/Valley Growers prides itself on the fact that its primary concern is its members' interests, both in providing maximum returns and in marketing its members' production. If I have a criticism of the commodity associations, it has been their failure for the most part to concern themselves with the ultimate sale of their members' production. The tomato industry has been singularly fortunate in the growth in demand for its product. The expansion of the fast food industry and the taste of the consumer for ethnic foods has created a strong demand for tomato paste and tomato products, and most housewives (or should I say housepersons?) feel tomatoes are a staple item they should have on hand. However, even the tomato industry is reaching the saturation point, and California growers are now capable of producing much more tonnage than the market requires.

This is a situation that has plagued the fruit growers for many years, and nothing much has been done about it. We have watched demand for canned fruits decline steadily and it wasn't until the California Canning Peach Association moved toward marketing its members' surplus peaches in a cooperative program with Tri/Valley Growers that serious efforts were made to export peaches to Japan with a quality product packed to the specifications of the Japanese market. Without a grower association, it is doubtful this would have been undertaken, but it was a move to open a new market that has promise of becoming increasingly important to both growers and canners over the next few years.

We have a long way to go in fruits, however, to restore profitability for our single-pool cooperative members. The tomato growers have argued for years that their product has provided whatever profit there was to be had by processors, and this is probably true. But as I mentioned before, even tomatoes may not enjoy this position much longer. The Tomato Association has been very successful in achieving prices and contract terms that have made tomatoes profitable for the grower, but this very success is encouraging overproduction.

The goal of our bargaining association should be to achieve stable pricing for all commodities with increases as conditions warrant. Canners, for their part, should employ responsible contracting of their required tonnages, rather than price, to limit production. Neither growers nor canners can live with yo-yo prices from one year to the next, and price stability could benefit all of the industry.

It is my belief that growers and canners and consumers have common interests in the production of a quality product that can be purchased for a reasonable price. And to keep those products in demand and our growers in business, it is going to be necessary for both growers and canners to work together in finding new markets, new uses for our products, new methods of packaging, and ways to do a better job of selling. I don't mean to downgrade the efforts of our fruit advisory boards in selling the products, but they are hampered by relatively small budgets in today's advertising world and I feel that some change in direction from retail advertising could be helpful. For the most part, processing cooperatives have not been brand oriented and therefore have not used retail advertising to move products. Therefore profit processors with major labels have reduced their advertising and promotion budgets for California fruits. All of this adds up to the fact that little is being done either by or for growers to maintain market share, and our total sales are diminishing.

By and large, our cooperative processors have not been in the forefront of developing new products and new markets. And the general attitude of some grower commodity organizations has been that their members would produce the commodity, but it was the processors' job to market it. I don't believe that either the cooperatives or the bargaining associations can continue to follow this path. Either we work together to create demand by whatever means necessary or we eventually may find there is no longer a need to either produce the commodity or process it. This has already happened to some of our traditional products that have succumbed to foreign competition and/or the inability of our growers and canners to produce and market them profitably.

Since the beginning of the canning industry, we have been packing our fruit commodities in halves and slices in the familiar tin can with little concern as to how we could make it more desirable and more convenient for the institutional and fast food markets. We desperately need to find ways to encourage these markets, which are currently accounting for 50 percent of our food consumption, to use our products. This is not going to be accomplished by wishful thinking; it has to be done through good, sound research into what the market requires in both product and packaging. I believe that all three of the processing cooperatives represented on this panel and all of the California bargaining associations in attendance here can and should move quickly in forming a research organization with the purpose of tackling the problems related to these markets.

As a member of a bargaining association, I believe there are many ways the association enhances my position as a member of a processing cooperative. I want it to stay in business and I am willing to pay my share to see that it does so. As a member of a processing cooperative, I want a home for my production and a fair return on my investment. This will not be possible as long as our major fruit packs are in oversupply. We have a mutual problem that will require further cooperation as well as dedication of time, money and effort to solve, but I believe that by working together we can do it.

Problems Ahead When Bargaining Begins With Processing Cooperatives

Jack L. Sullivan

Director

California Cannery and Growers, Inc.

First, I would like to discuss the background of California Cannery and Growers, and then I would like to discuss the next 5 years, which I think will be by far the most difficult years in the history of bargaining and possibly marketing as far as our relationships are concerned.

California Cannery and Growers was conceived and assisted in birth by bargaining associations. Our first crop year was in 1959, so last year was our 20th year. Starting in 1953 and 1954, California Canning Peach Association, Ralph Bunje and his board of directors, started exploring the idea of a cooperative. They invited other cooperatives to come in with us so when we had our meetings with each commodity, it wasn't a difficult job because we had people from bargaining cooperatives helping us organize. They helped present facts and figures, and that is how we performed.

On our initial board of directors, we had Jerry Martin; Gerlad Troutman, attorney for two different bargaining associations; Ralph Bunje; and Cameron Girton. We had, I'd say, many hours of help from the Department of Agriculture people. Phil Stewart talked to the leading bankers about the state of the country during this formation. So it is clear indeed that we were conceived by bargaining associations.

We now have 24 members on our board of directors, 16 of them were at one time or another either an officer or director of a bargaining cooperative. Presently, we have three past presidents of the California Tomato Growers Association on our board. We have one past president and one past vice president of the California Canning Peach Association on our board. So we are tied closely with bargaining cooperatives.

The next 5 years--no use beating around the bush about it--we are going to find ourselves in a position, especially this year as far as freestones are concerned and somewhat in pears, where we are going to start bargaining directly with canning cooperatives. Here's where we are going to have some problems. I think underneath we realize this, but we have been trying to avoid it. The fundamental problems as far as I'm concerned are in two areas. Most of us have been in bargaining during the past 20 to 25 years. We've talked with commercial canners. We go through certain proceedings. We don't develop the facts and figures. We don't develop communications, and they are very important. But when the final decision is made with the commercial canner, it is usually made by one or two men. Not many recommendations go into it by employees or officers of the company. I don't care how large it is or how small it is, that final decision is usually made by one or two persons.

It is not this way with cooperatives. I don't know of any person in the world that claims more knowledge of what pricing is than a director of a cooperative, especially if it's not his commodity! But it's true. When we started this program of the future and more and more cooperatives are formed, we are going to have problems with other friend's firms--good friends. These are the kind of things I don't like. I think you've got to face up to the potential problems. I think the bargaining cooperatives have got to face up to them. I think we're going to have to try many different things. As an example, take Eric Thor's study on Minute Maid. The Minute Maid idea right now is a dirty name in California, but it is working somewhat well as far as Minute Maid and 350 growers are concerned. I think we're going to have bargaining cooperatives funding different types of arrangements. I think we're going to try certain kinds of pools. I don't say we're going to have multiple pools because I think it would destroy California Cannery and Growers, but I'm talking about how these pools will be financed without figuring a hauling charge, or whether there will be a certain percent down payment.

We are going to have to explore all of these areas. I think we have some difficult times ahead of us. Knowing some people, this interests me, as far as bargaining cooperatives and marketing cooperatives are concerned, but I think our problems can be solved.

Bargaining and the Future



Ralph L. Lewis, Jr.



Leon Garoyan



Bargaining legislation ad hoc committee.

Bargaining: For and With Whom, and on What Issues?

*Leon Garoyan
Economist
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Marketing of farm products and their conversion to consumer products is a complex phenomenon, fraught with diversity that creates unique alternatives for classes of farm products.

Sometimes product uniqueness becomes institutionalized to where new practices become rejected outright due to constraints imposed by tradition and myopia. Traditional problems are encountered with old alternatives, while new economic conditions impinge on existing problems. Despite weaknesses and shortcomings in the marketing of food products in the United States, and the need for reform and modified innovation, our system is, remarkably, probably the best yet devised.

While what we have is comparatively better, and many countries would gladly accept our system and its weaknesses, the belief remains with many agricultural leaders that what is good may not be good enough to enable farmers to achieve their economic objectives. Yet few new patterns have evolved. Despite new economic conditions, we apply old prescriptions.

My objectives in this paper are less ambitious than to evaluate the diverse problems and alternatives for improving the marketing of farm and food products. But the task undertaken is still difficult, and you are asked to contribute your experiences and thoughts to help in the identification of how the marketing system may be made more effective.

I shall concentrate on a limited but significant aspect of fruit and vegetable marketing, the negotiation of prices and terms between organized growers and their buyers. After briefly putting the bargaining situation into perspective, I shall raise issues and some answers to the question: "Bargaining for and with Whom, and on What Issues."

Traditional Focus on Negotiating

Negotiations by farm groups have concentrated at the first-handler level on issues of how consumer expenditures for a specific commodity would be divided between farmers and processors. These struggles for equity were often well founded, and focused on prices and contract terms that affected farmers' incomes.

Research indicates that organized bargaining in California has resulted in prices that over a 15-year period have averaged significantly higher than for comparable crops without bargaining. ^{1/} As a result, growers of crops with bargaining fared better, on the average, than did growers for crops without bargaining cooperatives, even where marketing or processing cooperatives are important industry entities. This suggests limits to the ability of operating cooperatives to raise industry price levels, and elevates the importance of bargaining cooperatives in the total scheme of the marketing system.

Assuming bargaining demands are economically sound and within constraints of long run trends, there should be no serious conflicts between bargaining and processing cooperatives in the same commodity line, as the industries are presently structured.

Trends in Bargaining Environments

Over time, Congress has granted special opportunities to farmers-- the opportunity to alter the marketing environment for certain crops. Significantly, congressional intent has been to provide farmers, willing and capable of organizing, with limited but vital modification of antitrust policy, and with use of state or police power.

The Capper-Volstead Act of 1922 and the Marketing Agreements Act of 1937 are the primary means Congress intended to change the environment of marketing by granting to farmers some degree of monopoly power not previously available to them. Anyone who suggests, for example, that marketing orders increase competition, is economically naive or politically oriented. The bare fact is that their use is based on granting a modest amount of countervailing power to organized farmers, and that is specifically why Federal regulatory agencies and consumer oriented groups have raised questions regarding the impact of such market interventions as marketing orders.

The question being raised, and properly so, is whether use of such programs has exceeded reasonable bounds, those beyond congressional intent. It is just as proper for agencies and consumer groups to raise these questions as it is for producers to defend them. And in the environment that is evolving, more challenges to the privilege of using Government granted power by special interest groups should be expected.

Although cooperatives and marketing orders are economic tools, their foundation is based on political quicksand subject to jarring external forces wishing to bring changes to the marketing environment, or to have a voice in some marketing decisions.

^{1/} Leon Garoyan and Eric Thor, "Observations of the Impact of Agricultural Bargaining Cooperatives," to be published by NC-117, University of Wisconsin, Agricultural Economics Department, Madison.

The impact of bargaining cooperatives on market structure is difficult to isolate from other economic forces, such as marketing orders; increased disposable incomes that allow consumers to exercise more choice; economic growth that enables firms to enter new industries or different states in the same industry; forces evolving from changes in marketpower between food processing and food retailing; the increase in food consumed outside the home with its prescribed set of food choices; and the many other economic forces that influence market structure.

We note that structural changes in California have occurred at different rates for crops with and without bargaining, at both the grower and the processor level. While I have just admitted that numerous forces are at work simultaneously and no one force can be isolated with confidence for any one commodity, we can still raise questions if we assume these forces work fairly evenly across the board for related commodities. Following that assumption, we note that some tendencies are apparent in changes in structure for similar bargained and nonbargained fruit and nut crops in California over a 20-year period.

While farms in total in California dropped 54 percent between 1954 and 1973, they dropped slightly more, 59 percent, for three crops with bargaining cooperatives, and dropped 26 percent for nonbargained crops. Thus, in total, the reduction was most in bargained crops, and least in nonbargained tree crops, relative to all farms in the State.

Similar changes occurred in the number of processors during a 14-year period, 1960-73. We note a 50 percent drop in the number of processors for bargained crops, and 26 percent for nonbargained tree crops. The resulting processing structure is one of larger scales of operations for those who remain, meaning that not only are there fewer processors with which to negotiate, but each one's relative scale of operations is larger, also.

Major changes in consumption habits likewise have had important impacts on market structure. I estimate that about 38 percent of total food consumption occurs outside the home, the traditional food consumption area, or is prepared outside the home. One result is that decisions on what products are to be consumed, in what form, in what quantity, and how frequently are made by institutions and food service firms rather than consumers. This result goes beyond food service, and even affects commodities that are ingredients. The Raisin Bargaining Association recently told members that if breakfast food manufacturers would use raisins at the same rate as they did before the shortage of raisins in 1976, another 6,000 tons of raisins would be consumed in 1977-78. But strangely enough, these firms are probably selling as much breakfast cereals now as they did when they included larger amounts of raisins.

A second development is the concentration occurring in the food service and restaurant sector of the food industry. The top 25 food service firms did more business in 1976 than did the entire 400 largest food service firms in 1964. The largest 25 had more than 25 percent of total food service sales--disturbing concentration of control in an industry once noted for individual ownership.

Why are these developments important? Well, the balance of power has shifted over time, from processors to grocery retailers, and now is in transition to large, concentrated, diversified food service firms with no uniform buying practices and each able to impose its packaging requirements on processors. We are in the stages of a huge battle for control of food expenditures, with giant food retailers vying with equally large food service firms. Processors and farmers may be pawns in this vital economic game, because the firm that controls exposure of your product to consumers has the greatest marketpower.

Several interesting observations follow. Some processors are becoming more specialized, handling only large volume, standardized commodities, and dropping specialty products such as freestone peaches and apricots. Other firms are moving out of processing, and remaining in food distribution, and causing farmers to purchase their processing plants to assure themselves of a product home. Some grocery retailing firms and national processors are moving into the restaurant and food service sector. Grocery retailers have reduced the amount of shelf space and facings allocated to canned fruits. Dry breakfast foods far exceed the amount of shelf space allocated to canned fruits. It's as though everything nailed down is falling off the wall.

Issues of Pricing

As if these developments were not enough, there are still other impacts, as a result of tremendous upheavals in the food industry. Bargaining cooperatives are facing a situation best described as a "thin" market, in which there are fewer buyers with which to negotiate in the market, and sometimes as in fruit and vegetable processing, where processing cooperatives handle such a large share of the market that cash prices are difficult to determine. For example, it is estimated that if, as planned, a fourth cooperative begins operating in California in 1978, 35 percent of this State's canned asparagus tonnage will be handled by grower-owned cooperatives; 60 percent of the canning spinach; 60 percent of apricots and pears for canning; 25 percent of the tomato tonnage; more than 40 percent of the cling peaches; and about 85 percent of the olives and freestone peaches that are canned. In all but tomato and asparagus tonnage, processing cooperatives would at least dominate, if not saturate, the California fruit canning industry. ^{2/} Thus, the structural changes that have occurred will have important implications on the process of commodity bargaining in the future.

^{2/} Bruno A. Filice, vice president, California Canners & Growers, "Saturation of the Processing Industry by Cooperatives," presented at Pacific Coast Marketing Association, Boise, Idaho, Dec. 12, 1977.

To summarize, the situation facing the California fruit industry, at this moment, is described in this manner:

1. Numbers of producers and processors are declining, and seem to be declining faster for bargained compared with nonbargained tree crops.
2. Processing cooperatives are increasing their share of farm product receipts.
3. In some cases, prices are made in thin markets, with prospects for more situations where prices are to be negotiated for small quantities of total farm output.
4. Farm prices of bargained crops are increasing more than those of nonbargained crops, when prices are deflated to minimize inflation impacts.
5. The away-from-home food market is becoming as concentrated as is grocery marketing and both are vying for control. Processors are becoming less influential in food marketing, and even national brands are losing ground. At best, we are moving to two national labels, and perhaps only one in the canned fruit sector.
6. Challenges exist for marketing order programs used by many California fruit and nut growers.

Prospects of the 1980's

Someone once astutely observed: "The future belongs to those who prepare for it." The situation in the canning industry today is prologue. Given larger scale and few canning firms, and more industrialized and larger scale farmers, mutual desires are apparent for long term contracts. Will large-scale farmers require representation in price negotiations in the 1980's? Unquestionably, economic theory suggests and industrial experience indicates, the need for bargaining increases as the size of firms facing each other increases. But look for some interesting potential conflicts as nonfarm investors make investment in farming, and have to face up to their other investments in the food industry that are affected by negotiations for farm prices.

You may be bargaining for a relatively small number of large-scale producers and host of part-time producers in the 1980's who are not members of operating cooperatives. Retaining the large-scale farm depends on your ability to represent them more effectively than they will be able to do individually. But recognize there will be pressures for long term relationships with processors, and perhaps profit-sharing contracts for large producers with processors.

Of course, all bets are off if remaining processing facilities are shifted to growers, in which case the operating cooperatives would face the critical problem of wholesale price discovery once performed by profit companies.

All of this ignores the fact that bargaining is being carried on with a group with a declining economic power base. The question "With whom will you be bargaining?" looms critically in the future. With processing trending toward a custom or a co-pack basis, there will be frustrations as a bargaining unit attempts to identify and reach the economic decision centers of the food industry. In some cases, you may need to directly negotiate with those power sources beyond processing to achieve your objectives. Special Federal legislation may be required to enable a bargaining cooperative to establish the necessity to circumvent the processing level, and to require those firms beyond processing that have the marketpower to negotiate in good faith. Modification of the Michigan Act, on a national level, may be required.

As prices become more difficult to establish, due to thin markets, new price strategies become imperative. If markets remain "thin" as I have described them (instead of shifting entirely to grower-owned processing), one alternative is for negotiating with major processors for a share of realized net earnings before corporate income taxes. But you will need a pair of Philadelphia lawyers and at least one Vellasco accountant on your side to be assured of equity in negotiating what costs are to be included, how they will be allocated, and other accounting questions. Traditional accounting may be inadequate to cope with such situations, and new procedures may need to be developed.

The idea is not too far fetched. Presently, where an operating cooperative has a dominant industry position, some profit firms have adopted a cooperative system of payments that includes a share of earnings. Some California canners are reportedly establishing a related system for fruits and vegetables grown under contract.

A part of the issue of thin markets is to determine what percent of total tonnage outside cooperative processing control must be retained to bargain effectively. Economic theory may suggest some wishy-washy answer, but the real determinant is pure power--political and economic power--to convince remaining processors that bargaining clout remains. You can bet on it being tested.

The California Freestone Peach Association may have pioneered in directions that others having similar situations may consider--namely establishing a broader base for bargaining by using its organizational strength for product uses in addition to canning.

It is apparent to me that bargaining activity in the 1980's will carry cooperatives beyond the issue of equity and price discovery. They will be moved into a greater arena of market orientation than they have heretofore experienced. The U.S. marketing system is a mixture of public regulations and private incentive, the latter based on marketpower concepts that lack charity and sympathy, and even conscience. As much better our market system is of any I've observed, it still is deathly impersonal, with decisions being made by committees in a small number of large firms that influence both consumers and farmers. In such an environment, farmers are the recipients of both good and bad decisions that affect their future.

It is ironic that the sector with the largest capital investment per case of output, the grower, has the least input in decisions that affect his survival, while the one sector with the least investment per case, retailing, has the most impact on growers.

Just as grocery retailers were once able to neutralize the market-power of national labels, so must growers work in ways to offset, if not neutralize, the marketpower of today's dominant sector in the food industry. You may have to join them in product promotion. You may have to join processors with product development. You may have to directly become a principal in export marketing. My research suggests that a 5-percent increase in export markets, other things held constant, should increase farm prices by 4 percent for canned fruits. This may approach, and sometimes exceed, price increases that result from bargaining.

Delving in the market system will require commitments by growers and their cooperative leaders, beyond that which has now been experienced. As more participation in the market system occurs, it may be necessary for cooperatives to be held responsible for production responses by its members. This may mean that grower-members of bargaining cooperatives will hold inventory of surplus production in processed forms, just as dairy cooperatives have traditionally held their industry surplus, market by market. This puts the burden of overproduction directly on farmers, and climate--two important determinants of output.

It also requires that bargaining cooperatives maintain their role in providing economic information by which their members make individual production decisions.

SUMMARY

Bargaining cooperatives cannot be assured they will represent the large-scale producer of the next decade, who despite his large-scale operations, still will lack the economic power to effectively evaluate a fair deal with the large processors. To keep such growers, bargaining associations will need to supply benefits that exceed those available individually to large growers. To rely on small growers for its membership will doom a bargaining association to failure because it will not be an effective market entity.

Bargaining associations will need to agree on new Federal legislation that encompasses language that enables, when necessary, bargaining by accredited units with firms closer to the consumer--giant food service and grocery retailing firms. To wait until such negotiation becomes necessary before seeking the proper inclusion will result in ineffectiveness.

Boards of directors have an important role in charting their directions toward more involvement in the market system. They need to study trends, provide guidance and resources to management, and to constantly evaluate performance against goals.

Bargaining cooperatives will have more responsibilities in the future than ever before, due mainly to changes in economic forces, and diversity of programs will be required among commodities and States. Much needs to be done. As Shakespeare said, "Nothing comes of doing nothing."

Solutions to the Energy Crisis Lie In Politics as Well as Technology

*Ralph L. Lewis, Jr.
Vice President
Gulf Oil Company*

I'm going to use the editorial "I" and "we," to substitute for the oil industry and what it can do and what it cannot do.

I'm going to show you some things, talk about their costs, and how they relate to the world of agriculture.

Agriculture is going to change and change very rapidly. You had better be prepared for those changes.

First take oil. Every element known to man is in oil. My business is to find it, extract it, refine it, and sell it for a profit. Oil will never exist unless there has been an ocean. Oil is the death of forests, animals, and people. It is the debris that has been compressed over eons of time. To find oil, we must know where the oceans were. When we find it, it comes up under water or gas pressure. In due course, the well will begin to die. Some 10,000 wells will die this year. There are 522,000 wells in the United States. And when the well dies, two-thirds of the oil will remain in the rock. If we can figure out a way to improve on extraction of the oil, we will have solved much of our problem with energy from oil.

Part of the process of decaying vegetation is coal. I can make oil from coal. The problem is that it's costly. I cannot get a good grade of gasoline out of coal. But if I can figure out some way to add hydrogen to coal, then I can make it a rich crude oil, and I will not have to change the plumbing of the refinery and I can make fuel for you. We have 700 years' worth of coal in the United States. Coal is in your future.

Shale--we have mountains of it. This is a source of oil close to the surface. It is so close to the surface, some places 8 to 10 feet, that the sun has evaporated off what I normally would get when I drill for it. How do I get the fuel out of shale? The present technology is this: This Nation uses 17 million barrels of oil a day. For me to make 1 million barrels of oil out of shale, I would have to dig the Panama Canal every day and then process the rocks. Shale is in your future but it's down the line.

Uranium. One ton of ore will yield 4 pounds of yellow cake, which I can convert into nuclear fuel. This is in your future, also. I can take salt water and change it in my reactor and make hydrogen. Hydrogen is the best fuel for the future--you will soon be using it like you use natural gas. I will be able to do this but I will need about 10 to 15 years.

Solar. The perfect solar machine? A leaf. It is thin, it is mobil. It will catch the sun's rays. It will concentrate the energy down the stem. Can we duplicate it? By changing the molecular structure of a transparent glass made of sand and iodine, I can give it the ability to retain light. If I can concentrate it, I will have captured the sun. But I have been where I am today for 5 years. Solar is going to play a primary part in the world of agriculture.

A global map, seen through the eyes of a geologist, quickly reveals the world of the haves and havenots. The geologist says: I think that at one time the earth was a solid land mass. Great plates are under us and they shifted apart. So if I drill at 3,800 feet at a point in Brazil, I will hit the same rock at 3,200 feet in Africa. I think that Hawaii was an epicenter. And that's the newer part of the world. From Hawaii, there was a "ring of fire" that extends from Latin America and up the coast of California and into Alaska and down to Japan and to the upper regions of Australia. That is the geothermal "ring of fire." That is the newer part of the world. Concerning the older part of the world, I think this is what happened: I think a great canyon existed in the Mediterranean. It was barren for millions of years. Then there was an earthquake or something at the point of Gibraltar, and the oceans of the world swept in. They brought with them the animals, the fish, and possibly the people, and the seaweed with the debris and slammed them into the Middle East. And there that great pool died, and that says the geologist is why there is oil in great abundance in the Middle East.

That is the plate theory.

The Arabs are beginning to tell us first of all: We do not understand you Americans. You came over here with your technicians and began to take our oil. We let you because we had the British bayonet at our backs. When the British brought home their Tommy Atkinson, their colonial forces, the bayonet came out of our backs and things began to change.

The Arabs say: I do not understand you. You take my energy and rebuild your enemies. You took my cheap oil and rebuilt the Japanese. You took my cheap oil and rebuilt western Europe to pay for German industrialization. I don't understand that.

Let me tell you what's going to happen, Mr. and Mrs. America.

I'm going to run the price of oil upward until your alternate fuels become attractive. Until your coal, solar, and uranium become attractive. You see because if I continue on the course you've elected,

you will drain me dry. I'm going to run the price up. I'm going to take the money and invest it in the industrial nations. First of all that gives me two problems. I will not wreck the Bank of England. I have that capability today. I am going to embark on buying into (not to control, only to share in) American firms, Dutch firms, Belgian firms, because in due course my barrel of oil will give out, and I'm going to live on the coupons and dividends of you industrial nations.

The United States Government, both Republican and Democrat, made tactical errors. First of all, instead of letting oil move through the marketplace, it set up rules and regulations for us to operate in. If I find my oil well prior to 1973, I get \$5 a barrel, if I find it after 1973, I get \$10 a barrel. But if I buy it from the Arabs, I've got to pay \$14 a barrel.

When the energy crunch hit, we were bringing in 27 percent of our needs in overseas oil. Today, we're at 43 percent. We're on a disaster track. It has to be changed. You cannot slam into the oil companies or free enterprise without leaving scars. And the Government has scarred us badly.

We would like to provide the technical knowhow, for others to provide the knowhow--companies big and small, but you have to have an energy plan. But we are on a collision course.

I flew up here from Los Angeles. I had a nice flight. There was one or two things I enjoyed very much. I did not see a single uniform. I don't like uniforms. I served my time. I have two sons. I know enough about history that if things don't change, somebody is going to decide we should take something from somebody. And I do not intend to have my sons lie on the sands of Arabia because some of you have not been willing to listen.

There is an energy crisis, but there is a crisis of desire to do things. The world breadbasket at the present time is the United States, Canada, and Australia. You people in agriculture feed 43 Americans and 10 overseas. You have stopped the Russian army. As long as Ivan has wrinkles in his belly, he cannot move as long as he is dependent on United States, Canadian, and Australian grain. The Chinese are going to start doing some things. The Japanese will. Look at the island of Japan. The Japanese may buy that expensive oil at the present time to continue to be an industrial power. But they are quite suspicious of the American motive. For we still have power here. We have uranium. Eight-three percent of the world's uranium is in the United States, Canada, and Australia. Seventy-five percent of the world's coal is in the same countries. Interesting twist in coal. We're moving west looking for it. And when we come across it, we find peoples of the world who have not been treated very well who now control it--the Navajo, Shoshone, the Crow. There's a strip of coal under the Crow reservation that is 19 feet under the surface. It is 42 feet thick, 3 miles wide, and 61 miles long. If you think we're going to get it for \$24 and some beads, you're wrong.

We've been talking to the Crow, as have the West Germans and the Japanese. They're a sovereign nation. There is an Indian in your future.

Northern Alaska for oil is fine. Southern Alaska is a disaster. Seven wells we put down were dry. In southern California near San Diego, after battling the Sierra Club for 5 years for the right to drill, we have come up dry after drilling six wells.

There may be oil on the eastern seaboard. There's oil in Africa, Brazil. But the day of reckoning on oil is coming. If I do not find enough oil for you people, you will be afoot in 8 years. If I do not find enough gas for you, you are going to be out of gas in 6 years.

I said my business was to find oil and refine it and market it for a profit. That is the system. And many times I hear that the big oil companies are a ripoff. If we appear to be in with a bunch of winners, go to the stock market. You will find Texaco at its all time low, Gulf at all time low, Mobil at 1 point over all time low, and Exxon 2 points over low. If you think we're doing so great, go to your broker--he will be glad to sell you stock. And the other thing we hear is that we're too large. How would you like to sit on the board of directors and, concerning coal and uranium, have Congressman Udall and Senator Kennedy saying what we should do is break up the oil companies. You would say they can't be serious, but we remember the Panama Canal Act of 1911, which said the railroads could not enter trucking, barging, or shipping. And the one reason today you do not hear a lot of talk about Federal control of oil companies is Amtrak and the post office. If those two would have been successful, I would have had a "G" number.

The oil industry is not going to go down without a fight. We want to make a profit. We want our technicians. We have gone out and recruited your sons and daughters who have bright minds and continue to have a will to do what we want to do.

Gulf has an interest in solar, but only to this degree. We want somebody to come in and do better. We will never be in the solar business. We are not equipped for that. This is the thing that Lockheed, McDonnell, General Electric, Westinghouse will do. We do not have the people to get into solar. But we think we want them to come in to take the pressure off. Oil should be for national security, agriculture, chemical feedstock, and for other products.

Let me present some of the future for you. The perfect solar system is the ocean. We can go off the California coast at the present time and input transmitters 3,000 feet deep, put in a platform, and take garden fertilizer or commercial ammonia, put it in a pipe 12 feet across and circulate it back and forth. We can pick up that energy differential of 38 degrees, the difference from the surface to the bottom, and generate electricity for you. I will do that for you in 7 years--if I can get a Federal permit and not battle the environmentalists.

I'm going to West Virginia and Arkansas--for hot springs--not enough to make steam for electrical generation but to take the sludge from the sewer plant pump down hole and make hydrogen. Hydrogen is in your future.

Off San Diego, we're growing seaweed. A strain we're cultivating is growing at a rate of 18 inches per day. I can harvest that and use it for chemical feedstock. I'm going to be in that business--also the same with sawdust, corn husks, cotton hulls, and other agricultural wastes.

The reason the British are economically afloat right now is the North Sea. If you want to see where you are going to be in the next 50 years, look at Britain--breakup of families, demise of the Church, nationalization of industry...not a nice picture.

If we're going to stay in this business, we must have the technicians. We need your cooperation, your understanding. We can get out of the energy crisis, but listen well to what's being said. The political storm has waged from 1973. We have been hard put to spend our money tactically.

It's going to be an interesting time. Agriculture is going to change. That makes some people nervous because they don't like change. I can assure you, coal, uranium, solar, hydrogen, geothermal are all in your future. How swift we're going to be able to provide it for you at a fair and equitable price is dependent on policies in Washington, not our technicians.

Attendance List

Agricultural Council of California

Cal Adams
Lee Ruth

American Cotton Shippers Association

Neal Gillen

American Institute of Cooperation

Owen Hallberg
Beryle Stanton

American Sugar Beet Growers Association

Richard W. Blake

American Vegetable Growers

Harold T. Rogers

Apricot Producers of California

Gene Bays
Lauren Campbell
Ed Maring
Les Rose
Bill Sloan
Julius Traina
Jack Turnbull
Ralph Watters

Associated Milk Producers, Inc.

Lynn E. Elrod
Mrs. Lynn E. Elrod

California Agricultural Marketing Service

Martin Kelly

California Beet Growers Association, Inc.

Ben Goodwin
Malcolm Young

California Cannery & Growers

Bruno A. Filice
Les Heringer
Jack L. Sullivan

California Canning Peach Association

Elizabeth Bunje
Ralph Bunje
Ugo Cavaiani
Mrs. Cavaiani
Sharon Cole
Jeannette Grant
Steve Grant
Merle Norene
Roy Norene
Ronald A. Schuler
Jeane Thom
Frank Van Konynenburg

California Canning Pear Association

Cameron Girton
Mort French
Daniel Price

California Citrus Mutual

Harry Baker

California Farm Bureau

Emil Dietz

California Freestone Peach Association

John R. Starn

Grower-Shipper Vegetable Association of Central California

Richard V. Thornton

University of California

Leon Garoyan - Davis
Eric Thor - Berkeley

California Tomato Growers Association, Inc.

Ray Calcagno
Ernest Epley
Mrs. Ernest Epley
Jack Hayes
Bev Hayes
Bob Holt
Kay Holt

Carl Schneider
Jane Schneider
Fred M. Stewart

Dairylea Cooperative Inc.

Robert F. Pardoe

Del Monte Corporation

James Countrymen
Charles Hall

Farm Credit Bank of Louisville

J. Warren Healea

Farmers & Manufacturers Beet Sugar Association

John Heussner
Franklin Kulhanek

Filbert Growers Bargaining Association

Don Maltby

Florida Tomato Committee

Beth Ann Elsberry
Donald Elsberry
Wayne Hawkins

University of Florida

Ralph A. Eastwood

Fremont Pickle & Tomato Growers Association

Box Auxter
Ray Cunningham
John Havens
Bob Reed

Gulf Oil Company

Ralph L. Lewis

Hanson, Bridgett, Marcus, Milne & Vlahos

Gerald D. Marcus

Indiana Farm Bureau Cooperative Association, Inc.

Glenn Franklin

Inter-State Milk Producers Cooperative

Dr. James E. Honan
Paul E. Hand

E. A. Jaenke & Associates, Inc.

John Blum

Lake to Lake Dairy Cooperative

Truman Torgerson

Lehigh Valley Farmers Cooperative

John C. York

Lindsay Olive Growers

Earl S. Fox

Malheur Potato Bargaining Association

T. Ted Morinaka
Mrs. Morinaka

Maryland Cooperative Milk Producers, Inc.

Ralph L. Strock

Michigan Agricultural Cooperative Marketing Association, Inc.

Tom Butler
Harry A. Foster
Howard Gilmer
Frank A. Lee
P. C. Morrison
Robert Peabody
Noel W. Stuckman
Gene Veliquette
Mrs. Veliquette
William S. Wilkinson

Michigan Agricultural Marketing & Bargaining Board

Thomas J. Moore

Michigan Blueberry Growers Association

Pete Holbein

Michigan Farm Bureau

Max Dean

Michigan Milk Producers Association

Glenn Lake

Michigan State University

Jim Shaffer

Mid-America Dairymen, Inc.

Gary E. Hanman

Shirley Hanman

National Council of Farmer Cooperatives

Robert N. Hampton

National Farmers Union

Robert G. Lewis

The National Grange

Robert M. Frederick

Nationwide Insurance Company

Joseph W. Carlton

Harry P. Metz

G. Willard Oakley

Dwight W. Oberschlake

Leonard E. Schnell

Robert W. Summer

Robert E. Walker

Wendell Weller

Norbest, Inc.

Owen Sumsion

New Mexico State University

George R. Dawson

New York Farm Bureau Marketing Cooperative, Inc.

John Follman
Karen Koppel

Ohio Agricultural Extension Service

Glenn E. Maddy

Ohio Agricultural Marketing Association

Raymond R. Casey
Ralph Gillmor
Glenn Pirtle
Dean Simeral
C. William Swank

Ohio Farm Bureau

Robert Hester

Ohio State University

Chuck Ingraham

Oklahoma State University

Paul D. Hummer

Ontario Vegetable Growers Marketing Board

Hank Vander Pol
Harry Dougall
Mrs. Dougall
Max Steel

Pacific Coast Producers

Robert E. Collins

Potato Growers of Idaho, Inc.

Al Johnson
Gerald L. Murphy
Allan Wood
Margaret Wood

Prune Bargaining Association

Ken David

Raisin Bargaining Association

Mats Ando
Kalem Barserian
Robert Condoian
Willard Johnson
Henry Klein
Henry Panduro
Vinto Scarabello
Fred Taniguchi
John Pakchoian

Tri/Valley Growers

John Kautz
Mrs. John Kautz
Hubert Miller

United Egg Producers

James F. Fleming

USDA, Agricultural Marketing Service

Walt Armbruster
Floyd Hedlund
Barbara Lindemann Schlei

AMS San Francisco Regional Information Office

Ben Darling

USDA, Cooperative State Research Service

Lloyd C. Halvorson

USDA, Economics, Statistics, and Cooperatives Service

Martin Blum
Marshall Godwin
Louise Griffith
Gene Ingalsbe
Homer Preston
Randall Torgerson

USDA, Extension Service

Paul O. Mohn

Utah Council of Farmer Cooperatives

Morris H. Taylor

Washington Asparagus Growers Association

Betty Aaron
Hugh Aaron
Harold Clayton
Gene Coe
Hazel Coe
Dick Martin

Central Washington Farm Crops Association, Inc.

Gerald Williams

Western Washington Farm Crops Association

Gary L. Van Dyke

Washington Potato Growers

Paul Hirai

Washington State University

A. H. Harrington

Western Farmers Association

Bruce E. McCaw

Wisconsin Farm Bureau Marketing Association

Alton Rosenkranz

Ross Wurm & Associates

Dorothy Mortensen
Ross Wurm

