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ABSTRACT

COLLECTIVE BARGAINING BETWEEN PRODUCERS AND HANDLERS OF FRUITS AND VEGETABLES FOR PROCESSING: SETTING, LAWS, ALTERNATIVE RULES, AND SELECTED CONSEQUENCES

By

Mahlon George Lang

During the last decade, the Congress and several state legislatures have considered and in some cases enacted legislation which facilitates, protects and promotes the efforts of agricultural producers to organize for collective bargaining with first handlers over terms of trade for agricultural products. Producers of fruits and vegetables for processing have been most inclined to bargain collectively and, among agricultural producers, have been the most inclined to promote collective bargaining legislation.

To date, such legislation has frequently been written with very limited empirical knowledge of the markets in which collective bargaining takes place, the behavior of participants in bargaining, the consequences of collective bargaining and, more specifically, the consequences of collective bargaining under alternative rules. The aim of this research was to provide better information upon which to base public choices with respect to bargaining legislation. Accordingly, the research was devoted to a structure, conduct, and consequences

description of the setting for collective bargaining in agriculture, a description of existing and proposed collective bargaining legislation, an analysis of alternative rules which may be included in bargaining laws and an analysis of collective bargaining as an alternative to a "free market" in processing fruits and vegetables.

The description of the setting for collective bargaining was based upon a 24-page mail questionnaire completed by bargaining association managers and upon personal interviews with association managers, industry observers, processors and persons engaged in the implementation of collective bargaining laws.

The description of existing and proposed laws was based upon an examination of state and federal statutes, and upon information received from association managers involved in the promotion of new legislation.

The analysis of alternative rules was based upon responses to the questionnaires and upon interviews with the parties mentioned above.

The analysis of collective bargaining as an alternative to the "free market" is based upon data gathered through questionnaires and interviews, and upon an examination of the neoclassical economic theory used by some to argue for a "free market" in producer-first handler relationships.

In Chapter II, a description of agricultural bargaining in processing fruits and vegetables is presented. Variables described are institutional structure, market structure, participant conduct and selected consequences of collective bargaining activity. Institutional structure includes: commodities bargained for, value, contractual relationships, experience in bargaining, nonbargaining services

provided by associations, affiliations with other cooperatives, services received from other cooperatives, share of members out-of-state, memberships in processing cooperatives, and decision control in bargaining associations. Market structure includes: four-firm concentration ratios for buyers, area processors, importance of individual outlets, alternative crops, difficulty of transition to alternative crops, other crops processed by handlers, alternative actions for associations when processors refuse to bargain (short and long run), number of processing cooperatives, member growers, membership trends, sources for buyers, handlers producing their own raw products, the ownership of specialized capital, production and marketing functions performed by handlers, and on-farm processing.

Conduct variables include: handler refusals to bargain, responses by associations, importance of responses, contract terms discussed, kinds of prices bargained for, levels of support for formula prices, goals of association managers, information used, sources of information used, characterization of bargaining relationships, obstacles to the achievement of bargaining objectives, and the managerial perspective.

Performance variables include: benefits to the association as perceived by managers and members, changes in passed acreage practices, changes in out-put since bargaining began, changes in cropping patterns, benefits accruing to producers and handlers, and benefits accruing to nonassociation growers.

In Chapter III, the nature and use of existing and proposed state and federal laws relating to collective bargaining is reviewed. Federal laws include: The Capper-Volstead Act of 1922, the Agricultural

Marketing Agreements Act of 1937 and the Agricultural Fair Practices Act of 1967. State laws are those in California, Colorado, Idaho, Maine, Michigan, Minnesota, North Dakota, New Jersey, Ohio, Oregon, Washington and Wisconsin. Proposals include the Sisk Bill and proposals in New York, Ohio, and Pennsylvania.

Drawing upon the findings of Chapters II and III, Chapter IV analyzes specific rules which may be used to design a bargaining law. Rules examined include Capper-Volstead and alternative interpretations thereof, protection of rights to bargain collectively, fee deductions, certification and the definition of bargaining units, good faith bargaining, mediation, exclusive agency bargaining, arbitration, and administration. Each rule is examined in terms of its intent and the problem of making it workable. The importance of legislative design for the consequences of collective bargaining is stressed.

Chapter V is devoted to an analysis of collective bargaining as an alternative to the "free market." The two are compared in terms of the consequences of each for equity, stability and vertical coordination. It is suggested that collective bargaining, by evening the alternatives to each side in a transaction, by generating more market information and by creating pressure to seek better vertical coordination, may be a superior alternative to the "free market" depending upon the transactions costs for each coordination mechanism.

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to my parents

Mahlon O'Brien and Alice LaVerne Lang

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CHAPTER I

INTRODUCTION

Background and Importance of the Topic

Collective bargaining in agriculture and its implications for food system structure, conduct, and performance have been debated for more than a century. As early as the 1870s, units of the Grange "would sometimes pool their production and bargain collectively with merchants to achieve a higher price for product."¹ On the input side as well, "orders of many local Granges were pooled and state agents bargained directly with manufacturers for farm supplies."² Between 1916 and 1920, the first successful bargaining cooperative emerged in California and Utah.³ Since then, the number of fruit and vegetable bargaining associations has grown steadily.⁴ This growth was in the Middle Atlantic, North Central, and Pacific States. Fifty percent of the associations

¹Luther G. Tweeten, Foundations of Farm Policy (Lincoln: University of Nebraska Press, 1970), p. 64.

²Ibid.

³Peter G. Helmberger and Sidney Hoos, Cooperative Bargaining in Agriculture (Berkeley: Agricultural Publications, The University of California, 1965), p. 7.

The reader is encouraged to examine Appendix A of the present report. It is a brief history of the Utah-Idaho Canning Crops Association by the late A. W. Chambers.

⁴Ibid., p. 9.

are on the West Coast.⁵ Since its organization in the late 1950s, the National Farmers Organization (NFO) has worked to achieve a capacity for nationwide, all-commodity collective bargaining.⁶ In 1960, the American Agricultural Marketing Association (AAMA) was organized as an affiliate of the American Farm Bureau Federation (AFBF). Its state organizations have been active in the formation of new bargaining associations.⁷

Developments in the last decade suggest an intensified interest in farm bargaining. In 1968, the Agricultural Fair Practices Act of 1967 (S-109) was signed into law. It had been promoted by the Farm Bureau. It identified unfair practices by handlers toward producers and producer organizations. A wave of proposed national bargaining laws has appeared in response to the perceived inadequacies of S-109. Included are the Mondale, May, and Sisk bills. Each proposed stronger rules to require good faith bargaining on behalf of fruit and vegetable handlers.⁸

Recently, state legislatures have enacted more powerful bargaining laws. Michigan has enacted the strongest legislation. Notable provisions include compulsory membership in bargaining units accredited by a board and compulsory arbitration after a specified date, but at the beginning of a defined marketing period. Minnesota and Maine have enacted similar legislation without the compulsory features. California

⁵Ibid., p. 12.

⁶Oren Lee Staley, personal interview (Corning, Iowa: May 12, 1976).

⁷Jack Armstrong, "Bargaining Through Associations." In Harold F. Breimyer (Ed.) Bargaining in Agriculture (University of Missouri-Extension Division-C911-June 1971), p. 31.

⁸J.K. Samuels, "Legal and Legislative Aspects," _____, pp. 27-8.

has amended its marketing law to define refusal to bargain in good faith as an unfair practice for growers and handlers. New York, Ohio, and Pennsylvania legislatures have before them proposals similar to the Maine and Minnesota laws. As part of this research, proposed and pending legislation relating to farm bargaining will be discussed in detail. This set of proposals and new laws signals a strong current interest of some grower groups in legislation designed to facilitate farm bargaining at both the state and federal levels.

Collective bargaining in agriculture is widely viewed as a zero-sum game in which the decision to permit, endorse, or promote collective bargaining by farmers is made at the expense of processors and/or consumers. So viewed, the collective bargaining question is strictly an equity issue. The equity issue is clearly important. As a society, we value a fair game. But there is increasing evidence that broader implications of the question are now recognized. Armstrong, for example, observes that collective bargaining is one of several price making alternatives.⁹ The very existence of alternative mechanisms for price determination suggests alternative sets of consequences. Hurwicz' analysis of alternative pricing mechanisms¹⁰ indicates some of the dimensions by which alternatives can be evaluated. The "thickness" (amount of information contained in the message) of a "message space"

⁹ Jack H. Armstrong, "Requirements for Developing Information Systems," in Proceedings of the 19th Annual Conference of Bargaining and Marketing Cooperatives (Farmer Cooperative Service, USDA, 1975).

¹⁰ Lenoid Hurwicz, "Optimality and Informational Efficiency in Resource Allocation Processes," in Readings in Welfare Economics, ed. by Arrow and Scitovsky (Homewood, Illinois: Richard P. Irwin, 1969).

is traded off against the "compactness" (ease of transmitting) of a message.

Hurwicz' notion suggests that some pricing mechanisms offer a greater potential than do others for facilitating vertical coordination between producer and processor. The problem of achieving vertical coordination has long concerned those in the processing fruit and vegetable industry. That concern has been enhanced with recent increases in levels of canned and frozen food production and the rising demands for improved quality of food products.

There are indications that the study of factors affecting vertical coordination is attracting greater interest. Vertical coordination is a central focus of North Central Regional Project 117, a study of the organization and control of agriculture.

But even if interested parties recognize these "broader" implications of collective bargaining, what most ignore as they debate the issue is the question of how different rules (laws) under which producers and processors bargain will affect the behavior of participants and therefore the equity, the information, the incentives, and, hence, the vertical coordination within a commodity subsector. There is, as we shall see, a wide variety of ways in which to design bargaining laws. Thus, the effect of different rules upon behavior is a vital area of research.

Another question largely absent from the discussion of bargaining legislation is that of design and workability of whatever laws are passed. Study of existing and proposed bargaining laws reveals a past lack of attention to this question. There is evidence that legislation (e.g., Minnesota law) has been passed without recognition of the inter-relatedness of different portions of a law. As mentioned later, it

appears as if politically palatable portions of the Michigan law were selected for inclusion in the Minnesota law and others were left out. Because portions included were related to those left out, certain portions of the law are unworkable.

Another example is the 1975 version of the Sisk bill. It may be unworkable because of ambiguities inherent in the definition of "major areas of production," a key concept in the bill. Careless wording of legislative provisions (as discussed in Chapter IV) can make it extremely difficult to implement legislation.

Thus, the collective bargaining debate relates not only to the questions of equity and rules of the game. It also affects information flows, incentives, and vertical coordination. Differences in rules are therefore important as is the question of how rules are designed and whether they are workable.

There is never a policy vacuum with respect to collective bargaining. It is impossible for state or federal legislatures to avoid making a choice affecting it. To endorse some particular form of bargaining legislation is to say that the performance achieved under that legislation is expected to be the best that can be achieved. To reject all forms of bargaining legislation and thereby to define property rights in a manner which prevents or limits farm bargaining is to say that most satisfactory performance will result from such actions. In either case, a choice is made, and it is important that such a choice be an informed one.

Research Objectives

For this reason, the overriding objective of this research is that of providing a foundation upon which citizens, legislators, and partisans can make more informed judgments about legislation for collective bargaining in agriculture. Subordinate objectives are pursued in support of the primary aim.

The first objective is to describe the setting of collective bargaining as well as the attitudes and behavior of participants. This will be the substance of Chapter II, which is based upon primary data collected through mail questionnaires and personal interviews with bargaining association managers.

The second objective is to describe the legal framework of collective bargaining in agriculture. Chapter III is devoted to this objective. It provides a discussion of existing and proposed bargaining legislation and of litigation surrounding collective bargaining laws.

The third objective, which is more analytical and most directly related to the overall objective, is the subject of Chapter IV. It is to evaluate alternative collective bargaining rules in terms of sponsors' objectives and to suggest alternative means of achieving those objectives.

The fourth objective is to evaluate collective bargaining under workable legislation as an alternative to the free market and to do so in terms of specific food system performance dimensions. This objective is the subject of Chapter V. It is intended that this report, by describing the environment of collective bargaining, analyzing the rules under which it is carried out, and evaluating it in terms of specific performance dimensions, will provide insights which facilitate more

informed public and private choices and better design in bargaining laws should they be a part of the public choice.

Performance dimensions to be discussed are system equity, stability, and vertical coordination. The equity dimension is concerned with whether there is an equitable distribution of market power as measured by alternatives open to buyers and sellers. The stability dimension is concerned with whether price fluctuations are caused by variations in supply and demand or by limited market information. The vertical coordination dimension is concerned with the way that different coordination mechanisms ("free" market and collective bargaining) harmonize the various dimensions of product exchange (quantity, time, form, and place utility). A detailed definition of vertical coordination as a performance dimension is presented as a major part of Chapter V.

Approach to Research

Three major activities were carried out in the search for information to achieve the stated objectives. These activities were: 1) a review of the literature, 2) the use of a mail questionnaire, and 3) the use of personal interviews.

The literature is listed in the bibliography at the end of the body of this report. Major works are those of Helmlinger and Hoos, Cooperative Bargaining in Agriculture; Ladd, Agricultural Bargaining Power; Roy, Collective Bargaining in Agriculture; and Torgerson, Producer Power at the Bargaining Table. Several relevant articles have also appeared in the American Journal of Agricultural Economics. But most writing in the area has appeared in summaries of proceedings at twenty national conferences of bargaining associations.

These conferences are sponsored annually by the National Association of Bargaining Cooperatives and the Farmer Cooperative Service of the U.S. Department of Agriculture.

The review of literature provided an update with respect to research previously conducted, the focus of research questions asked, and the perspectives of people involved as managers, producers, processors, or observers of collective bargaining in agriculture. The review indicated that academic research on the subject is largely void of detailed, comprehensive descriptions of bargaining activities and particular associations involved. (Helmberger and Hoos' book¹¹ is an exception as is a descriptive piece by Biggs and Samuels¹² of the Farmer Cooperative Service of the U.S. Department of Agriculture.) In general, the only detailed, empirical data were found in isolated studies (Emerson Babb, et al.)¹³ of individual associations. Other works were approached on a strictly deductive basis (George Ladd),¹⁴ aimed at summarizing the area (Ewell P. Roy)¹⁵ or dealt with special

¹¹Helmberger and Hoos, Cooperative Bargaining in Agriculture.

¹²Gilbert Biggs and J.K. Samuels, Bargaining Cooperatives: Selected Agri-Industries (Farmer Cooperative Service, USDA-Information 90-1973),

¹³Emerson Babb, S.A. Belder, and C.R. Saathoff, "An Analysis of Cooperative Bargaining in the Processing Tomato Industry," American Journal of Agricultural Economics, 51 (February 1969), 13-25.

¹⁴George Ladd, Agricultural Bargaining Power (Ames, Iowa: Iowa State University Press, 1964).

¹⁵Ewell P. Roy, Collective Bargaining in Agriculture (Danville, Illinois: The Interstate Publishers and Printers, 1970).

topics (Randall E. Torgerson).¹⁶ For this reason, there is a shortage of information upon which to conduct informed discussion with respect to public policy on collective bargaining in agriculture. These weaknesses in the literature point out the need for a broad but somewhat detailed study of collective bargaining in agriculture.

This need provided the motivation for other research activities. Thus, the second activity was to develop and send out a detailed questionnaire to be completed by managers or presidents of agricultural bargaining associations.

To compliment the mail questionnaire, many bargaining association managers were interviewed. The list of associations in Appendix D identifies those associations interviewed. Interviews were also conducted with several associations which have ceased to bargain, with representatives of three processing firms, with persons administering laws, and with some interested observers.

Most interviews were conducted with association managers. A copy of this questionnaire is included as Appendix C. A casual comparison of the mail questionnaire with that of the interview questionnaire will reveal almost total similarity. The reasons are: 1) the questions could be answered more completely on the open-ended questionnaire and 2) the open-ended questionnaire is really a springboard for in-depth discussion of the most important questions related to the research objectives.

¹⁶Randall E. Torgerson, Producer Power at the Bargaining Table (Columbia, Missouri: University of Missouri Press, 1970).

Scope of the Studied Population

While the research is oriented toward fruit and vegetables for processing, it has included data from other commodities which do not fit neatly into either category. Thus, data are presented on broilers, filberts, and sugarbeets as well as processed fruits and vegetables.

There was no existing enumeration of bargaining associations. Thus, it was necessary to identify the population. Lists of associations provided by association managers, knowledgeable observers, and the Farmer Cooperative Service, USDA provided a starting point for compiling a final list.¹⁷ This list was reduced to 130 possible associations which, taking into account multiple-commodity associations, represented a possible 230 commodity bargaining divisions.

Mail Questionnaires

In mid-November of 1975, questionnaires were sent to all identified associations. Responses to these questionnaires included; 1) information that there was no such address, 2) notices that the association was defunct, 3) replies that the association was not a "bargaining" association, 4) completed questionnaires from associations that mainly operated sales desks, and 5) a number of nonresponses. About ten questionnaires from collective bargaining associations were received by Christmas.

The process had eliminated many "nonbargaining" groups, but the list of bargaining associations was still incomplete

¹⁷Specifically, Bob Brenneman, Indiana Agricultural Marketing Association; Harold Hartley, American Agricultural Marketing Association; Alton Rozenkranz, Wisconsin Agricultural Marketing Association; Jerry Williams, Washington Agricultural Marketing Association; Ralph Bunje, California Winegrape Growers Association; and Gilbert Biggs, Farmer Cooperative Service, USDA.

because of the nonresponses. In January 1976, the research was promoted at the national bargaining conference in Washington, D.C. Those attending were encouraged to complete their questionnaires.¹⁸ This promotion prompted some responses and helped to "legitimize" the research. The next step was to make personal phone calls to those who had not completed their questionnaires. This further reduced the number of "possible" bargaining associations. At the same time, some associations not on the initial lists were added and received questionnaires. Equally important, the personal calls were very effective in terms of securing responses to the earlier requests. Based on the best information that could be gathered through this process, there are 33 active bargaining associations representing 75 different fruit, vegetable, and nut divisions. Questionnaires were completed by 26 (or 78 percent) of these associations representing 51 (or 68 percent) of the bargaining divisions. Of those seven associations which did not respond, two indicated that they preferred not to complete the questionnaires, but indicated a willingness to cooperate with an interview. One sent printed matter on its activities. Of the remaining four associations, one was interviewed but did not complete a questionnaire, one manager indicated that he would cooperate if time were available, and the other two just never responded. These six associations account for eight divisions unreported. The remaining 16 divisions are unreported either by large associations who only reported on the "major" commodities or are aggregated in the report of one association.

¹⁸Particular thanks are extended to Mr. Tom Moore, Administrator, Michigan Agricultural Marketing and Bargaining Board; Dr. C. William Swank, Executive Vice President, Ohio Farm Bureau Federation, Inc.; and Dr. Randall Torgerson, Administrator, Farmer Cooperative Service, USDA.

In addition to these responses, questionnaires were completed by one broiler group, five sugarbeet associations, one defunct association, and two nonbargaining associations. Of these responses, only data from the broiler group and the sugarbeet associations are included in the compiled data.

Personal Interviews

Upon receipt of the completed questionnaires, plans were made to conduct personal interviews with as many association managers as possible. These were needed to develop a more complete understanding of 1) the environment in which the associations operated, 2) the managerial perspective from which the association manager acts, and 3) the questions which ought to have been asked but which may have been excluded from the questionnaire. They were also needed to get answers which may have been hard to provide on short, coded forms and to clarify confusing answers and eliminate contradictory responses.

For the purposes of these interviews, the questionnaire in Appendix C was developed. As an open-ended form, it is largely a reproduction of the mail questionnaire. Thus, as used, most of the questions had complete or partial answers. In practice, actual interviews were reduced to eight or ten questions which would compliment the mail survey and achieve the objectives listed above.

It was impossible to pursue all the questions one might have wished to ask because there is a limit to how much time one can fairly expect from the person being interviewed. Virtually always, the time required to pursue all likely questions would have far exceeded a reasonable time for the interviews, which actually lasted from one and one-half to six hours.

Obviously there came a time to choose which of the questions would be pursued and how much time to spend on each. It would have been especially difficult to establish a formal plan for such choices ahead of time. The interviewer simply had to rely on his own judgment, frequently trading off a question about the volume bargained or the percentage of bargained sales going to particular use in order to permit the manager to speak about his philosophy of bargaining, relationships with processing cooperatives, the effect of market orders, bargaining laws, or other "more important" questions.

On this basis, interviews were carried out with 30 of 33 active associations and with past managers or officers of four inactive associations.¹⁹ Interviews were also conducted with other officers, government personnel charged with implementation of bargaining laws, industry observers, three proprietary processors, and a processing cooperative. The findings of these interviews are incorporated in Chapter II.

The findings of this research effort are presented according to the following format. In Chapter II, the setting of collective bargaining in agriculture is described in a modified industrial organization framework. The chapter summarizes the findings of the mail questionnaire and elaborates on those findings with information gathered through personal interviews.

Chapter III describes the legal framework for collective bargaining in agriculture. It summarizes existing laws and proposals at both state and federal levels. It also summarizes key points in litigation

¹⁹George Webster, New Jersey Agricultural Marketing Association; Leonard Rizzutti, Walla Walla Vegetable Growers; Jeff Gain, Illinois Agricultural Association; and one individual who asked to remain anonymous.

surrounding that legislation. The chapter is based upon an extensive survey of bargaining laws and upon the interviews with bargaining association managers and others involved.

Chapters II and III provide a descriptive foundation for Chapter IV, which is an analysis of alternative rules for collective bargaining in agriculture. That chapter examines individual rules, evaluates them in terms of their objectives, and recommends modifications, which, based upon experiences under existing laws and upon interviews with managers as well as those charged with implementing laws, are expected to make them more workable and effective.

Chapter V is an analysis and evaluation of the consequences of collective bargaining as an alternative to a "free market" in processing fruits and vegetables. It concentrates on the consequences of the alternatives for equity, price stability, and vertical coordination. The chapter draws heavily upon economic theory, personal interviews, and mail questionnaire findings to conduct the analysis.

Chapter VI provides a summary, conclusions and some suggestions for needed research.

Preceding the body of the paper is a brief note on terminology. This will help to clarify some terms used frequently in the report.

A Note on Terminology

Several terms are used frequently in this thesis. The meanings of these terms as used by the author are briefly discussed below for the benefit of those familiar with the subject area as well as for initiates in the field of collective bargaining in agriculture.

Bargaining. Bargaining is a process participated in by two or more parties, each having goods and/or services to exchange. There are two and sometimes three dimensions to the process. First, there is an unknown solution or set of terms upon which some level of exchange will take place. This implies some range of possible (acceptable) solutions over which each party may agree to exchange. Second, there is a desire by each party to maximize their welfare within some set of constraints and over some set of alternatives. Third, depending upon the number of characteristics of the goods or services to be exchanged and the conditions under which exchange may take place, there may be many dimensions to the discussion. As we move away from commodities in which alternative markets are well known and in which the qualities and conditions of delivery are neatly specified, this third dimension of bargaining becomes increasingly important.

So defined, bargaining represents one of three broad kinds of exchange. These are tributary, administrative, and bargained exchange. They are discussed in some detail in other works. To some extent all are found in every economy. The U.S. economy is characterized by the latter where individual economic units are free to seek means of maximizing their own well-being by bargaining with whomever they choose.

Collective bargaining. Collective bargaining takes place when two or more economic units join together as one to bargain with one or more other economic units. The subject of this thesis is collective bargaining as opposed to individual bargaining in which all of us participate.

Collective bargaining association. Because there are antitrust laws which prohibit certain economic units from acting jointly to bargain

with others, those who wish to bargain collectively with others may do so legally only if they meet certain requirements which qualify them for exemption from provisions of those antitrust statutes. Those requirements are specified in the Capper-Volstead Act of 1922. Collective bargaining associations, as used in this thesis, are groups of agricultural producers bargaining collectively, presumably under the protection of that statute.

Successful bargaining. Successful bargaining, as used here, does not refer to success in achieving bargaining objectives. It refers to the capacity of collective bargaining associations to engage regularly in bargaining with buyers, to reach some agreement, and to follow through with exchange. It is a relative concept in that some associations are successful in reaching agreements more frequently than are others. Measures of success are described in Chapter II.

Association-division. In the first portion of Chapter I, there is a distinction between bargaining associations and divisions thereof. Associations (mainly state affiliates of the American Agricultural Marketing Association--AAMA) may bargain for more than one commodity but have separate membership lists and bargaining committees for each. These commodity groups are initially called bargaining divisions to distinguish them from the parent association. In fact, the divisions operate independently of one another although they may have professional commodity division managers with responsibility to two or more divisions. Because the "divisions" function largely as independent associations, they are referred to as "associations" in succeeding chapters.

Growers, producers, and farmers. These terms are used interchangeably throughout the dissertation. They refer to individuals who

produce bargained commodities and at one time have title to these commodities whether or not that title ultimately passes through an association to the buyer.

Processors. Those persons who buy the commodity for the purpose of changing its form and reselling it. They may be first handlers although they may have others buy for them. In general, processors are first handlers.

First handlers. The first person to take title to the commodity as it passes from the producer or the association. This may be a processor, a fresh shipper, or intermediate buyer. In general, first handler is used in preference to processor when fresh shippers are bargained with, as in potatoes and asparagus.

CHAPTER II

DESCRIPTION OF THE SETTING FOR COLLECTIVE BARGAINING IN AGRICULTURE

The objective of this chapter is to describe the environment of collective bargaining between producers and first handlers. The aim of this description is to facilitate understanding of relationships between bargaining parties and other elements of the food system. This, in turn, is intended to improve our chances of predicting consequences of changes in laws affecting collective bargaining. To meet these requirements, a conceptual framework very much like the industrial organization approach of Mason, Bain, and Scherer is employed.

The industrial organization approach is built around three concepts or classifications of variables which characterize the setting, activity, and outcomes within an industry. The concepts are structure, conduct, and performance. Briefly, structure refers to the whole set of constraints facing participants in economic activity; conduct refers to the objectives participants pursue and the strategies they adopt in doing so; and performance refers to specific consequences which flow from given combinations of structure and conduct. The idea of organizing material in this way is to map the boundaries (defined by structure) within which participants operate, along with attempting to identify the aims and strategies (conduct) of those participants so as to improve the

chances of predicting the consequences (performance) of changes in structure and conduct.

The Conceptual Framework and the Studied Variables

A very similar conceptual framework is used to present data collected for this research. The adaptation of the industrial organization model is discussed as the data are presented. For convenience, an overview of variables discussed is presented below.

Structural variables are broken into four groups: institutional structure, alternatives for sellers, alternatives for buyers, and other elements of structure.

Variables considered in institutional structure are listed below.

- 1) Number of commodities for which the association bargains
- 2) Commodities for which the associations bargain
- 3) Value of bargained crops
- 4) Contractual arrangements among associations, members, and handlers
- 5) Experience of associations in collective bargaining
- 6) Nonbargaining services provided by bargaining associations
- 7) Affiliation of associations with other cooperatives
- 8) Services provided through affiliation with other associations
- 9) Share of association membership located outside of the state in which the majority of members reside
- 10) Memberships in processing cooperatives by bargaining association members
- 11) Decision control in the bargaining association

Variables included in alternatives for sellers are listed here.

- 1) Four-firm concentration ratios for buying firms
- 2) Number of area processors and the number of those processors served by the association members
- 3) Importance of individual buyers to the association
- 4) Alternative crops for growers
- 5) Difficulty of transition to alternative crops
- 6) Number of crops processed by handlers sold to
- 7) Alternative actions for associations when handlers refuse to bargain (short-run)
- 8) Alternative actions for associations when handlers refuse to bargain (long-run)
- 9) Number and importance of processing cooperatives in markets where bargaining associations operate

These variables are included in alternatives for buyers.

- 1) Total number of growers of the collectively bargained commodity
- 2) Number of growers who are association members
- 3) Association membership trends
- 4) Sources of the raw product for those buying from the association or its members
- 5) Number of handlers producing some share of their raw product needs on their own or rented land
- 6) Number of handlers producing some share of their raw product and buying from the association or its members
- 7) The share of handler needs provided through handlers' own production
- 8) The share of association members' production purchased by firms producing their own raw product

Additional elements of structure are included in these variables.

- 1) The ownership of specialized capital
- 2) Production and marketing functions performed by handlers
- 3) Extent of on-farm processing

Conduct variables are also broken into several subordinate categories. These are: experiences in collective bargaining, approaches to collective bargaining, the nature of the bargaining relationship, and an overview on the managerial perspective or philosophies of bargaining.

Variables relating experiences in collective bargaining are listed here.

- 1) Handler refusals to bargain with associations
- 2) Actions taken by associations when handlers refuse to bargain
- 3) The importance of particular actions as responses to a failure to agree on terms of trade
- 4) Contract terms which are currently discussed, those the association manager thinks should be discussed, and those which are discussed as a result of efforts to bargain collectively
- 5) Kinds of prices bargained for by growers and handlers
- 6) Levels of grower and handler support for formula prices

The following variables reflect approaches of association managers to collective bargaining.

- 1) Goals of bargaining association
- 2) Information used in pursuit of association goals
- 3) Sources of information used in pursuit of association goals

Variables reflecting the nature of the bargaining relationship.

- 1) Bargaining association managers' characterizations of the bargaining relationship with handlers
- 2) Bargaining association managers' specifications of obstacles to the achievement of bargaining objectives

Four distinct philosophies of bargaining are developed and discussed. These philosophies represent different managerial perspectives and provide an overview of conduct by association managers.

Performance variables are listed below and make up the last portion of Chapter II.

- 1) Benefits of collective bargaining to the association as perceived by the association manager
- 2) Benefits of collective bargaining to the association as perceived by the association's members
- 3) Changes in the occurrence of passed acreage since collective bargaining began
- 4) Changes in quantities of output contracted since collective bargaining began
- 5) Changes in growers' cropping patterns associated with collective bargaining
- 6) Benefits accruing to producers and handlers as a result of the collective bargaining relationship
- 7) Benefits accruing to nonassociation growers as a result of the collective bargaining relationship

The remainder of Chapter II is devoted to a description of collective bargaining for the exchange of processing fruits and vegetables in the United States. The presentation will include further development of the industrial organization approach, an explanation of the variables studied, the presentation of data, and discussion of the possible implications of those findings.

Structure

As used in this research, structure refers to the set of constraints within which growers, association managers, and first handlers make decisions with respect to the exchange of perishable commodities. In the industrial organization approach, structure variables refer to concentration ratios, barriers to entry, vertical integration, product differentiation, cost structure, and conglomerateness.²⁰

The importance of these variables lies in the fact that they are indices of the alternatives open to parties in the market. The number of firms, the number of potential competitors, the number of alternative suppliers, the number of competing products, and the number of ways to absorb costs are other ways to interpret the same variables. They are measures of opportunity sets--the options open to buyers and sellers who determine prices, quantities, qualities, etc. of goods exchanged and resources used. If we know what options are open to participants in markets we wish to study, we improve our chances of predicting how they will act. For this reason, the data-gathering process focused on factors affecting the alternatives open to sellers and buyers. As we have seen, the number of structure variables listed in these categories exceeds the number listed by Scherer. What those new variables have in common with the industrial organization approach is that they measure alternatives open to participants.

Variables representing measures of institutional structure are also presented. The reason is that collective bargaining institutions are being studied. This requires: a) basic information about collective

²⁰F.M. Scherer, Industrial Market Structure and Economic Performance (Chicago: Rand McNally and Company, 1973), p. 5.

bargaining associations and b) the assumption that the structure of the associations themselves affects alternatives for growers or handlers. For convenience, this discussion is presented first.

Finally, two structure variables which do not fit neatly into any of the above categories are presented. They too may affect alternatives for participants studied, but it is not clear for whom. For this reason, there is a fourth category of structure variables.

Institutional Structure

This discussion will serve a dual purpose. In addition to describing key elements of institutional structure, it will more clearly define the bargaining associations represented by all of the data which is presented in the descriptive chapter.

As indicated in the introductory chapter, thirty-one bargaining associations completed the mail questionnaire. But this number is deceptive since nine of these associations bargain for more than one commodity and, in general, have separate bargaining committees for each commodity. For the sake of distinguishing the multicommodity associations from their subordinate units, the latter will be referred to as "divisions" for the time being. As the thesis develops, all of the single commodity associations and the individual divisions will be referred to as bargaining associations since, for most purposes, they are autonomous units. At the same time, managers may have responsibility for several divisions.

1. Number of Commodities for Which Individual Associations Bargain

In Table 1, the number of commodities bargained for by individual associations is indicated. As can be seen on the table, associations

bargained for as few as one commodity and as many as eight commodities.

Table 1. Number of Commodities Bargained for by Individual Associations

Number of Commodities Bargained for	Number of Associations Bargaining for the Listed Number of Commodities	Total Number of Divisions Represented by Associations Bargaining for the Listed Number of Commodities
1	22	22
2	2	4
4	2	8
5	3	15
6	1	6
8	1	8
Total Associations	31	Total Divisions 63

To summarize the table, 22 reporting associations bargained for 1 commodity, 2 associations bargained for 2 commodities, 2 associations for 4 commodities, 3 for 5, 1 for 6, and 1 for 8. These represent a total of 63 bargaining divisions.

It is emphasized that all reporting associations did not report on all of their divisions. Those divisions not reported are mentioned in Appendix D. The reasons given for not reporting were that unreported commodities were very much like those reported, unreported commodities were "not very important," there was not enough time to report all commodities, or a combination of those reasons.

2. The Commodities for Which the Associations Bargain

A crucial component of institutional structure is the nature of the commodity bargained for. Commodities vary by degree of perishability and by supply response. The degree of perishability determines

how fast a harvested commodity must be processed, the importance of timeliness in harvesting, the need for special procedures in handling, and others. These characteristics make vertical coordination more important. At the same time, they affect alternatives open to growers. The greater the demand for smooth coordination, the fewer the alternatives open to growers at the time of harvest.

The difference in supply response is largely a difference between annual and perennial crops. Its effect on grower alternatives is apparent. Often it is prohibitively costly to move out of a perennial crop in the short run whereas growers of annuals have more flexibility. Its effect on buyer alternatives is equally clear. In the short run, buyers must restrict their purchases to growers with existing stands of perennials whereas new sources of annuals may be generated in a relatively short time.

Because the nature of the commodity can affect participant alternatives, it is important to be aware of variations therein as the research progresses. Table 2 indicates the commodities for which reporting was done. These commodities are separated by annual, perennial, and sugarbeets. They are not separated by degree of perishability because the distinctions are a continuous function and classifications thereof too arbitrary to be useful. References to the effect of variations in perishability and their effects on coordination and, therefore, grower alternatives will be made throughout the thesis.

Table 2. Commodities for Which the Associations Bargain

Annuals		Perennials		Other	
Beans (all types)	4	Apples	1	Sugarbeets	5
Beets	1	Asparagus	3	Broilers	1
Cabbage (Kraut)	3	Cherries (Red Tart)	2		
Carrots	2	Filberts	1		
Cauliflower	1	Grapes	1		
Cucumbers	1	Peaches (Cling)	1		
Peas (Green)	5	Peaches (Freestone)	1		
Popcorn	1	Pears (Canning)	2		
Potatoes	5	Plums	1		
Strawberries	1	Prunes	1		
Sweetcorn	6	Raisins	1		
Tomatoes	3	Raspberries (Red)	1		
Aggregates ²¹	1				
	<hr/> 34		<hr/> 16		<hr/> 6

In the data presentations which follow, the information on the one broiler group is included in the figures for annuals. It has negligible influence on the figures cited. The respondent left most of the questionnaire blank since the association had only attempted to bargain and had little experience to draw upon and relate. The other groups, annuals, perennials, and sugarbeets, are reported separately. The reason for separating annuals and perennials has been discussed. Sugarbeets are separated because their relationship to processors has historically been quite different from producer-processor relationships in other crops. Sugarbeet growers and sugar processors had some common interests while the Sugar Act was in effect. The nature of this relationship is

²¹For one association, responses were aggregated on one questionnaire. That association bargains for baby limas, Fordhooks, broccoli, cauliflower, cucumbers, peppers, potatoes, and spinach.

adequately discussed elsewhere.²² They are separated because sugarbeet associations have not had the same problems as those faced by other associations. However, they have had a collective bargaining relationship which, as we shall see, has had interesting effects upon vertical coordination.

3. Dollar Value of Bargained Crops

Having seen the number of bargaining associations reporting and having identified some important classifications by which to study them, it is of interest to make some assessment of the dollar volume of bargained sales by these associations.

Relatively little effort was expended to secure estimates of the value of commodities sold on terms bargained by associations. There were two reasons for this. First, it involved substantial time on the part of respondents--time which could only be taken from their efforts to respond to other questions which would provide information about how the associations operated, what they tried to do, the problems encountered in pursuing their aims, and other questions which were more important than volume figures for dealing with behavioral issues. Second, the effort expended in securing volume figures was not likely to expose especially reliable data. The managers of associations bargaining for annuals generally do not have good data on the volumes produced by their members and less on quantities sold to outlets with which contracts were bargained. Testimony to difficulties encountered in

²²See for example, Economics of Sugarbeet Marketing, Marketing Economics Division, Economic Research Service (USDA ERS-49, 1962). The unique historical relationship between sugarbeet growers and handlers is also discussed in the latter portion of this chapter.

securing such data is seen in the difficulties faced by those associations applying for accreditation under the Michigan Agricultural Marketing and Bargaining Act.²³ Further, even those associations whose members have handlers check off marketing fees from payments to growers for remittance to the association don't have especially meaningful data. In one case, such an association was receiving marketing fee remittances for only 30 percent of the estimated volume of sales by association members.²⁴ A probable explanation is that some growers market their commodities under the name of a relative who is not an association member.

Given these difficulties, the only aim of collecting data on volume was to establish some lower bounds on the level of bargained sales. While numbers reflecting the total value of commodities marketed under collectively bargained contracts and associated funds would be useful to have, they cannot be reliably estimated from the collected data. Thus, the data on Table 3 only reflect extreme lower bounds on volumes collectively bargained for in each of the crops listed.

Problems encountered in collecting estimates on the annual crops are reflected in the slightly lower levels of response in that commodity group. In the perennial crops, estimates were more easily secured because associations often take title in those commodities and have good records of transactions. Nonresponses in perennials were mainly from

²³Part of the legal challenge to actions of the Michigan Agricultural Marketing and Bargaining Board deals with the problem of verifying that associations meet membership and quantity requirements under Public Act 344. This litigation is discussed at the end of Chapter III.

²⁴For reasons of confidentiality, the association is not identified.

Table 3. Value of Commodities Sold under Collectively Bargained Contracts

Commodity Group, Year	Respondents Reporting Value of Commodities Sold Respondents Reporting/Total	Average Value (in thousands of dollars)	Total Value	Standard Deviation
All Associations:				
1972	25/56 or 45%	14,498	362,450	23,097
1973	30/56 or 54%	17,849	535,467	27,296
1974	32/56 or 58%	21,245	679,848	30,349
Annual Associations:				
1972	13/35 or 37%	13,764	178,937	29,269
1973	17/35 or 49%	14,496	236,433	30,649
1974	19/35 or 54%	18,770	356,632	31,959
Perennial Associations:				
1972	9/16 or 56%	8,047	72,427	6,937
1973	10/16 or 63%	13,262	132,616	16,713
1974	10/16 or 63%	14,582	145,824	17,560
Sugarbeet Associations:				
1972	3/5 or 60%	37,029	111,086	10,819
1973	3/5 or 60%	52,139	156,418	8,201
1974	3/5 or 60%	59,131	177,392	35,544

those associations not taking title and encountering difficulties in estimating bargained volume. In one case, a manager of a perennial association felt obliged not to divulge volume figures.

The figures on Table 3 may be compared to those secured by Biggs and Samuels in 1971.²⁵ This study covers more associations but excludes citrus. Biggs and Samuels classified bargaining associations as fruit groups and vegetable groups. They are classified here as annuals and

²⁵ Gilbert Biggs and Kenneth Samuels, Bargaining Cooperatives: Selected Agri-Industries, Farmer Cooperative Service, USDA Information 90, 1973.

perennials.²⁶ Perennials are generally fruits (asparagus and filberts are exceptions) and annuals are generally vegetables (strawberries are exceptions). In Biggs and Samuels' survey, the average volume for 11 fruit associations was \$8,294,511,²⁷ while the average volume for eight vegetable associations was \$13,160,422.²⁸ These figures tend to support the estimates in Table 3 in which annual figures are comparable to those for vegetables and perennial figures are comparable to those for fruits in the Biggs-Samuels study.

4. Contractual Relationships between Associations Members and Handlers

The discussion of difficulties in estimating values of bargained crops raised the point that some associations take title to the commodity for which they bargain while others do not. This is just one of several important differences in contractual relationships among growers, their associations, and handlers. Those contractual relationships constitute another dimension of institutional structure which affects alternatives

²⁶There are both deductive and inductive reasons for examining annuals, perennials, and sugarbeets separately. A priori we would expect the marketing of crops that can be planted annually to differ from those which bear fruit for a number of years after a long period of maturation. Further, casual observation of the data revealed that responses for perennials were often in marked contrast to responses for annuals. Sugarbeets and their institutions had long been affected by the Sugar Act, a fact which explains a generally high level of harmony between beet growers and sugar processors. The effects of the differences are discussed elsewhere in this paper. It is of interest to observe happenings in the sugarbeet industry, however, because 1) there are many lessons of nonprice bargaining in its experience and 2) the industry no longer has the Sugar Act, a fact which reduces the dependence of processors upon growers.

²⁷Biggs and Samuels, p. 3.

²⁸Biggs and Samuels, p. 4.

facing participants in bargaining. For that reason, the major features of those contractual relationships are discussed below.

An "approved, preproduction contract for growers" was used by 31 of the 56 reporting associations in negotiating with processors. In addition, one association which would normally bargain for such a contract reported "no agreement." Under these contracts, title passed directly from the grower to the first handler. Upon arriving at a bargained agreement, the association would send a "letter of agreement" to growers. Alternatively, the handler would indicate in the contract that it was already approved by the association or the association would affix a seal of approval on the contracts themselves. (The letter of agreement would simply indicate the minimum terms of contracts upon which the members may sign.) These contracts were then signed prior to planting. All but eight of the associations indicating that they use such contracts were bargaining for annual crops.

"A written, master preproduction contract between association and processor" was reported by 15 of the 56 associations. These are actually "pre-harvest" contracts for the eight perennial associations reporting that they used such contracts. Under these contracts, title is assumed by the association and then passed to the handler.

In nine of the 56 cases, associations indicated that some combination of the alternative responses was appropriate. Typically, this meant that part of the contracting responsibility was carried out by growers as individuals. For example, growers would contract to deliver a specific quantity of the commodity to the handler. The association would then contract for price.

To provide a better understanding of these relationships and to illustrate additional factors in the contractual relationships which establish alternatives faced by growers, their association managers, and first handlers, brief summaries of major types of contracts are developed below. These summaries are not intended to provide a complete picture of contracts in use. They are intended to demonstrate an appreciation for the effect of different contractual arrangements upon alternatives open to and incentives faced by parties to collective bargaining.

The Ohio Agricultural Marketing Association (OAMA) has a processing vegetable membership agreement which includes a provision for collective bargaining. Upon signing a membership agreement with the OAMA, the grower pays a fee which entitles him to marketing and production information supplied in many forms by the OAMA staff. The member markets as an individual with no obligation to market at the direction of the association. He benefits from better market information.

If the board for the relevant commodity determines that the commodity produced by association members and sold to a particular handler is of "sufficient quantity" to "enable the association to bargain effectively and if two-thirds of the member growers representing 50 percent of the free tonnage of the members growing for such purchaser vote in favor of bargaining, the Association "shall thereafter be the exclusive sales agent" for those members unless, within 10 days, they give written notice of their desire to control their own sales.

Once the collective bargaining process is triggered, those electing to retain membership must sell their crop through or at the

direction of the association. With one year's notice, either party may terminate what is otherwise a self-renewing, 10-year contract.

After this point, bargaining and succeeding transactions reduce to a three-step process. First, the association, through its member marketing board, bargains for preproduction terms of trade with the processor. Second, upon conclusion of the negotiations, the OAMA sends a letter to its members. The letter indicates the terms of trade upon which the member must sell his crop. Third, the growers then sign contracts for quantities to be decided by grower and handler.

The Agricultural Bargaining Council (ABC) in Maine has membership agreements committing growers to sign only "approved" contracts with first handlers. If the association fails to secure a bargained contract, growers may, upon a vote of the membership, be released from their agreements.

The contracts are actually bargained by individual committees which deal with particular firms. The directors of ABC attempt to "equalize" those contracts among committees so that the contracts are competitive. Once the contracts are approved by the directors, individual growers determine quantities directly with the first handler.

The major difference between the arrangements of OAMA and ABC is that OAMA begins as a marketing association and may become a bargaining association. The key similarities are that terms of trade are established before quantity is determined and that title passes directly from grower to handler who, between them, determine quantity after terms are set.

These similarities are common to contractual arrangements for most associations which bargain for annuals. An exception is the

arrangement that has been used by the Oregon-Washington Pea Growers. That arrangement is briefly described in the discussion of arbitration at the end of Chapter IV.

Contractual arrangements in perennials have more variety. Often, the quantity to be exchanged is determined before terms of trade are established. The implications of this contrast with annual associations are discussed later. Selected arrangements in perennials are discussed below.

In the California Canning Pear Association, the member declares by June 1 the quantity he intends to sell for canning. The maximum commitment he can make is based upon a three year average of his sales. The commitment is to the association and not to a particular processor. Grower commitments determine the quantity the association must try to place.

Through contract, the association and the canners then determine what quantities from which orchards will be purchased by which processors. Thus, the association must be in a position to take title for the purpose of delivery on contracts, but does not necessarily do so.

Price is then established through a two-step process. The association announces an opening price it believes to be reasonable. If the price is accepted by one-third of the canners representing 45 percent of the total quantity bargained for, it is the final price for all handlers. If the offer is not accepted, a second offer is made by the association. If that is refused, the dispute may be taken to court. Until 1963, settlement was possible under a provision of the California Civil Code 1729(4) which provided that, when the price is not determined by contract, "the buyer must pay a reasonable price" and that "what is a

reasonable price is a question of fact dependent on the circumstances of the individual case." Now, under Civil Code 2305, provision is simply made for permitting parties to conclude a contract for sale even though price is not settled. There appears to be no explicit mechanism for the resolution of a dispute.

If all of the committed crop is not sold on terms resolved in this manner, it becomes necessary to pool. All growers share in the pool, and their revenues are affected accordingly.

Members of the California Canning Peach Association sign a member allocation form with a specific canner. The form commits acreage to a specific processor, specifies some conditions of sale, and commits the canner to purchase on terms negotiated by the association. Such forms may be signed before or after negotiations have taken place, and they may be multi-year contracts.

The association then negotiates a price through a procedure to be prescribed in a master contract. (The price determination mechanism was about to be changed at the time of the interview with Ron Schuler, the association manager.) When combined with the member allocation forms, the master contract incorporates the growers' commitments in those allocation forms into the contract. (The master contract refers explicitly to the member allocation form.)

If, after some date to be determined by the manager and the directors, all members do not have a home for their crops, a pool is triggered for the remaining tonnage. Members without a place for their crop share revenues received from custom packing or other outlets.

The pooling arrangement differs from that used in the canning pear association. In peaches, the arrangement provides a greater

incentive for individual growers to seek out a home for their crop. In pears, the arrangement provides a greater incentive for the association to do so. In both cases, the acreage to be bargained for is established before negotiations take place. In peaches, however, the quantity actually taken from members may be affected by the negotiations since more member allocation forms can be signed after negotiations.

In the California Freestone Peach Association and in the Apricot Producers of California, (1) growers "preference" tonnage to particular processors. Preference forms are given to the association. (2) The association offers those amounts to the processors. Processors say how much they need (Statement of Needs). This may be used as a basis upon which to divert fruit from one firm to which it is preferenced to another to which it is not preferenced. (3) The association then negotiates a price over the needed amount. There is no arbitration provision. (4) If there is excess tonnage, the association works to sell it from a pool composed of tonnage purchased from members with a revolving fund.

This pooling arrangement differs slightly from those of the canning peach and pear associations. The purchase of excess crops by the association puts pressure directly on the association to find a way to pack the remainder of the crop.

Another variation on contractual arrangements is that used by those associations which operate under a quantity controlling market order. The filbert, prune, and raisin bargaining associations do so. The primary difference in contractual arrangements for these associations and the others lies in the fact that an industry advisory committee determines the quantity in "domestic free tonnage" for which

the associations will bargain. The associations then bargain for terms of trade with the handlers. Placement of the bargained crop is not a great problem since the advisory committee takes into consideration the quantity that can be placed domestically in setting the free tonnage. The way in which associations approach bargaining, the way in which associations, cooperatives, and proprietary processors relate to one another, and the role played by the industry advisory committees are variables which make associations working under quantity-controlling marketing orders differ significantly from one another. Thus, the classification of the association in a group is only to point out how quantity determination differs from that under contracts used by associations not working under marketing orders.

The preceding discussion of contractual arrangements is not detailed or comprehensive. A complete analysis of contractual arrangements is a likely area for further research. This summary was designed primarily to illustrate the different kinds of incentives that are placed upon grower members and their leaders 1) when quantities are determined both before and after bargaining and 2) when pooling arrangements differ. These incentives will be referred to in Chapter IV.

If there is a generalization to be made from these responses and particularly from the interviews, it is that 1) in annuals, price is determined on the basis of expected supplies, and actual quantity is then a function of price and that 2) in perennials, aggregate quantity is determined, specific quantities to exchange may be established, and price is then a function of quantity. Where quantity-controlling market orders are used, the effect of the decision on domestic free tonnage on prices is considered, but actual price bargaining comes

after that decision. The implication is that there is a much greater range of possible terms of trade in annuals for a given year than there is for perennials. A major reason is that before planting, there is less information available in annuals about the amount that can and will be produced in a given year.

In both cases, the bargainers are trying to agree on an equilibrium price. When bargaining for perennials, they are speaking in terms of what an existing crop is worth. They have more information with which to decide on a reasonable price given knowledge of existing supplies.²⁹

Those bargaining for annuals can look at carryover, production costs, consumer income, and other variables to project demand. But it is difficult to know what growers will do and even more difficult to know what buyers will take. Frequently during interviews with managers of associations bargaining for annuals, it was pointed out that rumor and uncertainty surrounding packing intentions made it difficult to settle on terms of trade. An open-ended inquiry in the questionnaire asked "What kind of information is most difficult to secure?" Frequent responses from managers of associations bargaining for annuals were "carry over," "stocks on hand," or "packing intentions." Those accustomed to using data sources for the fruit and vegetable markets will say, "But wait, there are several sources of carry-over data." This is acknowledged by managers. What they frequently question is the accuracy of the data. This research cannot begin to inquire as to the degree of

²⁹ This does not mean that it is easy to bargain for perennials in a "long" year. It does mean that it is more apparent to all involved that a relatively low price will be decided and that differences in bids and offers are not as likely to be extreme.

accuracy or how much it adds to the difficulty of finding an equilibrium price. The frequency of complaints about carry over data do suggest a need to examine the usefulness of existing sources, however.

The point is that the job of coming to an agreement in annuals is harder than it is in perennials. Again this is different than saying that it is easier to achieve bargaining aims in perennials. The argument is that the distinction pointed out may help to explain why there appear to be more stable bargaining relationships in perennials.

5. Experience of Associations in Collective Bargaining

Bargaining experience is said by some to be a factor which explains stability in bargaining relationships and enhances the ability of an association to achieve its aims. For this reason, managers were asked to indicate how long their associations had bargained collectively. There is also a general, descriptive interest in knowing how long collective bargaining associations have been active in agricultural markets. Table 4 summarizes the responses to the question "How long has your association been involved in bargaining?"

Table 4. Associations' Experience in Bargaining

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Average Experience (years)	18.3	15.4	16.4	43.8
Standard Deviation	13.3	11.1	10.5	6.7
Number of Associations Reporting	55	34	16	5

The sugarbeet associations have the most experience, a fact which can be traced to the origins of the Sugar Act and which is discussed elsewhere. While the data show that the average perennial association is older than the average annual association, the fact that these data are not weighted by the associations' bargained volume leads to an understatement of the case. The oldest association known (59 years) is a very small association dealing in annuals, and one of the newest associations is a small association dealing in perennials. The removal of these "outliers" would show greater experience in perennials. As we shall see, bargaining relationships between perennial associations and their handlers are more stable than those between annual associations and handlers. It is not clear whether this difference in experience partially explains the differences in the nature of bargaining relationships or if other factors are more important.

6. Non-Bargaining Services Provided by Bargaining Associations

One aspect of institutional structure needed for testing Mancur Olson's³⁰ argument that exclusive goods or services may be required to build organizations which provide inclusive goods is the list of non-bargaining services provided by bargaining associations. Compiled responses to an inquiry about such services are seen in Table 5.

³⁰Mancur Olson, The Logic of Collective Action (Cambridge, Mass.: Harvard University Press, 1965).

Table 5. Nonbargaining Services Provided for Members by the Association

	Aggregate	Annual	Perennial	Sugarbeets
Information	42	27	12	3
Legislative Representation	30	15	11	4
Fieldmen	32	19	10	3
Research	26	15	8	3
Industry Representation	17	7	9	1
Newsletter	41	24	13	4
Public Relations	33	19	12	2
Commodity Programs	20	13	5	2
Other	4	2	1	
Number Responding	47	28	15	4

The functions listed above are performed with widely varying degrees of formality and regularity. In terms of information, for example, some associations have fairly sophisticated information storage and data processing facilities with which they accumulate and analyze market information for mailing to members. They may also have frequent phone contact with members to provide outlook information. Some of the information that is gathered may be exchanged with other associations as is done through the AAMA. This is done less formally through other groups and personal acquaintances.

At an intermediate level, some association managers with small, local staffs may provide brief reports on markets and prices. At the least formal level, the association may simply provide growers with someone to talk to who knows where information is and can discuss total crop alternatives.

Information provided by associations, whether transmitted directly through market messages, newsletters, or monthly publications, appears to be one of the key drawing cards for association membership. It is potentially one of Mancur Olson's "exclusive goods" which helps to explain why it is that many associations appear to have successfully overcome the "free rider" problem expected to keep bargaining associations from growing or surviving. This function of exclusive services may explain the recent decision of some associations to stop providing information services to nonmembers. The desire of growers to possess information relative to their total cropping patterns at such "stress points" as bargaining time is reflected in the frequent complaints of association managers that growers who repeatedly refuse to become members keep their (managers') phones tied up with questions about "how's the bargaining going?"

7. Affiliations of Bargaining Associations with Other Cooperatives

As mentioned above, information and other services may come from sources external to the local bargaining association. These sources may be very informal personal contacts of association managers with other members; they may be through an amalgamated association which meets periodically to discuss market outlooks and mutual problems; or they may be through a formal structure such as the American Agricultural Marketing Association (AAMA) which exists (for one reason) to exchange market information on selected commodities.

These sources are of interest for the same reason as local sources of services. If they appear to be especially important, they may suggest that it is important for an association to look beyond its

own immediate resources to secure member services needed to maintain an association and to operate effectively.

The numbers of associations using some affiliation with other cooperatives to provide its members with services and perform its bargaining function are presented in Table 6. Farm Bureau affiliations are listed separately because its AAMA is the most frequently mentioned single source of services external to the individual association.

Table 6. Affiliation of Bargaining Association with Other Cooperatives

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Affiliated with AAMA	22	17	5	
Other Affiliation	11	7	1	3
Total Respondents	33/55	24/34	6/16	3/5

The percentage of perennial associations drawing upon external sources of information and services (37.5) was much lower than the percentage of annual associations (70.1). Those perennial associations that did draw upon "external" services were those that 1) did not take title to the crop (a service) and 2) did not bargain for a crop that was highly specialized in a geographic sense.

These findings seem to support an earlier observation that market information is "harder to come by" in annuals and to reflect an effort by associations to deal with this problem by seeking external sources of such information.

8. Services Provided Through Affiliations with Other Cooperatives

The preceding discussion of external sources of services for bargaining association members proceeded largely on the assumption that the primary kind of service needed was market information. The foundation for this assumption is the set of responses to a question about the nature of services provided through those sources. These responses are summarized on Table 7.

Table 7. Services Provided through Affiliations with Other Cooperatives

Services	Aggregate	Annual	Perennial	Sugarbeets
Market Information	29	21	5	3
Technical Information	9	5	1	3
Credit	1	1	0	0
Legal Services	9	5	2	2
Coordination of Marketing Effort	14	10	2	2
Source of Agricultural Inputs	6	5	0	1
Pricing Recommendation	11	10	0	1
Other	1	0	0	1
Total Responding	32	24	5	3

Again, information appears to be especially important currency in the affiliation of associations. Market and technical information, along with coordination of the marketing effort and pricing recommendations (clearly related to provision of information), are most frequently mentioned.

9. Share of Association Members Located
Outside of the State in Which Most
Members Reside

Many people criticize the concept of state bargaining legislation on the grounds that commodity production regions are not neatly located within state boundaries and that there are production areas scattered among several states. They argue that state laws cannot be effective because they do not affect growers outside the state and that associations within one state compete with those in other states. It is clear that there is inter-regional competition among production centers for several crops. The potato market provides a notable example. The apple market provides another. The numbers of associations bargaining for different commodities (Table 2) provide a partial measure of this diffusion.

To measure the extent to which production regions cross state boundaries, association managers were asked what percentage of their members lived in states other than the one in which the majority of their members resided. The responses of the managers to that question are summarized in Table 8.

Less than one-third of the 52 association managers responding to this question indicated that they had members located in other states. Of those 15 responding positively, 10 reported that less than 20 percent of their members resided out-of-state. Of these, 6 reported less than 10 percent out-of-state memberships.

The fact that out-of-state memberships are few and represent relatively small shares of total membership is not a complete answer to the issue which prompted this question.

Table 8. Share of Association Members Located Outside of the State in Which the Majority of Members Reside

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Range of Responses in Percentage Terms	0-40	0-40	0-34	0-33
Number of Associ- ations Reporting in Each Percent- age Interval:				
None	37	24	10	3
0<n<10	6	3	3	0
10<n≤20	4	3	1	0
20<n≤30	2	1	0	1
30<n≤40	3	1	1	1
Total	52	32	5	5

There are still several crops which are widely produced and complicate local bargaining efforts. Sweet corn, peas, lima beans, and potatoes are examples. The fact that association memberships are generally limited to state areas may simply reflect high transaction and organization costs when memberships are widely dispersed.

10. Memberships Held in Processing Cooperatives by Bargaining Association Members

Another dimension of institutional structure has to do with the relationship of bargaining associations to processing cooperatives. The importance of processing cooperatives in markets served by bargaining associations is discussed here. It is of interest because we wish to understand some of the interrelationships between bargaining

institutions and processing cooperatives. Such an understanding is needed to deal with questions about the design of legislation relative to processing cooperatives. A first step in understanding is description. Responses to the question, "Do any of your members belong to processing cooperatives?" and to a request to estimate the number of those members are summarized in Table 9.

Table 9. Memberships Held in Processing Cooperatives by Bargaining Association Members

	Annual Associations (numbers are rounded off)	Perennial Associations
Average Association Membership	303	520
Average Number of Processing Cooperative Members	42	81
Total Association Membership	9,087	8,321
Total Processing Cooperative Membership	633	730
Total Processing Cooperative Memberships as a Percentage of the Total Association Memberships	6.5%	8.7%
Number of Associations Reporting Processing Cooperative Memberships	16	11
Number of Associations Responding to Questions	33	16
Percentage of Associations Indicating Some Members Were Also Members of Processing Cooperatives	48%	69%

Bargaining associations do not negotiate with processing cooperatives on behalf of their processing cooperative members. Thus, the question is raised "Why are processing cooperative members also members of bargaining associations?" Three explanations for dual memberships surfaced in the course of interviews with association managers.

First, processing cooperative members benefit from the activity of bargaining associations. The cooperative member's first payment is generally about 60 percent of the commercial market value of the commodity involved. Where a bargaining association keeps the commercial market value higher than it would otherwise be, the processing cooperative member benefits. The bargaining association helps to establish a "floor" under the final product price of the processing cooperative's competitors, thereby increasing member returns for a given level of output.

A second explanation for dual memberships which applies to some associations in California is the fact that the California Cannery and Growers, a major processing cooperative, was formed by four commodity associations, all of which eventually became bargaining associations. They once required that processing cooperative members also be members of the commodity association.

A third explanation which applies mainly to annuals is that many annual associations reporting dual memberships were simply indicating that their members held memberships in processing cooperatives for other commodities. This was only rarely the case in perennials.

The first two factors partially explain the existence of dual memberships in processing and bargaining associations. While they are

credible explanations, their relative importance requires further research with members before firm conclusions could be made.

11. Decision Control in Bargaining Associations

An institutional variable of great importance relative to charges by critics of collective bargaining in agriculture is that of who really decides what course of action the association will take. Are those who make major decisions responsible for those decisions?

To get a measure of who controls the major decisions with respect to terms of trade, managers were asked two questions. The first was "Who presents the association position in bargaining?" The other was "Who makes the final decision on whether to accept terms of a contract?" Responses to the first question are summarized in Table 10.

Table 10. Persons Presenting the Association Position in Bargaining

	All Associations	Annual Associations	Perennial Association	Sugarbeet Associations
Bargaining Committee	18	13	3	2
Executive Secretary or General Manager	26	14	10	2
Commodity Division Manager	5	2	3	
Other	3	2		1
Total Responding	52	31	16	5

The larger the association, the more likely it is to rely upon a professional employee to present its position. This is to be expected since the larger associations are more likely to have a professional

employee. This explains why the perennial associations, which are generally larger and older, rely far more frequently on such a person.

Given a professional manager, it seems logical to use him to present the association position since he is more likely to have the time to gather and develop information required for bargaining. Because the professional employee frequently plays this role, he has some control over what position will be taken even though he develops that position in consultation with a board of directors or a bargaining committee.

Based upon responses to a question about who has final decision control, however, it appears that in all cases, the direct control is in the hands of someone other than the manager. Managers were asked the open-ended question "Who makes final decisions on whether to accept or reject terms of trade?" The responses were easily classified and are presented in Table 11.

Table 11. Persons Who Make the Final Decision on Whether to Accept a Contract

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Board of Directors	31	18	8	5
Bargaining Committee	8	5	3	0
All Members Vote	12	10	2	0
Association Manager	0	0	0	0
Number Responding	51	33	13	5

While the association manager does not have final decision authority in any of the reported cases, it was clear from the interview process that managers could be very influential with the bargaining committee or board of directors. Some managers are such strong leaders that the board or committee may routinely accept their recommendations. One manager indicated that the board had recently given him formal authority to act unilaterally in accepting final terms. A few managers have been given such authority on a more informal basis.

Other managers are obliged to actively "sell" their directors on particular proposals. Still others mainly present directors with their assessment of choices to be made.

The influence of the association manager is varied. At the same time, association members or their directors always have ultimate decision authority. Even those managers who have been given decision authority in accepting contracts readily indicate that the authority is theirs as long as the members are satisfied with their use of it. It can therefore be argued that, to the extent that directors or committee members reflect the views of association membership at large, final control of bargaining associations is with those who reap the consequences of their actions. At the same time, the role of the association manager in control of the association merits more research.

The preceding discussion of the institutional structure of bargaining associations provides the reader with fundamental descriptive data on the commodities for which associations bargain, their experience, and the value of the commodities for which they bargain. Additional descriptive data and summaries provided some insight into factors influencing the incentives placed upon grower members as individuals or in

groups and their managers. These factors included the nature of the commodity, contracts employed, nonbargaining services provided by associations and cooperatives with which they are affiliated, dual memberships in processing and bargaining associations, and the allocation of decision control within the association.

These variables primarily (not exclusively) affect the dynamics of decision and control within the association. The allocation of rights and privileges internal to the association is most directly affected by such factors.

In the remainder of the discussion of structure, issues of decision and control and of alternatives open to parties primarily (not exclusively) external to the association, are discussed. Some of the variables are traditional in industrial organization research. Others are adapted for the purposes of this research. All of the market structure variables which follow aim to provide indices of the alternatives open to growers and handlers. Accordingly, this segment of Chapter II is divided into two parts under market structure: Alternatives for Sellers and Alternatives for Buyers.

Market Structure: Alternatives for Sellers

1. Four-Firm Concentration Ratios for Buyers

Four-firm concentration ratios are the most commonly used measure of market structure. By specifying the share of purchases, value added, employment, assets, etc., attributed to the largest four firms in a market or industry, they are presumed to reflect to some degree the concentration of market power. The concept of the concentration ratio and its inherent weaknesses are discussed by Scherer.³¹

³¹ Scherer, Industrial Market Structure and Economic Performance, pp. 50-57.

In spite of some of the alleged weaknesses of the concentration ratio as a measure of market power, it seems a useful measure of market alternatives for producers of agricultural products. Both the research of the National Commission on Food Marketing³² and that of Lanzilotti³³ provided industry level concentration ratios relevant to various commodity subsectors. These were not adequate for the purpose of this research since the "relevant markets" for bargaining associations and, especially, individual growers were much smaller than those reflected by industry ratios. To describe alternatives open to individuals and associations, a new set of concentration ratios was needed.

To develop these ratios, managers were asked "What percentage of the area's output is purchased by the largest four processors?" The author was concerned initially with how to phrase the question. As is, it appeared ambiguous. What is "the area?"

An alternative approach was to define some specific geographic boundary for the market. This alternative was rejected because the suggested boundary could have complicated the question, confused the respondent, and made no sense to someone close to the market.

For this reason, the managers were permitted to define the "market area." In virtually all cases, they did so easily. This seems to suggest that the managers had a clear concept of the relevant market. In cases where managers were confused or uncertain as to how to respond,

³²National Commission on Food Marketing, Organization and Competition in the Fruit Vegetable Industry (NCFM Technical Study Number 4, June 1966), pp. 180-3, 221-3.

³³Robert F. Lanzilotti, "The Superior Market Power of Food Processing and Agricultural Supply Firms,--Its Relation to the Farm Problem," Journal of Farm Economics, 42 December, 1960.

they usually left the question blank or commented on their confusion. Thus, the author is generally satisfied with the concentration ratios secured. They are reported in Table 12.

The data confirm what most would predict--that growers of fruits and vegetables for processing frequently have very limited market alternatives for their crops. For 19 of 47 associations, the top four firms purchased more than 90 percent of the area's production. About 75 percent of the associations (34 of 47) indicated that the top four firms purchased more than 70 percent of the area production.

These data still understate the degree of buyer concentration for the individual grower. The concentration ratios in Table 12 are based upon a relevant market for the association. The association may cover an entire state and have several local bargaining committees representing area growers in dealing with a local handler. Thus, the relevant market for individuals is smaller on average than those reported by managers and, therefore, still more concentrated. Growers as individuals have still fewer alternatives.

The point is that an assumption of the purely competitive model (many buyers) is not remotely appropriate in the producer, first-handler markets studied. Seller alternatives are restricted.

2. The Number of Area Processors and the Number of Those Processors Served by Members of the Association

A more complete picture of market structure is provided by data on the total number of processors in the market areas served by associations and the share of those firms with which the associations' members deal. These data reflect cases in which there is absolute

Table 12. Four-Firm Concentration Ratios: Purchases by Area Processors
(Number of Associations Reporting Concentration Ratios in the Specified Interval)

Item	C<25	25<C<50	50<C<60	60<C<70	70<C<80	80<C<90	90<C<100	Blank
Aggregate:								
Frequency	0	3	3	2	12	3	19	9
Cumulative	47	47	39	36	34	22	19	
Annual:								
Frequency	0	5	2	0	9	2	12	5
Cumulative	30	30	25	23	23	14	12	
Perennial:								
Frequency	0	4	0	2	3	1	4	2
Cumulative	14	14	10	10	8	5	4	
Sugarbeets:								
Frequency	0	0	0	0	0	0	3	2
Cumulative	0	0	0	0	0	0	3	

Concentration = C = Percent purchased by top four firms.

concentration (one handler in an area) and where there are many relatively small handlers.

Two questions were asked. 1) How many processors of the commodity are located in the geographic area served by your members? 2) To how many of these processors do your members make deliveries in a typical year? A summary of responses to these questions is presented in Table 13.

Table 13. Number of Processors to Which Association Members Deliver and Number in Area Served by Association Members

	Number of Associations			
	Aggregate	Annual	Perennial	Sugarbeet
Number of Firms to Which Association Members Deliver:				
1	10	6	1	3
2	3	2	0	1
3-4	4	2	1	1
5-10	19	12	7	0
11-20	10	5	5	0
More than 20	<u>4</u>	<u>3</u>	<u>1</u>	<u>0</u>
	50	30	15	5
Number of Firms in Area Served by Association Members:				
1	10	6	1	3
2	3	2	0	1
3-4	4	2	0	1
5-10	19	10	8	0
11-20	10	6	5	0
More than 20	<u>4</u>	<u>4</u>	<u>1</u>	<u>0</u>
	50	30	15	5

These data indicate that the four-firm concentration ratios understate the degree of concentration that actually exists in some markets. In ten market areas, only one firm dealt with the association. In thirteen markets, there were two firms or less.

There is also a variation in the frequency with which high concentration ratios appear in annuals, perennials, and sugarbeets. They are much more common in annual crops and sugarbeets than in perennial crops. The implication is that, as individuals, growers of annuals and sugarbeets have fewer market outlets than do individual growers of perennial crops.

3. Importance of Individual Outlets to Bargaining Associations

Another way of looking at market alternatives for the association is to study the importance of individual outlets. Such data provides a measure of the importance of individual alternatives to the association and a more refined measure of firm concentration levels at the same time.

To secure estimates of the importance of individual handlers to associations, the questionnaire asked managers to list percentages of association business going to the largest handler, the second largest handler, etc. Their responses are summarized in Table 14.

These figures are consistent with the preceding measures which indicate high levels of concentration in markets facing growers as individuals and in associations. Again, the concentration levels appear to be quite a bit higher in annual crops than in perennials. On average, the largest outlet took 43.2 percent of association members'

Table 14. Average Importance of Individual Outlets to Association

Average Importance of	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Largest Outlet	47.1	43.2	36.6	83.4
2nd Largest Outlet	19.9	18.1	22.4	29.0
3rd Largest Outlet	13.2	12.4	14.9	15.0
4th Largest Outlet	9.7	9.5	10.9	5.0
5th Largest Outlet	7.9	7.9	8.1	5.0

production in annuals and 36.6 percent in perennials. (High concentration levels were well known in sugarbeets.)

The statistic used in Table 14 is of limited value in that it is just an average of percentages estimated by association managers. Those percentage figures are not weighted in any way to reflect the volume of the association reporting. Such weighting may change the concentration levels listed. Thus, they should be read with this caution in mind.

4. Alternative Crops for Growers

When markets are highly concentrated--when alternative outlets for a particular commodity are limited--growers may consider planting alternative crops. This is one of the disciplines imposed upon the buyer in a free market. Thus, to get a more complete measure of alternative markets for sellers, association managers were asked which other crops could be produced by member growers.³⁴ The responses of association

³⁴It is clear that the number of crops which could be grown is very large if the prices are right. If the price of peas were high enough they could be grown on pastureland. But those alternatives referred to here represent the crops normally grown as alternatives to the bargained commodity.

managers to the question are seen in Table 15.

Table 15. Alternative Crops for Growers of the Bargained Commodity

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Average Alternatives	2.8	3.8	1.1	.5
Range of Responses	0-9	1-9	0-4	0-1
Number Listing Alternatives	30/31	20/20	9/9	1/2

Predictably, responses indicated that there were more alternative crops for the growers of annuals. This is not due to the suitability of soil, water resources, or climatological factors as much as to the difficulty of transition to another crop. This is clearly difficult in the case of all perennials. Removal of an orchard is a costly and drastic step. These observations raise a question of the difficulty of transition in all crops.

5. Difficulty of Transition to Alternative Crops

All managers were asked in the questionnaire "would it be difficult to make this transition?" Their responses are summarized in Table 16.

The difficulty of transition to other crops was generally explained in terms of the commitment of specialized assets to the production of current crops. In the case of perennials, the trees themselves are specialized assets. In the case of potatoes and sugarbeets, the assets are harvesting equipment owned by growers. The many

Table 16. Difficulty of Transition to Alternative Crops

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Yes, It Would be Difficult	15	5	8	2
Number Responding	40	26	12	2

responses in Table 16 which indicate that transition in annuals is not difficult come from growers of sweet corn, peas, and lima beans for which handlers generally own the harvesting equipment.

6. Other Crops Processed by Handlers

Although growers appear to have some latitude in their selection of crops to grow, this does not mean that their market alternatives are extended. The reason is that handlers frequently process other crops. Thus, to produce a different crop is not necessarily to produce for a different firm.

To secure a measure of local diversification by handlers, managers were asked how many crops were purchased by the processors with which their members dealt. The responses to that question are summarized in Table 17.

On the average, handlers appear to have at least as many options for buying as producers do for growing and selling. If the alternative crop must be sold to the same firm that buys a grower's current crop, the alternative provides little in the way of market leverage. This limits the impact of the argument that growers dissatisfied with the rewards for producing one commodity can simply grow another, thereby

Table 17. Number of Other Crops Processed by Handlers

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Average Number of Other Crops Purchased	3.8	3.9	4.6	0
Range of Responses	0-8	0-8	0-8	
Number Responding	44	27	14	3

imposing discipline upon the handler. In some regions, the argument applies since grain crops are alternatives.

Growers, as individuals, do have limited market options which have been associated with the structure of those markets. This is one reason why growers have formed the bargaining associations with which this research is concerned. Those associations represent a change in the structure of these markets. Such a change is aimed at reducing the alternatives open to the handlers themselves. It aims to make the growers function as a unit. Even then, as we shall later see, growers have sometimes encountered difficulties, mainly in securing "recognition" or "good faith" in bargaining. A more complete picture of alternatives for sellers requires an examination of those alternatives under the market structure as modified by bargaining associations.

7. Alternative Actions for Associations When Handlers Refuse to Bargain (Short Run)

To determine what alternatives were available to growers when or if a handler refused to bargain with them as an organized group, managers were asked what their growers could do in the short run (one year or less) and in the long run (more than one year) if such a refusal were

encountered. To begin with, interviews with managers of established perennial (west coast) associations frequently reacted as if the question were largely irrelevant to their situations. Their position was that, when a few buyers take all or most of the crop and when a large association is charged with placing most of it, neither side can "refuse to bargain." Both sides have far too much to lose.³⁵ This attitude accounts for several completely negative responses to these alternatives. Some of the alternatives, particularly custom packing, are used when all of a crop cannot be placed, however.

The other alternatives were real to those associations that had encountered difficulties in securing recognition or reaching agreement. Their responses are seen in Table 18.

The classification "other" represented the planting of other crops, the use of an arbitration provision, or, in sugarbeets, the use of a fair price hearing (gone with the Sugar Act). The option to "ship to another market" was generally applicable to commodities that have fresh uses. "Custom processing" has been used by some associations which have a pooling capability or, in one case, its own facilities. The option to leave a crop in the field is really more applicable to perennials since growers of annuals rarely plant before they have a contract.

It is unlikely that most of these options would be used exclusively. As we shall see in a later discussion of conduct, the use of the alternatives is mixed.

³⁵ Ronald Schuler, President, California Canning Peach Association, personal interview, Lafayette, California, April 5, 1976.

Table 18. Alternative Association Actions in the Face of Handler Refusal to Bargain--Short Run

Alternative, Short Run	Aggregate	Annual	Perennial	Sugarbeets
Leave in Field	11	4	6	1
Custom Process	16	8	8	0
Ship to Another Market	18	10	8	0
Other Local Processors	15	9	6	0
Other	23	17	2	4
Respondents	53	33	15	5

**8. Alternative Actions for Associations
When Handlers Refuse to Bargain (Long Run)**

To determine what long-range adjustments may be expected if the bargaining relationship failed to develop, managers were asked about a similar set of alternatives. Table 19 indicates their responses.

Some of the responses were clearly similar or identical to those for the short-run alternatives. Whether these are really viable long-run alternatives is a matter of speculation which really requires further study of individual cases. The large number of responses, indicating the production would be discontinued, can be interpreted as a set of judgments that the production and marketing of the commodity would undergo some major changes in the absence of a viable collective bargaining relationship.

Table 19. Alternative Association Actions in the Face of a Handler Refusal to Bargain--Long Run

Alternative, Long Run	Aggregate	Annual	Perennial	Sugarbeets
Discontinue or Reduce Production	30	21	5	4
Custom Process	15	6	9	0
Ship to Another Market	18	10	8	0
Other Local Processors	16	10	6	0
Respondents	54	34	15	5

9. Number and Importance of Processing Cooperatives

For some growers in some markets, membership in a processing cooperative is an alternative means of marketing the crop. It may be considered as an alternative means of vertically coordinating a particular commodity subsector and currently competes with bargaining associations to represent growers in some areas. The choice to market through a processing cooperative requires a commitment of capital to the processing function. It requires that the grower do more than produce and organize to sell his crop.

Managers were asked to indicate whether there was a processing cooperative in their market areas and, if so, how much of the area's production was handled by that cooperative. Their responses are seen in Table 20.

Table 20. Number and Importance of Processing Cooperatives in Bargaining Association Market Areas

	All Associations	Annual Associations	Perennial Associations
Percentage Share of Area Production Handled by Processing Cooperatives:			
0-10%	3	1	2
11-20%	9	5	4
21-30%	3	1	2
31-40%	4	2	2
41-50%	2	0	2
Number of Associations Reporting Processing Cooperatives in Their Market Areas	21	9	12

It is significant that 75 percent (12 of 16) of the perennial associations reported processing cooperatives while only slightly more than 25 percent (9 of 34) of the annual associations reported processing cooperatives. Coupled with the fact mentioned earlier that perennial associations are older and that it is not easy to move into another commodity from perennials, the preponderance of processing cooperatives in perennials begins to suggest that there has been a longer and stronger felt need for collective action in perennials. This theme will be developed further as the report progresses. The point with respect to alternatives for sellers is that the nature of the product (the fixity of the assets required to produce it) affects grower alternatives and their incentives on groups and individuals. This raises a behavioral question that will be discussed in the section on conduct.

Market Structure: Alternatives for Buyers

Up to this point, the discussion of market structure has been developed from the perspective of the individual growers and the associations they form. In what follows, an attempt is made to describe market structure from the handler's perspective. (This is not to say that it will be described as perceived by the handler.) The strategy here is to develop a view of the alternatives open to handlers in the same way that alternatives open to growers were discussed.

1. Total Number of Growers of the Collectively Bargained Commodity

No attempt was made to secure concentration ratios for growers. Because there are so many growers, such ratios would be very low and serve little purpose. The most useful analogue to the four-firm concentration ratios used by handlers is simply that of counting the growers from which handlers can buy. Managers were therefore asked to estimate the total number of growers selling to the handlers with which their members deal. Table 21 summarizes their responses.

Table 21. Total Number of Growers Selling to Handlers to Whom Members Deliver

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Range of Responses	15-3300	15-1600	80-3300	30-2525
Average Response	730	423	1157	1294
Standard Deviation	790	448	997	984
Total Growers	36,523	12,703	17,350	6,470
Number of Associations Reporting	51/56	30/35	16/16	5/5

These are the grower numbers facing processing firms in the absence of a collective bargaining arrangement or processing cooperative. It is easy to see the advantage of being a buyer in such a market. There are many alternatives. If one grower does not wish to sell on your terms, there are many more who will.

2. Number of Member Growers Who Are Association Members

Substantial shares of these growers are represented by bargaining associations. The numbers, by association category, are presented in Table 22.

Table 22. Total Number of Member Growers

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Range of Responses	9-2500	9-1700	50-2000	30-2500
Average Response	467	303	520	1286
Standard Deviation	557	356	505	974
Total Members	23,838	9,087	8,321	6,430
Number of Associations Reporting	51/56	30/35	16/16	5/5

Memberships represented the greatest share of the estimated grower population in sugarbeets (99.6 percent). Numbers reported for sugarbeets do not represent membership in the same sense as do the numbers for the other associations. In sugarbeets, the "memberships" reported reflect the number of people who pay voluntary marketing fees. (These are checked off unless the grower goes out of his way to

get the deduction back.) An explanation for this high level of participation lies in the origins of the Sugar Act. Processors actively sought grower support for grower associations and willingly did what they could (including making voluntary deductions and remissions) to help them. At that time, processors needed political support from growers (with whom they had joint interests because of participation plans) in getting the Act which restricted quantities of sugar to levels which would not depress prices. Thus, the "memberships" are not based upon membership agreements which commit growers to market only on bargained terms. One major sugarbeet association now has 80 percent of its growers signed to the latter type of membership agreement. Relations between sugarbeet associations and processors may also be expected to change the longer they work without the Sugar Act and the fewer their common interests. In this regard, it was mentioned earlier that one request by the Great Western Sugar Company in this year's dispute with the Mountain States Growers was that "there will be no automatic deduction for dues to grower marketing associations."

More than 71 percent of growers of annuals were represented by associations. Bargaining associations represented 47.9 percent of growers in perennials. As is reflected in the data on processing cooperatives, growers of perennials used processing cooperatives more than do growers of annuals. (There is great pressure to insure a home for perennial crops over time). This is a partial explanation of lower percentages of memberships in associations bargaining for perennials.

3. Association Membership Trends

The direction of membership trends is generally upward in absolute terms while the absolute number of growers is generally decreasing. These trends are reflected in responses to the question, "Has the number of members in your association changed in the last five years?" The responses are summarized in Table 23.

Table 23. Association Membership Trends During Last Five Years

	Increase	Decrease	No Change	No Response
Aggregate	34	11	6	5
Annuals	24	1	5	5
Perennials	10	5	1	0
Sugarbeets	0	5	0	0

Where respondents indicated an increase in membership, they generally attributed the increase to the information services by the association. Where there were decreases in membership, managers frequently observed that the decrease was common to the industry as a whole. Farm numbers were simply decreasing. The fact that membership increases were more common in annuals (24 of 30 responses) than in perennials (10 of 16 responses) may be explained in part by two factors. First, perennial associations are typically older and more established than are the associations for annuals. Second, because there is a processing cooperative alternative, fewer growers needed or sought another form of collective action.

4. Sources of the Raw Product for Those Buying from the Association or Its Members

Just as individual growers have alternatives to dealing with handlers, handlers often have alternatives to dealing with the bargaining associations. To extend the understanding of alternatives open to handlers, the questionnaire asked managers to estimate the importance of alternative sources of the raw product. The alternatives included are seen on Table 24 which reports responses to that question.

Table 24. Sources of Raw Product for All Handlers Dealing with the Association

Source	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Handlers' Production	7.2%* 0-25% (10)	6.0%* 0-10% (6)	9.0%* 1-25% (4)	
Open Market	17.8% 5-45% (12)	11.4% 5-35% (7)	26.8% 10-45% (5)	
Association Production	68.9% 10-100% (47)	68.8% 10-95% (27)	62.2% 25-85% (16)	98.0% 95-100% (4)
Other Sources	29.1% 1-90% (35)	28.4% 5-90% (22)	38.5% 20-60% (10)	2.7% 1-5% (3)

* Figures indicate average importance, range of importance in percentage terms, and the number of associations reporting some importance.

When reading the table, it is important to remember that the average figures reported are only for those associations reporting and not for all associations. Thus, the average importance of 7.2 percent

for handlers' reliance on their own production applies only to the ten associations reporting that their handlers produced their own. (This explains why percentage figures for all sources sum to well over 100 percent.)

It should also be mentioned that some managers thought of their own members' sales to handlers as "open market." In such cases, the quantities were re-classified in association production even though the association never took title to the crop. It is noted that open market sources were far less common in annual crops where contracts are generally required before a crop can be financed.

These figures reflect the average importance to all handlers dealing with the association. Thus, for individual handlers, the ranges go well beyond those listed.

"Other sources" almost always refers to contracted production with nonmembers of the association.

Handlers' own production refers to quantities grown at the direction of handlers on their own, leased, or rented land. The nature of the legal and financial arrangements associated with such production was not studied in detail. The data on handlers' own production was of interest, however, because of the concern that led the state of Wisconsin to pass a law which ties minimum payments to growers to the average cost of raw product production for handlers. For this reason, the extent to which handlers produce their own raw product is discussed in greater detail below.

These data indicate that, for some handlers, there are important alternatives to dealing with bargaining associations. But to the extent that associations succeed in representing growers collectively,

they successfully reduce the range of options open to handlers.

5. Number of Area Handlers Producing
Some Share of Their Own Raw Product Needs

The first of several questions asked of managers about handlers' efforts to produce their own raw product dealt with the total number of area processors engaging in the practice. Table 25 indicates the number of area processors producing some of their raw product needs as reported by association managers.

Table 25. Association Managers' Indications of the Number of Area Processors Producing Some of Their Own Raw Product

Number of Processors Producing Some of Their Own Inputs	Number of Managers Indicating That the Specified Number of Processors Produce Some of Their Own Inputs			
	Perennial Associations	Cumulative Frequency	Perennial Associations	Cumulative Frequency
1	6	6	1	1
2	4	14	3	7
3	0	14	3	16
4	1	18	0	16
5	1	23	0	16
6	0	23	1	22
9	0	23	2	40
10	2	43	0	40
12	1	55	0	40
Total Associations Report- ing That Some Processors Produce Their Own Inputs	15		10	
Total Processors Producing Their Own Inputs		55		40

The number of handlers engaging in raw input production is almost as great in perennials as in annuals. This would not have been predicted since the decision to go into annuals requires a smaller commitment of capital over a shorter period of time. Further, since many of the handlers reported to engage in producing some of their own raw product needs are those producing peas and sweetcorn, the marginal costs of such an effort are low. Handlers generally own the specialized harvesting equipment anyway. In annuals, pea and sweetcorn growers were those most frequently reporting such handlers.

It is important to note also that 23 of the 55 handlers in annuals are located in Wisconsin. This explains the greater concern of Wisconsin growers with handlers who produce their own crops.

6. Number of Handlers Producing Some of Their Own Crop and Dealing with the Association

The inquiry into processors producing their own raw product grows out of a question about whether such production is a viable alternative to dealing with a bargaining association or, from the association's point of view, whether it is to be used as a source of leverage in bargaining. (The Wisconsin Law assumes that handlers may produce their own crop at a cost greater than that incurred through dealing with an association so as to undermine the collective bargaining institution.)

Thus, managers were asked to indicate the number of handlers with which they dealt who were producing some of their own raw product needs. Their responses are reported in Table 26.

As seen in a comparison of Tables 25 and 26, twenty-four handlers (about 24 percent of the total) who produced some of their own raw product did not deal with the association. While this is cause for

Table 26. Number of Handlers Dealing with the Association and Producing Some of Their Own Inputs

Number of Processors Mentioned	Number of Managers Indicating That the Specified Number of Processors Producing Some of Their Own Inputs Actually Deal with the Association			
	Perennial Associations	Processors	Annual Associations	Processors
1	6	6	1	1
2	4	8	2	4
3	0	0	2	6
4	0	0	1	4
8	3	24	0	0
9	0	0	2	18
Total Associations Dealing with Such Processors	13		8	
Total Such Pro- cessors Dealing with Associations		38		33

interest in the total sources of inputs for such firms, there is not enough information to suggest that the firms' own production is a viable long-term alternative to dealing with an association. This question requires further inquiry and goes beyond the scope of this study.

Another way to look at the same data is to see what percentages of all handlers dealt with by the association and of handlers in the association's market areas are represented by the handlers who produce some of their own raw product. This summary is seen in Table 27.

About 19 percent of all processors in areas served by bargaining associations produced some of their own product. About 15 percent of those processors who dealt with bargaining associations did so. Again, this research did not actively seek an explanation of the fact that

many processors who produce their own inputs do not deal with bargaining associations.

Table 27. Processors Producing Some of Their Own Raw Products as a Share of All Handlers in the Market Area

	Annual Associations	Perennial Associations	All Associations
1. Total Such Processors	55	40	95
2. Total Such Processors Dealing with Associations	38	33	71
3. Total Area Processors	320	179	499
4. Total Area Processors Dealing with Associations	284	174	458
5. 1 as Percentage of 3	17.1	22.3	19.0
6. 2 as Percentage of 4	13.4	18.9	15.5

7. Share of Handler Needs Provided through Handlers' Own Production

Up to this point, the phenomenon has been discussed in terms of numbers of handlers producing their own raw product. Little has been said of the importance of that source of supply. In Table 28, the responses of managers to a question about the importance of the source are summarized.

These estimates suggest that the importance of a processor's own production is relatively low. In only 6 of 24 cases reported was the processor's reliance on his own sources greater than 25 percent. Further, the distribution of responses in the 0-25 percent bracket is highly skewed. Most managers estimated the processor reliance on his own sources to be 1-5 percent.

Table 28. Share of Processor Needs Provided through Their Own Production

Percentage of Needs Met	Annual Associations	Perennial Associations
0-25%	12	6
26-50%	2	3
51-75%	1	0
76-100%	0	0

8. Share of Association Members' Production Purchased by Processors Who Produce Some of Their Own Raw Product

Managers were also asked to indicate how much they relied upon the firms which produced some of their own product as outlets for their members' production. There were fewer responses to this question because it was not clearly understood by as many managers. Responses received are summarized in Table 29.

Table 29. Share of Association Production Purchased by Firms Which Produce Some of Their Own Raw Product Needs

	Aggregate	Annual	Perennial	Sugarbeets
0-10%	2	1	1	
11-20	7	4	2	1
21-50	4	3	1	
51-90	3	1	2	
91-100	3	3	0	

The distribution of such processors is generally uniform both among associations which rely upon them greatly and among those which rely upon them minimally. Thus, little is to be inferred from these observations.

The whole meaning of processing firms' activity in the production of raw products is not clear. The data presented in the preceding pages merely suggest that 19 percent of handlers do produce some of their own, that one-third of such activity is concentrated in Wisconsin and Michigan, and that the average importance of such sources is less than 10 percent.

Other Elements of Market Structure

Three additional elements of market structure which do not fit neatly into the preceding discussion still merit discussion because of the effects they appear to have on grower-handler options and alternatives. The first is the ownership of specialized assets. The second is the set of production and marketing functions typically performed by handlers. The third is the practice of on-farm processing.

1. The Ownership of Specialized Capital

The ownership of specialized assets has two potential effects on the alternatives of parties engaged in bargaining. Johnson and Quance, argue that such ownership may lead growers to "overproduce."³⁶ That is, commodity price levels adequate to draw specialized capital into production may drop in succeeding production periods. Prices are then reduced to levels which do not justify use of the specialized resources

³⁶ Glenn L. Johnson and Leroy Quance, The Overproduction Trap in U.S. Agriculture (Baltimore, Maryland: The Johns Hopkins University Press, 1972).

at their acquisition price. But salvage prices for those resources are lower than their acquisition prices. If commodity prices do not fall so low that the marginal value products of specialized resources fall below the salvage price, they will remain in use even though their use at acquisition prices is not justified. Thus, in the same way that a public price policy can draw resources into production, be changed, and impose capital losses on growers, a processing firm could offer terms adequate to entice growers to buy specialized production equipment, drop its offer in succeeding periods, and still secure supplies at less than the "cost of production" with respect to acquisition prices. In this sense, the effect of ownership in specialized assets is to reduce options for the owner.

Another effect of the ownership of specialized capital may be to reduce options of the adversary. If production requires specialized equipment, the buyer may have no one to purchase from other than those who have that equipment. Buyers can only expect growers with potato diggers to grow potatoes unless they are willing to pay prices that will induce others to buy equipment and begin production. Buyers can only secure perennial crops from those who have fruit trees. Over the short run, they cannot draw others into production. Thus the ownership of specialized capital can reduce alternatives for negotiators on both sides of the bargaining table.

Because of the potential impact of specialized asset ownership on the alternatives open to participants in the studied markets, managers were asked whether growers, the association, or the processors owned 1) all, 2) some, or 3) none of the specialized capital required for the production and harvesting of a commodity. The responses of

managers to this question are summarized in Table 30.

Table 30. Distribution of Ownership in Specialized Capital

	Aggregate	Annual	Perennial	Sugarbeets
Producers Owning				
All	8	6	1	1
Some	28	13	11	4
None	16	13	3	0
Association Owning				
All	0	0	0	0
Some	1	0	1	0
None	51	32	14	5
Processors Owning				
All	14	12	1	1
Some	11	10	1	0
None	27	10	13	4

In only one case did an association report ownership of specialized capital. This capital was in the form of fruit boxes.

Processors were listed as the owners of specialized capital mainly by the pea, sweetcorn, and lima bean associations. This is indicated in Table 30 where it is seen that processors of annual crops owned more specialized capital than did processors of perennial crops. Fruit boxes were in reference when managers mentioned specialized capital owned by processors of perennials.

Clearly, growers held the bulk of specialized production and harvesting equipment. Those cases where growers mention "none" correspond closely to the cases where processors have "all." Again, these are pea, sweetcorn, and lima bean associations.

The impact of ownership in specialized assets cannot be clearly established by these data alone. The possible impacts will be discussed in Chapter V. It will be argued that what appear to be relatively stable bargaining relationships in perennials and relatively unstable relationships in certain annuals are partially due to the fact that growers own specialized capital in perennials but not in some of the annuals. It will also be argued (Chapter V) that the effect of ownership in specialized assets is to prevent growers from simply pulling out of production when prices are low.

2. Production and Marketing Functions Performed by Handlers

Several production and marketing functions are regularly performed by handlers in the markets studied. The nature of these functions are of interest because they reflect some control over the production and marketing process and therefore of vertical coordination. The responses of managers to questions about which functions are performed by handlers are summarized in Table 31.

The implications of the fact that handlers perform these functions to the extent indicated are not entirely clear. The research did not, in general, examine them in detail. The responses are presented largely for the benefit of those researchers who may wish to follow up on this effort. The table will be referred to as the effects of collective bargaining on vertical coordination are discussed. Many of these functions are part of the vertical coordination process.

Table 31. Production and Harvesting Functions Performed by Handlers

Functions	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Harvesting	19	19	0	0
Grading	37	24	11	2
Hauling to Plant	28	21	7	0
Providing Seed	28	24	0	4
Providing Containers	28	16	12	0
Spraying or Dusting	8	8	0	0
Providing Credit	22	15	5	2
Specifying Cultural Practices (not spraying or dusting)	13	10	2	1
Specifying Harvest Schedules	30	22	5	3
Other	4	1	2	1
Number Responding	52	32	15	5

3. On-Farm Processing

This question was asked because the implementation of the Michigan Law was complicated by the fact that some cherry growers had pitting machines for cherries and did work for their neighbors. As a result, there arose conflict over the definition of "handler." The question was used to determine the extent to which similar processes were employed in other commodities.

Only three associations responded positively to the question of whether there was on-farm processing. Of these, one was the Michigan

cherry association, and the others referred to practices conducted routinely by all growers of asparagus and prunes in preparing their commodities for market.

This concludes the discussion of economic and institutional structure in the markets under study. Based on an assumption that structure really defines the opportunity set or alternatives open to participants in the market, every effort has been made to develop the discussion in terms of how structure affects alternatives of growers, their associations, and handlers. Such a description is designed to help identify some of the constraints under which these people operate, thereby improving the chances of predicting the consequences of alternative rules for collective bargaining in agriculture.

To further enhance the chances of predicting the effects of rules, the questionnaire and interview process focused on the motivational and behavioral factors that direct the activity of participants in the structure within which they operate. The findings of that effort are developed in the second major part of Chapter II--Conduct: Participant Motives and Actions.

Conduct

In traditional industrial organization theory, certain variables are used regularly as measures or indices of conduct. Among these variables are pricing behavior, product strategy, research and innovation, advertising, legal tactics, and others.³⁷ They are of interest to students of marketing because they help one understand how

³⁷Scherer, Industrial Market Structure and Economic Performance, p. 5.

firms will behave within a particular market structure.

In some cases, the variables employed here are the same as those listed by Scherer. In other cases, they are new variables adapted to this research. They serve the same purpose for this research as do the conduct variables of industrial organization theory.

Experiences In Collective Bargaining

1. Handler Refusals to Bargain with Associations

Refusal by handlers to "recognize" associations or to bargain with them in good faith is frequently a central concern of bargaining association managers. For this reason, those managers were asked how frequently such refusals were encountered.

In response to the question, "Have your processors ever refused to bargain?" 23 of 50 reporting associations indicated that handlers at times refused to bargain. Of 23 indicating a date of last refusal, 2 were in 1976, and 15 were in 1975. For annual crops, 17 of 30 reported refusal with 2 refusals in 1976 and 14 in 1975. For perennial crops the figures were drastically different, 5 of 15 reported refusals. There was one each in 1975, 1973, 1969, 1964, and 1958. One "refusal" was listed for sugarbeets and no year was mentioned. Responses to this question must be carefully considered in that they are clearly based upon one "side's" version of what is "good faith" or a "refusal" to bargain. During interviews, it became apparent that several of the "refusals" were really just temporary failures to agree. In other cases, appearance of bad faith were much stronger.

Related information was secured from responses to the question of whether associations had, at one time, actually failed to agree on

terms with processors. Responses were as follows: all associations, 27 of 52 reporting; annuals, 22 of 32 reporting; perennials, 3 of 15 reporting; and sugarbeets, 2 of 5 reporting. These failures do not mean that contracts were not signed. In the sugarbeet cases, the contracts were resolved by fair price hearings while the Sugar Act was in effect. In other cases, associations released their members from agreements so that they (members) could plant, but refused to sign bargained contracts at less than cost of production. (Even though managers themselves conceded that market price was below an average cost of production level).³⁸ Other reported failures were resolved by arbitration in the Northwest or in Michigan. Still another was "resolved" in California by a threatened court action.³⁹ In some cases, actual failures to deal were experienced. They resulted either in failure to plant a crop (a Michigan association bargaining for potatoes for freezing with Ore-Ida failed to agree on terms in 1975), in the processor successfully circumventing the association,⁴⁰ or in the processor successfully talking growers into ignoring their membership agreements (Minnesota Peas, Corn - Green Giant, 1976).⁴¹

Even though these failures have rarely been complete (resulting in the nonplanting of a crop), they represent costs not only for parties at the bargaining table, but also for those who bear any costs

³⁸ Confidential interview with a bargaining association manager.

³⁹ Cameron Girton, General Manager, California Canning Pear Association, San Francisco, California, April 5, 1976.

⁴⁰ Confidential interview with a bargaining association manager.

⁴¹ Minneapolis Tribune, March 2, 1976, p. 5A.

that are passed on. They create uncertainty and divert efforts from other pursuits.

It is again important to note that the perennials report failure to successfully bargain less frequently than do the annuals. This will be used as another index of "bargaining success" as the research develops.

2. Actions Taken by Associations When Handlers Refuse to Bargain

Earlier in Chapter II, information on alternative courses of action in the face of a handler's refusal to bargain was discussed (Tables 18 and 19). The managers were asked to indicate which of those alternatives were actually used. The responses of the managers are seen in Table 32.

Table 32. Actions Taken After Failure to Agree on Terms of Trade

	Aggregate	Annual	Perennial	Sugarbeets
Discontinue Production	10	7	3	0
Custom Process	4	1	3	0
Ship Elsewhere	6	3	3	0
Other Local Processors	7	4	2	1
Other	15	12	2	1

The most important response was "other." For sugarbeets, this meant a fair price hearing; for the perennials, there was an arbitration and a threatened court action; for the annuals there were several arbitrations, some cases of failure to agree on contracts, and, in

others, a reduction in acreage.

In general, the use of one of these alternatives did not imply that it was the only alternative used. For this reason, managers were also asked to indicate the relative importance of each alternative.

3. The Importance of Particular Actions as Responses to a Failure to Agree on Terms of Trade

The responses of managers to the question about the relative importance of alternative actions are summarized in Table 33. It averages managers' responses which are expressed in percentage terms.

Table 33. Importance of Alternative Actions by Member Growers after a Failure to Agree on Terms of Trade

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Discontinue Production	20.5% (11)*	22.6% (7)*	16.8% (4)*	
Custom Process	10.8% (4)	40.0% (1)	1.0% (3)	
Ship Elsewhere	12.4% (7)	18.3% (3)	8.0% (4)	
Other Level Processors	20.6% (7)	35.0% (4)	1.5% (2)	1% (1)
Other	66.5% (16)	78.5% (12)	7.3% (3)	99% (1)

*Numbers in parentheses indicate associations responding.

With the exception of "other," which generally referred to arbitration sometimes affecting entire crops, the most important alternatives were to discontinue production and to use other local processors. The low percentage figure for perennials in "other" is explained by the fact that the arbitration in reference affected only

one or two firms.

The most important point to be inferred from these data is that one alternative was not generally used to the exclusion of all others. Marginal adjustments were made in most cases. The effect of a failure to agree on terms of trade was not, in general, to completely block the flow of crops to market.

4. Contract Terms Currently Discussed, Those Which Managers Believe Should Be Discussed, and Those Discussed as a Result of Efforts to Bargain Collectively

A central concern of this research is the effect of collective bargaining on vertical coordination. One index of vertical coordination is found in the terms discussed in contracts. Because there is an interest in understanding the effect of collective bargaining on the terms discussed, three basic questions about contract terms were asked. These were 1) For which terms of trade do you currently bargain? (Bargain), 2) For which terms of trade do you believe bargaining should take place? (Should Bargain) and 3) Which terms of trade are now discussed that were not discussed before the association bargained? (Now Bargain). Managers' responses to the questions are summarized in Table 34.

The responses to these questions will not be discussed in detail. They provide a foundation for a separate study in and of themselves. To serve the purposes of this research, however, the terms most frequently mentioned will be briefly commented on. After these comments, three broad observations will be made about the implication of these findings for vertical coordination.

Table 34. Contract Terms For Which the Association Negotiates, Should Negotiate, and Negotiates as a Result of Collective Bargaining

Terms of Trade	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Price				
Bargains	52	33	15	4
Should Bargain	1	0	1	1
Now Bargains	22	15	5	2
Premiums and Discounts				
Bargains	33	24	7	2
Should Bargain	6	2	3	1
Now Bargains	18	16	1	1
Time of Payment				
Bargains	46	28	14	4
Should Bargain	2	1	0	1
Now Bargains	37	25	8	4
Quality				
Bargains	43	30	11	2
Should Bargain	3	1	1	1
Now Bargains	23	15	8	0
Quality Measurement Procedures				
Bargains	32	21	8	3
Should Bargain	4	2	1	1
Now Bargains	20	13	6	1
Delivery Schedules				
Bargains	26	20	3	3
Should Bargain	8	2	5	1
Now Bargains	15	11	1	3
Provision of Containers				
Bargains	19	8	11	0
Should Bargain	8	7	1	0
Now Bargains	15	8	7	0
Provision of Seeds				
Bargains	34	28	1	5
Should Bargain	5	2	3	0
Now Bargains	18	16	0	2
Provision of Transportation				
Bargains	28	15	8	5
Should Bargain	6	5	1	0
Now Bargains	10	7	2	1

Table 34. Continued

Terms of Trade	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Weighing Procedures				
Bargains	26	12	10	4
Should Bargain	15	14	0	1
Now Bargains	19	10	7	2
Raw Product Handling Procedures				
Bargains	26	17	5	4
Should Bargain	3	0	3	1
Now Bargains	14	10	3	1
Quantity of Product				
Bargains	21	12	8	1
Should Bargain	6	5	0	1
Now Bargains	14	11	2	1
Bypassed Acreage				
Bargains	22	22	0	0
Should Bargain	4	1	3	0
Now Bargains	23	22	1	0
Length of Contract				
Bargains	26	16	7	3
Should Bargain	11	9	1	1
Now Bargains	20	15	3	2
Responsibilities and Rights During Production				
Bargains	35	24	7	4
Should Bargain	2	0	1	1
Now Bargains	24	18	5	1
Prices of Inputs				
Bargains	17	13	2	2
Should Bargain	3	3	0	0
Now Bargains	7	5	1	1
Spraying and Dusting				
Bargains	21	19	1	1
Should Bargain	1	0	1	0
Now Bargains	11	11	0	0
Planting Time				
Bargains	14	13	0	1
Should Bargain	6	5	1	0
Now Bargains	14	14	0	0

Table 34. Continued

Terms of Trade	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Harvesting Time				
Bargains	15	11	1	3
Should Bargain	6	5	1	0
Now Bargains	10	9	0	1
Use of Irrigation Equipment				
Bargains	1	1	0	0
Should Bargain	5	3	1	1
Now Bargains	2	2	0	0
Other				
Bargains	1	1	0	0
Should Bargain	2	0	2	0
Now Bargains	3	3	0	0

More than 40 associations indicated that their association bargained for price, time of payment, and quality provisions. Price, or a formula for payment, is discussed by all associations. Time of payment is an issue of great concern to growers. It varies significantly as we move from one commodity to the next and from one year to the next. Growers frequently wait months for their final payments on crops delivered. The issue is a "sore spot" for some growers who have seen themselves as a source of "cheap money" to handlers who generally pay no interest on payments withheld. Quality provisions are a part of most contracts. The number of responses is likely an understatement of the cases in which quality provisions appear since the provision was often confused with "premiums and discounts." Quality provisions by themselves refer to a minimum condition of acceptance.

More than 30 associations indicated that their associations bargained for premiums and discounts, quality measurement procedures,

provision of seeds, and responsibilities and rights during production. Premiums and discounts may vary with the severity of the incentive or penalty associated with quality or size variations. Quality measurement procedures can affect the amount paid for a crop. Careless practices by employees who measure quality or measurement systems which contain an inherent bias are sometimes the object of disputes. The price and quality of seeds, when provided by handlers, is also of concern to growers. For example, a small variation (say 5 percent) in the germination certification standard for the seed is reported by some pea growers to affect yields by as much as 20 percent. Their price clearly affects net returns to growers. Responsibilities and rights during production involves determination of who will apply and absorb expense for spraying or whether certain chemicals will be used. These factors affect the incidence of costs and the quality of the product.

The term mentioned as being most frequently added to contracts as a result of bargaining was time of payment. The reason for its importance lies in widespread grower resentment of financing a portion of handler operations for little or no interest payments.

Terms mentioned more than twenty times as being added as a result of collective bargaining were price, quality, quality measurement procedures, bypass provisions, length of contract, and rights and responsibilities during production. Price and quality appear frequently because the very use of contracts was attributed to collective bargaining by some managers. This was most generally the case in such crops as potatoes which have a fresh outlet. Quality measurement procedures as well as rights and responsibilities during production were discussed because they affected growers' returns although growers had no

voice in their resolution before bargaining. As individuals, they could not effectively complain about their treatment with respect to these provisions. Length of contract provisions were sought for two reasons. First, growers wanted to be able to establish cropping patterns and make plans with more lead time. Second, some managers observed that there are substantial costs involved in negotiating each year. They wish to reduce the time devoted to negotiation. "Bypass" clauses in some contracts provided that handlers could avoid harvesting a contracted crop at little or no direct, immediate expense to themselves if they did not need it for the pack. Allegations are that handlers would "overcontract" to make certain that their needs would be met and then would never get around to harvesting the crop before it burned out. Bargained contracts (as we shall see in Chapter V) have changed incentives with respect to bypass options for handlers.

In addition to the terms for which associations now bargain, a number of managers indicated that still other terms should be discussed in negotiations. This suggests that the range of terms bargained for may increase in years to come.

Three major observations based upon Table 34 can be made with respect to the content of contracts used by associations and handlers. All deserve consideration as we evaluate 1) the use of collective bargaining as a means of achieving vertical coordination and 2) the use of alternative rules to facilitate it.

First, the process of negotiating contracts is complex. Many dimensions of a product and conditions of delivery must be discussed before exchange can take place. This is in stark contrast to the world

of homogeneous products assumed in the theory of perfect competition.

Second, collective bargaining has led to an increase in the number of terms discussed. Actually the number of associations indicating that terms were added as a result of their actions may be understated. Several managers indicated that the association was organized before their time and that they could not comment on terms added.

Some would say that the use of a contract does not require collective action. They would say that, in many cases, the needs of processors for a reliable supply of quality products provided the impetus for contracting. And, to a degree, they are correct. This was not true in all cases, however, and it applies only to minimal terms of the contract. Much control, even the determination of price, was left in the control of handlers in early contracts. The effect of collective bargaining has been to add to those terms and to add contracting itself in some cases. Further, terms that handlers would voluntarily put in contracts differ from what growers would include. Thus, one manager indicated that two or three different terms went into and out of contracts each year depending upon which side's bargaining position was best.

Third, all of the terms discussed affect vertical coordination. In theory, market pricing is expected to "signal" resources to their "highest and most efficient use." Price alone is to perform the coordination function.

In a market where so many terms may be discussed, it is not clear how price alone can do the job. Products are not homogeneous and information, even about price itself, is not perfect. It appears that an additional mechanism may be required to transmit market information.

On the basis of this discussion, collective bargaining appears to be one alternative. By providing a forum through which information can be passed and an association which has some control over market alternatives, collective bargaining arrangements appear to create an atmosphere in which growers and handlers can jointly determine which production functions each can perform best. (Examples of the effects of such dialogue are seen in the last part of Chapter V.)

In all of this, price remains as a rationing mechanism. Its value as a vehicle for passing market information is simply brought into question.

5. Kinds of Prices Bargained for by Growers and Handlers

There are several types of prices for which associations and handlers may bargain. A firm price established in advance of planting or harvest may not reflect the relative scarcity of the commodity at that time; it may not reflect the opportunity cost of growing that crop relative to others; it may not reflect changes in the costs of input through time. For this reason, there was interest in seeing whether bargaining associations and handlers had found innovative pricing arrangements to deal with these problems and to reduce the cost of bargaining for price. Therefore, managers were asked about the kinds of prices for which they bargained. Their responses are seen in Table 35.

Prices bargained for were typically specified, fixed prices. Associations indicating otherwise were 1) sugarbeet associations, in which participation contracts dependent upon the price of processed sugar are used, 2) a Minnesota growers' group which bargains for a price

Table 35. Kinds of Prices Bargained for by Associations and Handlers

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Firm Price	40	27	13	
Pegged to Some Market Price	5	2		3
Pegged to Cost of Production	1	1		
Formula Price Dependent upon Quantity Levels	1		1	
Other	<u>5</u>	<u>1</u>	<u>2</u>	<u>2</u>
Number of Asso- ciations Re- porting	52	31	16	5

tied to futures market movements in field corn and 3) associations which misinterpreted the question and listed factors they consider in setting price objectives.

There are variations on the "firm price." Some associations (Michigan) bargain for a base price below which contracts cannot be signed, but above which the market is free to go and frequently does go. In 1975, for example, a base price for apples was agreed upon in the \$3.00 range but later went well above that level.

The "firm price" is generally dependent upon quality levels. Some of the most sophisticated quality contracts are found in the Idaho potato industry. There, contracts have many quality dimensions. Growers are rewarded and penalized according to their performance with

respect to quality.⁴²

The number of quality conditions appearing in contracts is greater in annuals than perennials. As we look at peas, sweet corn, limas, tomatoes, and other annuals there is frequent discussion over quality provisions and the "steepness" of incentives to produce quality. With the exception of asparagus, these issues just do not stimulate discussion in the perennial crops. Grades and sizes are well-established, and price is a more important issue in bargaining. It is not clear from this research that there is anything unique about annual crops as opposed to perennials which makes the grading problem any greater in one than the other. Variety and practices which influence quality appear to be more fixed in fruits than in vegetables, thus, more time is spent on quality questions in annuals than in perennials.

6. Levels of Grower and Handler Support for Formula Prices

The question of formula prices was raised early in the research. There are several factors which may argue for formulas dependent upon quantities produced and/or costs of production. Among these are 1) the natural variations in quantity for a given acreage and 2) the desire to bargain multi-year contracts. If our concern is with designing a food system in which prices reflect actual scarcity of food, a price which

⁴²In other states, both association managers and processors pointed out a problem facing those who would introduce quality control provisions into contracts. While growers are most anxious to add incentive provisions for high quality, they are far less inclined to include penalties for substandard qualities. Thus, a majority of low-quality growers can vote to exclude penalties for poor quality. This reduces the amount buyers will pay for high quality because the average value of the crop is reduced.

varies with quantity has obvious merits. If we wish to reduce transaction costs associated with bargaining, there is merit in multiyear contracts.

Because of the potential usefulness of formula prices as an aid to improved vertical coordination and as a means of reducing the costs of negotiations, managers were asked to indicate both whether they thought their members would favor formula prices and if handlers would favor them. Responses to these questions are summarized in Table 36.

Table 36. Growers and Handlers Thought by Managers to Support Formula Pricing

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
Members Favor	30/47	18/29	10/16	2/5
Handlers Favor	15/46	8/28	6/16	1/2

What is not reflected here is the widespread skepticism with which the idea of formula prices are viewed. The question naturally raised by the skeptical was "whose formula?" Even if people thought they could agree on some variables to consider, both sides would identify other factors to consider for any given year.

In the California perennials, a formula is used by both "sides" and found helpful in setting rough "bounds" for the discussion of price. A series of models developed by Hoos and Kuznets⁴³ is in general use

⁴³Sidney Hoos and George M. Kuznets, Pacific Coast Canned Fruits F.O.B. Price Relationships 197--197- (California Agricultural Experiment Station, Giannini Foundation of Agricultural Economics, August _____), Drs. Hoos and Kuznets write this publication on an annual basis. For this reason, specific dates and report numbers are not included.

for this purpose. There were no indications, however, that either side was about to accept the model as a final formula for price.

There is an ongoing experiment in Idaho between Lamb-Weston and selected potato growers to use a two-year contract.⁴⁴ Elaborate survey work was done to determine costs of production for the growers. Much will be learned from this effort. Several men of experience in the potato industry expressed hope that some kind of multi-year provision could be established. Their claim was that bargaining simply took too much time. To date, multi-year contracts have either been based on a fixed price or based on a commitment to resolution through arbitration during interim periods.

Approaches of Association Managers to Collective Bargaining

The first segment of the discussion on conduct dealt with selected experiences of associations in their efforts to bargain collectively. Difficulties in securing recognition, grower reactions to those difficulties, and the terms over which bargaining takes place were mentioned. The aim of that segment was to provide an overview of activity in collective bargaining and the nature of terms negotiated.

In what follows, specific aims of collective bargaining associations, information sought to achieve those aims, and sources of information drawn upon to do so are discussed. Again, the topics are

⁴⁴Tom Sahlberg, Potato Growers of Idaho, personal interview, March 23, 1976.

studied to improve our chances of predicting the consequences of collective bargaining in general and of specific bargaining rules in particular.

1. Goals of Collective Bargaining Associations

The goals of bargaining associations as ranked by their managers are summarized in Table 37. Managers were asked to rank the possible goals in order of importance. In coding the responses, the value "9" was used for all nonresponses. Coding numbers for responses and nonresponses were then averaged. This provided a descriptive statistic to use in getting an overall feeling for the importance of each goal. The lower the statistic, the greater the importance of that goal.

There are several weaknesses in the statistic. Two important ones are that 1) it doesn't have a handy probability distribution and that 2) it doesn't reflect the relative importance of a goal for one manager in comparison to the other. Thus, there is an aggregation problem, and the ranking of goals is only ordinal. Several succeeding tables rank preferences in the same way. A lower statistic implies greater importance.

Because of the weaknesses of the statistic, part of the frequency distribution is included. The number of managers ranking the goal as most important or second most important is listed.

On average, the most important goal was generally higher grower incomes. This was predictable, and the discovery does not add much to our understanding. Beyond this overall goal, those goals thought to be instrumental in achieving higher incomes were identified.

Table 37. Managers' Ranking of Goals in Order of Importance to the Association

	Aggregate	Annual	Perennial	Sugarbeets
Assured Markets				
Mean	4.636	4.647	4.25	5.8
1st	8	3	3	2
2nd	16	11	5	0
Stable Prices				
Mean	3.691	3.529	3.25	6.2
1st	15	11	4	0
2nd	8	2	4	2
Higher Prices				
Mean	5.673	5.176	6.188	7.4
1st	9	6	2	1
2nd	4	3	1	0
Expanded Markets				
Mean	5.582	5.559	4.563	9
1st	3	1	2	0
2nd	0	0	0	0
Expanded Membership				
Mean	5.236	4.618	5.375	9
1st	6	5	1	0
2nd	6	5	1	0
Better Market Information				
Mean	5.818	5.324	6.188	8
1st	5	5	0	0
2nd	1	1	0	0
Higher Grower Incomes				
Mean	3.0	2.824	3.313	3.2
1st	20	12	6	2
2nd	19	13	5	1
Third Party Grading and Weighing				
Mean	7.545	7.206	7.813	9
1st	1	1	0	0
2nd	3	0	0	0
Other				
Mean	7.873	7.824	8.5	6.2
1st	6	5	1	0
2nd	2	0	0	2
Total Respondents	55	34	16	5

Managers of both perennial and annual associations ranked price stability next in importance. Significantly, the specification of stability as a goal was common. It attained its high ranking even though only 15 of 55 association managers ranked it as most important. During interviews, managers predictably volunteered that they wanted high, stable prices. But they would immediately acknowledge a trade-off between high prices and stability. They generally indicated that stability was a more important goal. Predictability of prices simply helps growers to plan for cropping and financial needs. In fact, higher price was ranked fifth and among managers for annual associations and tied for sixth and seventh among managers of perennial associations.

Assured markets were next in importance for managers of associations bargaining in perennials. This reflects a concern with placing a crop from trees which bear fruit for many years (for decades in the case of canning pears). It also reflects the fact that most such associations take title to the crop and are faced with packing problems when they fail to place it. Understandably, expanded markets were ranked next in importance for similar reasons.

Managers of associations for annuals ranked expanded memberships next in importance. This choice over assured markets can be understood in light of a difference in the nature of the product and the fact that annual associations do not take title. The positive reason for ranking expanded membership higher is seen in the fact that "entry" into the production of annuals is comparatively easy. New growers may more easily be drawn into production by processors, and these provide alternative sources of supply, thereby weakening the association position.

Assured markets were ranked next in line by managers in annuals.

The goals of bargaining associations as seen by their managers merit more study. The importance of such study lies in the potential for development of realistic models of association behavior. Some⁴⁵ have suggested, however hesitantly, that the bilateral monopoly model may apply in studying bargaining associations. These findings suggest that such profit-maximization models are of limited value in this area. (If the objective function of an association manager were expanded markets, for example, pressures may be away from high or low prices toward more stable prices at higher levels of output. See Appendix G.)

2. Information Used in Pursuit of Association Goals

The research next focused on the kinds of information used to achieve specified association goals. Several kinds of information known to be used by associations, suggested by theory, recommended as possibilities by academicians, and used by industry people were listed. These are seen in Table 38. Instructions to respondents were the same as those for Table 37. The same statistic was computed for this table as for the preceding one. Frequencies with which the kind of information was ranked first and second were also computed.

There were sharp differences in the kind of information first sought by managers of annual and perennial associations. Grower costs of production were looked to first by managers of associations bargaining for annuals. The same people looked next to alternative crops for producers--the opportunity cost of growing the bargained crop.

⁴⁵Helmberger and Hoos, Cooperative Bargaining in Agriculture, p. 49..

Table 38. Managers Ranking of Kinds of Information Used in Planning and Conducting Bargaining Activities

	Aggregate	Annual	Perennial	Sugarbeets
Projections				
Mean	2.891	3.059	1.75	5.4
1st	25	13	12	0
2nd	4	2	2	0
Processors Cost				
Mean	5.145	5.176	5.063	5.2
1st	0	0	0	0
2nd	8	2	4	2
Grower Cost				
Mean	2.2	1.765	3.25	1.8
1st	20	14	2	4
2nd	25	18	7	0
Investment Plans of Processors				
Mean	7.273	7.324	7.063	7.6
1st	0	0	0	0
2nd	2	1	0	1
Substitute Procurement Markets for Handlers				
Mean	6.618	6.029	7.125	9
1st	1	1	0	0
2nd	2	2	0	0
Substitute Markets for Growers				
Mean	6.091	6.029	5.313	9
1st	0	0	0	0
2nd	5	4	1	0
Public Opinion				
Mean	7.782	7.971	7.188	8.4
1st	1	0	1	0
2nd	1	1	0	0
Alternative Crops for Producers				
Mean	4.127	2.912	7.25	2.4
1st	8	7	0	1
2nd	11	9	0	2

Table 38. Continued.

	Aggregate	Annual	Perennial	Sugarbeets
Other				
Mean	8.764	9	8.188	9
1st	0	0	0	0
2nd	1	0	1	0
Total Respondents	55	34	16	5

The third kind of information was projections of production, consumption, and "market clearing" price levels. In short, managers first wanted supply information. They are suppliers and, after all, face the need to present their position before buyers in whose interest it is to challenge those data. They next went to demand data, thereby suggesting recognition of a need to bring demands into line with economic reality. Sugarbeets followed roughly the same patterns as annuals.

In perennials, managers emphasized different goals. Accordingly, they emphasized different kinds of information. They first sought projections of production, consumption, and "market clearing" prices. This is surely due to their understandable preoccupation with "finding a home" for a relatively unadjustible supply of perennials. The next concern was with grower costs of maintaining an orchard and harvesting the crop. The third item mentioned by managers in perennials and the fourth for managers in annuals was processors' costs.

Thus, in both cases, managers looked first at supply factors in pursuing their goals. It appears, however, that much effort is also

devoted to securing information on demand factors as well.

3. Sources of Information Used in Pursuit of Association Goals

The next area of inquiry involved sources of information used by managers in pursuing association goals. Two potential values to knowing sources used are that such knowledge may 1) help improve capacity to predict association behavior and 2) offer guidance with respect to public and private investment in the provision of information. Again, ranked responses were sought. The same statistic was computed as for the two preceding tables. Frequency of responses indicating first and second place ranking are also presented.

Table 39. Managers' Rankings of the Importance of Different Sources of Information Used in Pursuit of Association Goals

	Aggregate	Annual	Perennial	Sugarbeets
Research by Association Personnel				
Mean	4.44	4.088	5.188	4.5
1st	22	16	4	2
2nd	4	2	2	0
Government Publications				
Mean	3.852	3.941	3.875	3.0
1st	10	7	3	0
2nd	14	11	2	2
University and Extension Publications and Personnel				
Mean	5.056	5.294	4.75	4.25
1st	3	1	2	0
2nd	8	5	3	0

Table 39. Continued

	Aggregate	Annual	Perennial	Sugarbeets
Other Farm Organizations				
Mean	6.185	5.971	6.563	6.5
1st	2	2	0	0
2nd	5	2	2	1
Contract with Handlers to Assess Needs				
Mean	3.722	4.118	2.50	5.25
1st	14	6	8	0
2nd	11	7	3	1
Private Consultants				
Mean	6.463	6.5	6.438	6.25
1st	2	0	1	1
2nd	1	0	1	0
Trade Journals				
Mean	6.241	6.294	5.688	8.0
1st	1	0	1	0
2nd	8	6	2	0
Other				
Mean	6.722	6.853	6.563	6.25
1st	3	2	0	1
2nd	3	0	3	0
Total Respondents	54	34	16	4

Government publications were of primary importance for managers in annuals while ranked second by those in perennials. In annuals, research by association personnel was second in importance.

The marked difference between annuals and perennials was in the degree to which managers in perennials looked to handlers for market information. This was the primary source in perennials and, while of primary importance to some in annuals, only ranked third. This

distinction confirms a strong message received throughout the interview process--that there is much more ongoing communication between associations and handlers in perennials than in annuals.

The third important source of information in perennials was from university and extension publications and personnel. This is consistent with a need to secure crop estimates to help bring information to the bargaining process.

Two major observations, both generated from the data on approaches to bargaining, are in conflict with popular perceptions of collective bargaining in agriculture. The first is that managers have a widespread awareness of and concern with forces which discipline the pricing objectives of the bargaining association. In general, associations do not recklessly seek the highest possible price for a given season or ignore the effects of a high price on stability or the quantity that will be taken at that price.

Second, because of their concern with seeking out terms that provide stable, reliable markets, many associations devote substantial energies to the generation of information which will help them bargain for such terms. By bringing information to bear on the bargaining process, they, along with handlers, perform a service which may help both sides to make more informed production and purchasing decisions.

The Nature of the Bargaining Relationship

An earlier discussion mentioned some of the difficulties encountered when associations attempt to bargain with handlers. In this segment, a broader assessment of the bargaining relationship between associations and handlers is discussed. It provides a more

balanced view of those relationships and attempts to provide some measure of their stability and viability as mechanisms for vertical coordination.

1. Bargaining Association Managers'
Characterizations of Their Bargaining
Relationships with Handlers

Managers were asked to indicate which of the characterizations on Table 40 applied to their relationship with handlers. They were told that more than one response was permitted.

Table 40. Managers' Characterization of the Bargaining Relationship
(Frequency for Those Indicating These Responses)

	All Associations	Annual Associations	Perennial Associations	Sugarbeet Associations
1. Adversary with Much Conflict	8	6	0	2
2. Tough with Mutual Respect	51	32	16	3
3. Dominated by Growers	1	1	0	0
4. Dominated by Processors	8	6	1	1
5. Bluffing is More Effective Than a Well-Documented Case	7	4	1	2
6. Well-Documented Case Will Prevail	36	21	12	3
7. Other	0	0	0	0
Total Responding	55	34	16	5

These findings tend to support a hypothesis that bargaining relationships are more mature and stable in perennials than in annuals. If positive answers to choices 2 and 6 are thought to be indicative of a "healthy" bargaining relationship and if positive responses to the others are "unhealthy," it again appears that the perennial associations have more stable relationships with handlers. While there were high levels of response to both of the positive indicators in both annuals and perennials, there were a total of 2 negative responses in perennials, 17 negative responses in annuals, and 5 negative responses in sugarbeets.

In some respects, the above data reflect the success with which associations and their handlers have established bargaining relationships. It says nothing explicit about the success of associations in achieving their aims within those relationships, however. An explicit assessment of the latter kind of success makes up the last portion of this chapter. Before moving on to that assessment, two other conduct related dimensions are discussed. The first is the managers' assessment of obstacles to the achievement of the collective bargaining objectives. The second is a discussion of bargaining philosophies which characterize approaches to collective bargaining in broader terms.

2. Bargaining Association Managers' Specifications of Obstacles to the Achievement of Bargaining Objectives

Managers were asked to rank obstacles they face in trying to "bargain effectively" with handlers. There are many possible interpretations of such a concept. Responses to the question are

interpreted on an assumption that "effective bargaining" is effective in terms of the goals listed in Table 37. Responses were handled in the same manner as earlier "ranking" questions. Numbers are generally higher because there were more alternatives.

On the basis of these observations, the greatest obstacle to effectiveness in collective bargaining is a lack of control over volume. This observation reflects the assumption of many that collective bargaining associations commonly restrict supplies and behave like monopolists. Bargaining associations per se do not have the capacity to do this unless they have full supply contracts and elect to ration rights to produce among their growers. In this research, no evidence that this happens in fruits and vegetables was encountered. On the contrary, the fact that inability to control supply is such a powerful force suggests a strong discipline on the activity of associations.

The second-ranking obstacle was that first handlers create incentives for growers not to join the association. This does not necessarily mean that handlers engage in unfair practices although this is sometimes the case. But it also means that handlers pay the same terms to all growers or that they simply go to nonmember growers first to procure their requirements.

A related obstacle, the one that ranks third, is that processors have too many alternative sources of supply. This applied much more to annuals and was relatively unimportant in perennials. Again this is a discipline imposed upon associations because the handler still has more market alternatives than the grower through his association.

Table 41. Managers' Rankings of Obstacles to Effective Bargaining by the Association

	Aggregate	Annual	Perennial	Sugarbeets
Failure of Members to Support the Association				
Mean	6.537	6.647	6.467	6
1st	12	8	3	1
2nd	3	0	2	1
Lack of Bargaining Experience				
Mean	8.500	8.824	8.133	7.400
1st	1	0	0	1
2nd	1	0	1	0
Lack of Market Information				
Mean	8.019	7.441	9	9
1st	2	2	0	0
2nd	5	5	0	0
Lack of Recognition by Handler				
Mean	6.870	6.353	7.333	9
1st	1	1	0	0
2nd	13	10	3	0
First Handlers Create Incentives Not to Join				
Mean	6.019	5.618	5.933	9
1st	7	5	2	0
2nd	4	3	1	0
Failure to Attract New Members				
Mean	8.214	8.118	8.267	9
1st	0	0	0	0
2nd	0	0	0	0
Bargaining Rules and Unfair Practice Provisions Not Enforced				
Mean	8.167	7.853	8.6	9
1st	3	3	0	0
2nd	1	1	0	0

Table 41. Continued.

	Aggregate	Annual	Perennial	Sugarbeets
Bargaining Legislation Is Inadequate				
Mean	6.593	6.059	7.537	7.4
1st	1	0	0	1
2nd	6	6	0	
Lack of Control Over Volume				
Mean	4.44	3.853	4.267	9
1st	21	13	8	0
2nd	4	3	1	0
Growers Have Unreasonable Expectations				
Mean	8.685	8.647	8.667	9
1st	1	1	0	0
2nd	0	0	0	0
Processors Have Too Many Alternative Supply Sources				
Mean	6.278	5.5	7.133	9
1st	2	2	0	0
2nd	12	8	4	0
Other				
Mean	7.611	7.971	7.933	4.2
1st	5	0	2	3
2nd	0	0	0	0
Total Reporting	54	34	15	5

Inadequate bargaining legislation was a problem for annual associations in some cases. The range of shortcomings is potentially broad. Alternatives in legislation and their consequences are discussed in Chapter IV.

Lack of recognition by handlers was also a problem that annual associations faced more frequently than did perennial associations.

It is clearly related to the fact that handlers (as mentioned above) have more alternatives when facing annual growers than when facing perennial growers.

3. The Managerial Perspective: Philosophies of Bargaining

The data in Table 41 offer insights with respect to the market structure within which collective bargaining takes place, as well as the aims, approaches, difficulties of, and relationships among those who act within this framework. They do not, however, offer a coherent picture of the managerial perspective or philosophy with which association managers and leaders approach their jobs. The understanding of such perspectives and an analysis thereof is a necessary component of a picture of participant conduct in the collective bargaining framework. To finish the discussion of conduct, the following pages offer a summary and analysis of alternative managerial perspectives. It is based almost entirely on conversations with bargaining association managers nationwide. It is also an aid to the integration of managers' responses to conduct-related questions.

The discussion is developed around three bargaining philosophies encountered in fruit and vegetable bargaining and one which, while not used in fruits and vegetables, is certainly related to it.

No generalization about the attitudes with which bargaining association leaders approach the bargaining table can capture the bargaining philosophy of any one individual or association. Just the same, a summary of three general philosophies may prove useful in understanding alternative approaches to bargaining. These are: 1) cost of production, 2) "price discovery" or "market," and

3) "opportunity" approaches.

The cost of production approach is just what it sounds like. The primary bargaining objective is to secure a contract price covering a specified cost norm plus a "reasonable" profit. The cost of production concept is not strictly followed by any association. When there is an especially strong demand, the bargained price must be higher than cost of production to achieve equilibrium. Increased demand creates a need to draw out more growers or to induce existing growers to add marginal land to production.

When demand is weak, or carry over high, the "cost of production" figure may be "too high" to equate supply with demand. The bargaining parties may 1) hold out for cost of production, in which case some growers desiring preproduction contracts won't get them or 2) release growers from membership requirements and permit these growers desiring to sell at lower prices to do so. (Association leaders are loathe to sign contracts for less than cost of production.)⁴⁶

Two key concepts are vital to an understanding of the cost of production approach. These are the concepts of a "fair price" and homogeneous growers.

The notion of a "fair price" lies at the heart of this approach. It is argued that it is only "just" for contract prices to cover grower costs of production. Yet why might growers accept a contract which offers less than costs of production? Simple uncertainty about future prices offers a partial explanation. Grower ignorance of their own costs is also to blame. Very frequently bargaining association

⁴⁶Glendon Wathen, President, Agricultural Bargaining Council of Maine, personal interview, March 9, 1976.

managers, several of them growers, observe that some of their neighbors keep poor records and don't know what their costs of production are. The growers will plant at a loss. Another explanation lies in the practice of cross-subsidization. A frequently heard comment is that farmers "like to grow peas." (Other crops are also involved.) One reason is that the farmer may just feel that he is good at growing that crop or just like to watch it grow. A more economic explanation, specifically in the case of peas, is that peas is a good rotation crop. It returns nitrogen to the soil and leads to higher wheat yields. Peas and wheat may be joint products.

The fact that farmers sow at a loss, either out of ignorance of costs or because it's fun to grow a particular crop, is not likely to draw sympathy for the farmer involved. But there is an economic rationale to bargain for the average total costs of production. A bargained price at average total costs of production would prevent the capital losses incurred when, because of uncertainty, growers overplant. By negotiating prices consistent with supply and demand trends, collective bargaining may help to reduce that uncertainty.

The second concept underlying the focus on "cost of production" is that of a homogeneous group of growers. The "cost of production" is an inherently "average" concept. For those who naively assume that all growers have the same costs, the supply function is perfectly elastic. The processor will be able to get all he wants at that price. (This concept ignores the notion of diminishing marginal productivity.) A price which covers the cost of production plus a reasonable profit will lead to market equilibrium since processors will contract for exactly what they need at the bargained price. The

bargaining leader who sees the world through such eyes expects that his association can bargain for a price which will be "fair" to all growers and lead to market equilibrium (supply = demand) at the same time. If price is too high, too many growers will want to provide the product. Thus he may allege that he is disciplined by the market.

In fact, all growers are not alike, either in terms of their capacities to minimize production costs or to meet quality requirement of processors. The concept of an average cost of production means that some growers' costs are above average while others are lower. This is one reason why supply is not perfectly elastic. Some growers are willing to grow a product while others are not because their perceived costs are lower and the price needed for a reasonable profit is not so high as others.

A second reason applies even if everyone's costs were identical and challenges the philosophy described above. As prices of output increase, the commodity bargained for becomes more attractive relative to other resource uses, and more will be supplied. As prices drop, the opportunity costs of land use exceed revenues in the bargained commodity, and less of it is sown. These two factors complicate the bargaining problem for those using the "cost of production" approach.

First, whose cost of production is relevant? Is there anything special about the average cost of production? Should the cost of production figure be lower to encourage more "efficient" on-farm resource allocation or should it be higher to include more growers?

Second, there is the problem of finding a price at which supply equals demand. If there is an upward sloping supply curve, there is only one price at which the quantity supplied will equal

demand.⁴⁷ If the price is too high, many growers wishing to grow the crop will be left without contracts (annuals), or worse, with no home for their crop (perennials). Such events would put pressure on bargaining association leadership. If the price, though "fair," is too low, not enough of the quantity will be supplied to meet processor needs. Handlers themselves will ultimately apply upward pressure on prices.

In the free market, the unique price which will lead to market equilibrium is determined by many competing buyers and sellers acting independently and in their own interests. The "market price" reflects the scarcity of one item or service relative to others. It provides a "signal" which growers use to decide whether or not to produce. While such conditions may have been approximated in the more open fruit and vegetable markets of a few years ago, they are clearly absent in today's market characterized by one or by a few processing firms dealing (generally through contracts) with large numbers of growers. While processing firms compete on the output side for the sale of their processed product, they often face little or no competition for the purchase of raw products. The price they offer is decided, not by many competing forces operating with knowledge of all the alternatives, but by one or by very few individuals. (The theory of imperfect competition argues that such circumstances will lead to a price lower than that achieved in the "free market" and a less than socially optimal level of output.)

⁴⁷I assume a downward sloping demand function even though demand within a season may be highly inelastic.

What "open market" activity there is frequently applies to a very small share of total production. Some have called this a "thin" market price. What price there is does not reflect the "market price" of pure competition. Processors don't always have all of the supply and demand information required to determine competitive market price and, even if they did, would have no incentive to pay it. The price generated does not reflect the same information as it does when all parties are price takers.

Effort is needed to "discover" a market-clearing price. Supply and demand information must be assembled and discussed by interested parties on both sides of the transaction.

The point is that the "cost of production" approach must realistically consider market forces in establishing bargaining objectives. By holding out for a specific cost of production and reasonable profit, growers forego increased revenue opportunities by ignoring increases in demand and lose sales opportunities by ignoring reductions in demand. Astute association leaders and employees who use the cost of production (a supply approach) as a point of departure do not ignore variations in demand conditions in setting bargaining objectives.

The "price discovery" or "market" approach to bargaining may differ little in effect from the "enlightened" cost of production approach. The assumptions of the price discovery approach follow the discussion above. It claims that the true "market value" of a commodity cannot come out of markets in which processor concentration ratios are very high because there is little or no competition on the buyer side of the market. The aim of the bargaining association, the manager would say, is to negotiate with buyers and determine what the "real"

market price would be. One main difference between this approach and the former is that it implicitly recognizes as variable the question of whose costs of production are covered. If demand is strong, there is a market for the products of growers with higher production costs. If demand is weak, the reverse is true.

Thus, the concept of fluctuating prices and risk is accepted in this approach though it is partially assumed away in the "cost of production" approach.

Risk is recognized as an important disciplinary force by experienced bargaining association managers. Ralph Bunje observes that "You don't want too much stability. Then you have overproduction and depressed prices. There must still be risk for the grower."⁴⁸ This contrasts with the cost of production approach which asks, without recognizing risk, for a price which covers its cost.

At the same time, the market price philosophy aims to eliminate violent variations in price to the extent that those variations are not caused by changes in supply and demand. Many association managers observe that raw product demand within any one season is very price inelastic. In a year of short supply, growers can extract very high prices. When supplies are long, processors can extract very low prices. As positions are reversed in succeeding seasons, a compensating reaction takes place.

Price variations caused by such behavior represent risk to growers and processors alike. The greater the instability, the greater the need for financial resources to deal with adverse market movements.

⁴⁸Ralph Bunje, California Winegrape Growers Association, personal interview, April 1, 1976.

The smaller farmer is least able to cope with such instability. It is in response to such effects that the "market" approach looks to a longer term supply-demand equilibrium. A five-year equilibrium price may differ greatly from a one-year equilibrium price and may offer much more stability. It is for this reason that one association manager said, "Every price I (we) make is part of a five year plan."⁴⁹ He recognized the point made independently by a veteran colleague who observed that "If we do too well one year, we'll pay the price in the next season."⁵⁰

Another key to the market approach is its desire to bring together as much supply and demand information as possible. This can prevent price instability born out of ignorance. When buyers fear a shortage, "panic" buying can lead to prices significantly higher than those justified by actual supply and demand conditions. Similarly, growers concerned about placing their perennials or securing contracts for annuals in the face of weak demand may accept prices well below what the "market" may justify. Thus, ignorance too may lead to unstable pricing situations. The market approach will focus on this problem and try to bring as much information as possible into the determination of a bargained price.

The "opportunity" approach to bargaining was mentioned by only one association manager.⁵¹ It contrasts with the "cost of production" or "technical" approach in that it is more market oriented. It differs

⁴⁹ Ronald Schuler, personal interview, April 5, 1976.

⁵⁰ Cameron Girton, personal interview, April 5, 1976.

⁵¹ Confidential personal interview.

from what has been called the "market" approach in that it aims to take advantage of the ignorance of those with whom managers deal rather than to fill the ignorance gap. It is oriented toward taking advantage of intraseasonal inelasticity of demand.

To the charge that such practices may exacerbate price fluctuations, its practioner replies that the raw product represents a very small share of the final product value. He argues that fluctuations in raw product prices are not a serious threat to the processors because their price makes up such a small share of his total input costs.

Whether the raw product cost is a small share of handlers' total costs or not, many would argue that the raw product cost is the only cost the processor has a chance to "squeeze." A chorus of bargaining association managers would contend that the processor will retaliate by attempting to drive future prices low enough to compensate for losses suffered earlier when the processor was in a disadvantaged position relative to his competitors. If he does so, he, in tandem with the association, will create a pattern of instability, the cost of which will be faced by growers and handlers alike.

The preceding discussion provides a broad overview of the perspectives from which association managers approach the bargaining table. Market forces are respected by all three approaches. But, there are major differences in emphasis. The first approach is more characteristic of managers bargaining for annuals. The cost of production can be more influential in these crops because they are not yet planted when bargaining takes place. Because different growers have different production costs, however, growers with lower production

costs represent a source of supply that disciplines demands for "higher" prices based on the production costs of others.

The second approach is more characteristic of bargaining in perennials. While the cost of harvest is certainly a lower bound on prices, the major influence on price is the supply of an existing crop and the demand for that crop.

There are two major differences between this approach and the last one. The first is the concern of the second approach with bringing information to bear on the pricing decision. That approach is concerned with equitable treatment of handlers based upon complete market information. The latter approach exploits the ignorance of adversaries. The author would argue that this works to the long-term disadvantage of all concerned. The second difference in the two approaches is related. The market approach looks at equilibrium prices as a long-term (five year) concept while the opportunity approach exploits the moment. Again in the author's view, this latter approach will exacerbate fluctuations in price and work against the goal of price stability allegedly sought by many bargaining associations.

A much broader philosophical perspective, one which challenges some of the basic assumptions of single commodity bargaining, is found in the approach used by the National Farmers organization. As indicated in the following summary of an interview with Oren Lee Staley, that approach begins with an assumption that prices of all products are interrelated and, for that reason, an industry-wide, nation-wide, all-commodity approach to collective bargaining is most workable.

Edited transcript of interview with Oren Lee Staley,
President NFO, Corning, Iowa, May 12, 1976.

(A starting point in discussing collective bargaining with Staley is the assumption that one has to go Nationwide and All-commodity [NFO Terminology] if the bargaining effort is going to be successful.)

If you bargain effectively in one area, buyers will go elsewhere, because there are so many sellers. If you bargain effectively in one commodity, farmers will flock to the production of that commodity. Thus, you have to raise the general level of farm prices, if you are to raise it at all.

(There is also a dependency relationship among commodities that is central to his thinking.)

Grain is the key. You can't raise cattle, hogs, or produce milk without feed grains. If you raise the price of grain, you automatically raise the price of the other commodities or provide leverage to do so. Further, since the grain is storeable for up to four years, this facilitates efforts to bargain in that area. (It can be rotated--first in, first out.) In addition, foodgrain prices are dependent upon the feedgrain prices in that they compete for the same land and other inputs.

There has to be a good marketing and bargaining program before farmers can seriously bargain. The NFO is developing a Nationwide Bargaining structure based on a collection, dispatch, and delivery system in which the physical facilities are owned by the members in local cooperative units. A professional staff, much of it composed of former employees of the major food processing and distributing firms (Continental, Ralston Purina, Hormel, Cudahy, etc.), keeps the bargaining staff up to date on market prices, as well as on transportation and handling costs for all commodities.

Marketing strategies on grain, meat, and milk are based mainly on the development of good information as a basis for bargaining. Responses to bids in grain or meat are based upon very current market information, knowledge of transportation costs, and a capacity to physically deliver the desired quality of product on a timely basis.

The NFO can bring buyers into competition with each other by being aware of 1) all marketing alternatives and 2) the costs of taking advantage of them. Once minimum price contracts are established in some areas, they provide leverage for the NFO to ship out of any areas in which the difference in price is greater than the cost of transportation. They get these contracts by guaranteeing a reliable, quality supply of the product.

The price is then enhanced in the low-priced areas since buyers are forced either to pay higher prices to retain needed volume or to sign contracts which assure themselves stable supplies.

With regards to the charge that the NFO does not have the volume to really affect marketing, Staley would probably say that currently they are making gains through the use of more complete market information than other farmers in the major crops and because control of 50 percent or even near that is not needed to bargain effectively. Because buyers are so concentrated, with, perhaps five major buyers in each industry, a reduction of marketing efforts to those who accept contracts most benefiting NFO members puts pressure on buyers by reducing the supplies they need to operate at profitable levels. Thirty percent of the total product represents a sizeable share of the needs for perhaps two of the five firms in the industry. This kind of tactic as a means of securing contracts isn't so necessary now as it was at one time.

Buyers know that NFO will do it if necessary and recognize such activities as costly and disruptive. Such firms value stability. The share of major commodities currently controlled by NFO is not known outside of the organization. Presumably, it is approaching 30 percent nationwide since the rallying cry for the NFO has been "Think 30" and more recently "Operation 30." This is the market share that the NFO feels it needs to market and bargain effectively in the major commodities. Again, on the assumption that nearly all processing is concentrated among the top 5 firms in each industry, 30 percent would represent the volume of at least two firms. The potential loss of this quantity would be significant enough to the industry for that commodity to force prices up. The assumption appears to be that shifting production out of normal marketing patterns could either keep a couple of firms from operating at all or could force all five to operate at lower levels with higher unit costs of production. To do this, grain can be stored or the weights to which cattle or hogs are fed out can be reduced.

Q. But when such actions are carried out, don't other growers benefit at the expense of your members?

A. The problem is real, but it may be over-played. If our efforts are effective in driving up prices, we have a good enough information system to respond and get our product to market at the high prices they have created. Further, we try to get only members who understand the nature of the problem farmers face as individuals in a concentrated market. They understand that those actions may be necessary. We have no serious difficulty dealing with any

of the major buyers because they respect us now and recognize that we can offer them quality, stability, and reliability.

To continue, while others benefit from our efforts, we aren't excluded from the benefits. Besides, someone has to take the lead. There will always be costs associated with leadership.

Q. The American farmer has demonstrated a propensity to produce at prices lower than the cost of production and to do so for extended periods of time. This is due to the commitment of specialized assets and a drop in their salvage value below their value on the farm. If farm prices are raised further still on a commodity-wide basis, is there not a capacity for excess supply?

A. 1. The excess supply problem has been oversold. It has never been more than a few percent (5-10) over consumption.

2. What excess there is can be stored on farms or in grower-owned facilities until the end of the year or when seasonal production peaks have passed. (June is Dairy Month)

3. The quantity of food produced here has always been used. The question is: Who controlled it?

4. We want farmers to get control of it, bargain for prices based upon our cost of production, and deal in terms of one year forward contracts. What we don't sell at the price we want will be sold at year's end for lower prices or sent overseas or given to charitable institutions, etc. Rather than sell all for a low price, we'll sell some at a high price and give some away.

This mode of operation is really no different than GM pricing with year-end discounts, or Rexall Drug's 1¢ Sales.

Organization targets for NFO are the "pockets of minimum production." Staley observes that the big firms compete strongly at high concentration points and operate at low profit levels at those points. The Illinois River area is an example. They operate alone and without competition in other areas. Staley refers to these as pockets of minimum production.

Grain prices may be as much as 50-60¢ per bushel below the competitive price in such areas. NFO tries to move into such areas. When it does, it operates at cost (NFO always operates at cost) and passes any gains on to its members. When such practices raise prices in the area, the NFO puts pressure on the big firms to meet its price and raises the general level of farm prices.

NFO has opposed bargaining legislation at the state level and any legislation which includes a certification process because it divides farmers by region (in state laws) or at best by commodity. Bargaining efforts by state would be defeated by large firms, undermining the efforts of the small associations. If a single commodity effort was successful, it would simply draw growers in and create an oversupply, depress prices, and ruin bargaining in that commodity.

"NFO is Different - ALL - COMMODITY - NATIONWIDE."

The breadth of the approach used by NFO is, in the author's view, largely explained by two major factors. First, the NFO has engaged from its beginnings in negotiations for the major commodities. Because of the relative homogeneity, storability, and transportability of these commodities, the organization learned early that it had to think in terms of a very broad geographical market. It was in competition with a highly diffused population of fellow growers. This contrasts with the more geographically isolated fruits and vegetables which are not as homogeneous, as storable, or as transportable. The NFO, as the major milk bargaining cooperatives ultimately did, found it necessary to think and act on an industry-wide basis.

The second factor explaining the NFO approach can be traced to a different concept of institutional growth. The NFO approach assumes that individual grower associations, through uneven, coordinated growth, will undercut each other's efforts to bargain collectively. It challenges the notion that those associations can gradually and independently achieve their aims.

In the author's view, this assumption is not as well founded in the case of the specialty crops as it is in the major crops. The specialty markets are just not as fluid or responsive as are the major commodity markets. Thus, while the specialties are in

competition with different producing regions and with other crops for the use of land, the problems of organization for collective bargaining are not as great as they are in the major crops. Bargaining is relatively concentrated around particular parts of the year, and market activity in competing regions can be considered by the negotiators.

Thus, marginal improvements in terms of trade are feasible goals for local specialty crop associations. Such goals do not seem reasonable for growers of major crops. If nonmarginal changes in the general level of farm prices are sought, however, the approach used by the NFO seems more appropriate. To be feasible, the approach may require facilitating legislation. This is another matter, however.

Performance: Selected Consequences Associated with Collective Bargaining in Agriculture

The first two parts of Chapter II have been devoted to discussions of structure (the set of market and institutional constraints within which collective bargaining takes place) and conduct (the behavior of growers, their associations, and the handlers with which they deal within those constraints.) The final portion of the chapter examines some of the consequences which flow from the structural parameters and conduct patterns just described.

This section does not pretend to identify or evaluate all potentially important consequences associated with producer efforts to bargain collectively with handlers. What is important is clearly a normative question. Thus, what is presented is a set of observations on very fundamental variables, the "importance" of which is documented

mainly by the frequency with which the topics upon which they report comes up in the literature on and discussion about collective bargaining in agriculture.

1. Benefits of Collective Bargaining
to Association Members as Perceived
by the Manager

Managers were asked to rank the ways in which they felt association members had benefited from collective bargaining. Responses were computed as in the earlier ranking questions and are presented in Table 42.

Table 42. Managers Ranking of Areas in Which the Association Has Benefited Most from Collective Bargaining

	Aggregate	Annual	Perennial	Sugarbeets
Higher Prices				
Mean	1.491	1.265	1.625	2.6
1st	46	32	10	4
2nd	5	1	4	0
Stabilized Prices				
Mean	6.382	6.529	5.250	9
1st	4	0	4	
2nd	13	9	4	
Secured Reliable Markets				
Mean	7.673	7.824	7.438	7.4
1st	1	0	0	1
2nd	5	5	0	0
Grading Standards Consistent				
Mean	6.2	6.412	5.188	8
1st	0	0	0	0
2nd	7	5	2	0

Table 42. Continued.

	Aggregate	Annual	Perennial	Sugarbeets
Higher Return for Quality Products				
Mean	7.309	7.294	7.25	7.6
1st	0	0	0	0
2nd	4	2	1	1
Standardized Contracts				
Mean	6.473	6.588	5.875	7.6
1st	2	1	1	0
2nd	4	2	1	1
Planting and Harvesting Times Are Coordinated with Handlers and Other Growers				
Mean	8.509	8.206	9	9
1st	0	0	0	0
2nd	3	3	0	0
Growers Are Rewarded for Particular Cultural and/or Handling Practices				
Mean	7.60	7.794	6.75	9
1st	0	0	0	0
Inputs or Credit Are More Easily Acquired				
Mean	8.855	8.882	8.75	9
1st	0	0	0	0
2nd	0	0	0	0
Shorter Settlement Period				
Mean	7.345	7.5	6.875	7.8
1st	0	0	0	0
2nd	3	3	0	0
Other				
Mean	8.491	8.765	9	5
1st	1	1	0	0
2nd	2	0	0	2
Total Respondents	55	34	16	5

There are at least two important points to note here. First, there is almost perfect uniformity between the rankings on annuals and perennials. That was not the case in any of the earlier tables. Second, higher prices was the highest ranked benefit. This contrasts with the association goals in which higher prices were nowhere near the top of the list, although it does not necessarily conflict with the achievement of those goals. Higher prices consistent with other goals may have been achieved. It is not surprising that growers would comment to managers on prices most frequently. Consistent grading standards and standardized contracts ranked second and fourth. Stabilized prices, ranked third, was one of the goals listed in the earlier table.

2. Benefits of Collective Bargaining to the Association As Perceived by Association Members

A similar, though not identical, set of questions was asked with respect to the compliments heard from members with respect to the benefits they received from the bargaining efforts of the association. This forced the manager to separate his concept of benefits from those actually voiced by growers. The results were not especially revealing.

Higher prices were again ranked as most important. Thirty of fifty managers ranked it first. Proportionally more thought it to be the most important in annuals (22 of 32, or 69 percent) than in perennials (6 of 15, or 40 percent). The next most important benefit in annuals was knowing a price in advance of production. Stability of prices was the second in importance for growers of perennials (stability was fourth for annuals). The third-ranking benefit in

annuals was more of the product sold, less wasted. This would reflect reductions in passed acreage, something that is not an issue in perennials. The summary is seen in Table 43.

Table 43. Compliments Most Frequently Voiced by Members

	Aggregate	Annual	Perennial	Sugarbeets
Higher Prices				
Mean	2.76	2.818	2.786	2.0
1st	30	22	6	2
2nd	7	4	3	0
Stable Prices				
Mean	6.5	6.97	5.533	6.0
1st	5	0	5	0
2nd	7	7	0	0
Grower Rewarded for Handling and Quality Control				
Mean	7.49	8.18	5.8	9
1st	1	0	1	0
2nd	7	2	5	0
Marketing Costs Are Reduced				
Mean	8.51	8.531	8.4	9
1st	0	0	0	0
2nd	0	0	0	0
More of the Product Is Sold, Less Wasted				
Mean	6.653	6.344	7.0	9
1st	0	0	0	0
2nd	9	6	3	0
Timing of Marketing More Certain				
Mean	7.816	7.188	9	9
1st	0	0	0	0
2nd	4	4	0	0

Table 43. Continued

	Aggregate	Annual	Perennial	Sugarbeets
Facilities for Hauling Are Provided				
Mean	9	9	9	9
1st	0	0	0	0
2nd	0	0	0	0
Prices Are Determined in Advance of Production				
Mean	6.4	6.152	7.133	5.0
1st	14	10	3	1
2nd	2	2	0	0
Other				
Mean	8.020	8.212	7.933	5.5
1st	3	1	2	0
2nd	1	0	0	1
Total Respondents	50	32	15	3

3. Changes in the Practice of "Passing Acreage" Since Bargaining Began

The practice of "passing" acreage had been a "sore spot" among growers of peas, sweet corn and lima beans for many years. Processors contracting with growers would put provisions in their contracts which permitted them not to harvest (or pay for) the crop if it were "burned" or if there were no time to pack it. The situation created was one in which the processor, by contracting a bit more than needed, could insure that he would have plenty to pack. This "insurance" resulted in no immediate cost to the processor since the grower bore the risk of overproduction. It did increase cost for growers who would be expected to reduce their output in succeeding periods, thereby putting upward pressure on prices. Since this contract term was informally reported

to be one of the first changes after bargaining began, managers were asked about the effects of collective bargaining on passed acreage. It applied only to annuals and the results in Table 44 were anticipated.

Table 44. The Effect of Collective Bargaining on Passed Acreage

	Annuals
Passed Acreage Reduced	25
Passed Acreage Increased	0
No Change	<u>6</u>
	31

Obviously, the frequency with which acreage is now "passed" has been reduced. Many contracts were rewritten as a result of collective bargaining. A frequent change was to require that handlers pay some share of the costs incurred when acreage is passed. This created a disincentive to pass acreage and explains a reduction in the practice.

4. Changes in Quantities of Output Since Collective Bargaining Began

Those who criticize the concept of collective bargaining frequently charge that the practice amounts to "meddling" with the "law of supply and demand." If prices are enhanced by such "unnatural" means, quantity supplied will exceed quantity demanded. Less will be sold.

With this charge in mind, a question was asked concerning the changes in quantities contracted since "bargaining" began. The responses are indicated in Table 45.

Table 45. Changes in Quantity Since the Beginning of Collective Bargaining

	Aggregate	Annual	Perennial	Sugarbeets
Increase	20	11	8	1
Decrease	4	1	3	
No Change	<u>20</u>	<u>19</u>	<u>1</u>	<u>—</u>
	44	31	12	1

These figures do not "prove" anything about the effect of collective bargaining on quantities contracted. On one hand, it may be said that there is abundant evidence that increases in output associated with collective bargaining outweigh the reductions. Along the same lines, it may be argued that such performance is consistent with the theory of monopsony which indicates that prices can actually be raised and lead to increases in equilibrium output.

On the other hand, some may argue that one would expect at a minimum that quantities exchanged would increase with expanding markets, that many have not changed and that output, as the "law of supply and demand" would suggest, has been reduced by collective action.

5. Changes in Growers' Cropping Patterns Associated with Collective Bargaining

The broader question of collective action and its impact upon cropping patterns was also asked. This was partly as a check on the responses in Table 45 and partly to explore other possible impacts.

In general, the same pattern was seen with respect to quantities planted. (Note that in only 28 or 54 cases did changes occur. This

implies no change in plantings.) One other item, mentioned nine times as a secondary change, was the changed location of planting. Interviews revealed that added quality incentives in contracts led growers to plant in land that would turn out a higher quality crop. On better land, for example, sweet corn develops fuller ears and more uniformity. The summary of responses to the questions on cropping patterns are seen in Table 46.

Table 46. Bargaining Activity and Changes in Cropping Patterns

	Aggregate	Annual	Perennial	Sugarbeets
Changes Occurred	28/54	20/34	7/16	1/4
Most Frequent Change				
Increased Plantings	14	10	4	0
Decreased Plantings	6	5	0	1
Changed Location of Planting	3	1	2	0
Changed Time of Planting	0		0	0
Other	5	4	1	0
Second Most Frequent				
Increased Plantings	0	0	0	0
Decreased Plantings	3	2	1	0
Changed Location of Planting	9	9	0	0
Changed Time of Planting	2	1	0	1
Other	0	0	0	0

During the interview process, many anecdotes concerning how responsibility had been shifted were accumulated. Some of these are recounted in Chapter V. The emphasis in those cases is not on shifting decision control, but on assuming responsibility for currently held decision control.

6. Benefits Accruing to Producers and Handlers as a Result of the Collective Bargaining Relationship

The concept of shifting responsibility within the market channel so as to make people bear the consequences of their actions runs counter to widespread notions that bargaining is really a zero-sum game. It is evidence favoring the hypothesis that the consequences of collective action extend beyond growers and handlers themselves.

Much of the literature also has assumed that the association-handler relationship is a zero-sum game. Proponents of this view argue that anything growers gain will be at the expense of handlers and or consumers. Others challenge that notion.

Because of this controversy, a question was asked about joint benefits of the bargaining relationship. Managers were asked about how growers and handlers benefited from the development of a collective bargaining relationship. Their responses are summarized in Table 47.

Importantly, there were strong, positive responses to several of the possible answers. On an aggregate basis, 48 or 54 or 88 percent replied positively that there was improved information about mutual needs and problems. The responses were uniformly high. In annuals, 88 percent responded positively, in perennials, 93 percent did so, and in sugarbeets, the response was completely positive. Improved information translated to a response to transmitted needs in many cases.

Among others, Keith Tallman, President of the Malheur County Potato Growers⁵² indicated that processors had sent representatives

⁵²Personal interview, March 24, 1976

Table 47. Ways in Which Growers and Handlers Have Benefited from the Bargaining Relationship

	Aggregate	Annual	Perennial	Sugarbeets
Quality and Variety More in Line with Market Demands	25	17	7	1
Increased Quality Control Reduced Product Loss	24	14	8	2
Assembly Efficiency	8	3	5	0
Improved Information About Market Needs, Problems	48	29	15	4
Stability of Price Quantities	20	10	10	0
Other	4	3	0	1
Total Respondents	54	34	16	4

to growers' meetings for the purpose of showing growers what kind of potato quality they needed to increase the value of their pack. The processors went on to offer guidance as to how such a product might be produced. Growers responded and, throughout the Oregon-Idaho area (possibly others), have become rather "specialized" in producing for one firm or the other. The bargaining association served as 1) a focal point for grower education and 2) a means by which to capture rewards for using that knowledge to produce a product which was more valuable.

This anecdote and similar ones are likely behind the positive responses that "quality and variety" are more in line with market demands and that there was "increased quality control and less product

loss." Stability of prices and quantity benefited both sides according to 20 of 54 managers.

Improvements in assembly efficiency were not important in most cases. One explanation is that some growers usually deal with one nearby processor, and that cross-hauling is just not common.

During the interviews, association managers were almost always quizzed as to whether the processors or handlers would agree with this assessment. In all cases they said yes.

These observations offer little more than a benchmark upon which to pursue further study of the question about who benefits. There is no measure of how important the mutual benefits were or of what costs were incurred in securing them.

7. Benefits Accruing to Non-Association Growers as a Result of the Collective Bargaining Relationship

The reason behind the "agency shop" provision of Michigan's bargaining law is the free rider problem--that nonmembers will benefit from any gains of the association whether they pay marketing fees or not. The efforts of the association, by raising prices from which growers cannot be excluded, provide one of Mancur Olson's "inclusive goods."⁵³

The significance of this circumstance is that, in strictly pecuniary terms, there is a positive incentive for each not to join. Economic man does not pay to get something he will receive anyway. The policy implication is that, if society selects collective

⁵³Olson, The Logic of Collective Action.

bargaining as a desirable alternative, it may have to do something about the free rider.

Questions about nonmember benefits were asked mainly for the benefit of those not familiar with collective bargaining. Responses are summarized in Table 48. To most managers, the question was almost rhetorical. It was clear that nonmembers got the same bargaining benefits as members without paying the marketing fees. As indicated elsewhere in this report, such things as information services may be "exclusive" goods and do not fit this generalization.

Table 48. Nonmember Benefits from Association Activity

	Aggregate	Annual	Perennial	Sugarbeets
Price Increases through Bargaining Strength	41	27	13	1
Price Increases through Association Efforts to Reduce Acreage	2	0	2	0
Handlers Give Nonmembers Preferential Treatment	18	15	3	0
Nonmembers Get Same Price and Pay No Marketing Fees	41	26	12	3
Other	8	7	1	0
Total Respondents	51	33	15	3

The other relatively frequent response was that nonmembers received preferential treatment from handlers (through longer contracts, better seeds, alleged higher prices, etc.). This is interpreted as an attempt to undermine the strength of the association. Again, it

appeared more frequently in annuals than in perennials.

This concludes the review of descriptive data on the market structure in which collective bargaining takes place, the conduct of participants within that framework, and selected consequences associated with collective bargaining activity by bargaining association managers. It is against this background that Chapter III begins to develop the legal framework for collective bargaining.

Summary

The Structure of Markets and Bargaining Institutions

Collective bargaining activity and its setting can be described in terms of 1) market and institutional structure, 2) participant motivation and behavior, and 3) selected associated consequences.

Producer-first handler markets in individual commodities are characterized by very concentrated buyer sectors. Four-firm concentration ratios for proprietary processors are very high in the local market areas. Concentration levels faced by individual growers are much higher.

Other "markets" for growers include processing cooperatives. These are more common on the West Coast and particularly in perennial crops.

Many growers contract with the concentrated buyers. They frequently charge that they cannot get the "full market values" for their commodities. Buyers can say, "Take my offer or leave it--there are plenty of other growers and your crop does not mean that much to me." They are right. Furthermore, because growers have fixed human and physical capital, they may continue to produce at prices less than

average total cost of production.

Although growers may have alternative commodities to produce, it is often the case that the same processor purchases the alternative crops.

When specialized physical capital is required for producing or handling the commodity involved, it is frequently owned by growers. Associations appearing to have the greatest difficulty in achieving mature, stable bargaining relationships are those bargaining for commodities in which processors own most of the specialized physical capital.

The most mature and stable collective bargaining relationships generally appear to be in those commodities where grower assets are the most specialized.

In this setting, associations aim to provide growers with more equitable bargaining relationships. On average, the associations representing growers of perennials are older. Growers of perennials also seek group solutions to marketing problems through processing cooperatives in greater numbers than do growers of annuals.

There are two broad types of contractual relationships. In one type, the association actually takes or may take title to the commodity, thereby assuming more immediate pressure to place the crop. In such cases, the association membership agreement typically includes some sort of "pooling" arrangement.

Under another type of contract, the association bargains for terms of trade without assuming title to the commodity. Terms of trade are decided upon and then growers contract individually for quantity.

Associations do not take title in the case of annuals, but frequently do so in perennials. In annuals, terms of trade are determined first, and then quantity is determined. In perennials, quantity exchanged generally is determined first, and then price is bargained. (This is not the case in Michigan.) This distinction suggests that bargaining for a price which reflects supply and demand is easier⁵⁴ in perennials than in annuals. This may partially explain the greater difficulties encountered by the annual associations in achieving good bargaining relationships.

The hardest term to resolve is almost always price. But a wide variety of terms are discussed and/or have become permanent parts of contracts as a result of bargaining. Other exchange procedures have been changed as a means of accommodating differences first discussed at the bargaining table. Furthermore, many changes in the distribution of responsibilities and incentives in production and marketing have evolved through the bargaining process. Thus, it would be wrong to conclude that the bargaining process is only to determine price.

Two observations should be made on the basis of this description. 1) There are many differences between collective bargaining in annuals and in perennials. 2) There are important structural differences between bargaining associations and monopolistic firms. These differences make the bilateral monopoly model generally inappropriate as a guide to analysis of collective bargaining in agriculture. (The model is discussed in Appendix G.)

⁵⁴This does not mean that it is easy for parties to get their way in either type of commodity.

Conduct

This discussion deals mainly with the motivation and behavior of bargaining association managers/officers in fulfilling their responsibilities.

Association-Processor Relations

The success of associations in securing and maintaining collective bargaining relationships with handlers is evaluated on the basis of answers to several key questions asked of managers. Again, "success" does not refer to the ability of an association to "get its way" but to its capacity to relate as an association to handlers.

The most stable bargaining relationships are seen in the perennial crops on the West Coast. The least stable relationships, as reflected in difficulty encountered in securing recognition, holding members and securing agreements are seen in field crops for which processors own most harvesting equipment. In a "moderately stable" category are those annual crops for which growers own the specialized capital and those associations bargaining for perennials but having less experience⁵⁵ in bargaining.

There are a few exceptions to all three of these generalizations. There are perennial associations that do not have good relationships with handlers as there are annual associations in crops where handlers own the specialized capital that have relatively good bargaining relationships with handlers.

⁵⁵"Less experience" in bargaining refers as much to the industry as to the association itself.

Managers were asked in interviews to characterize the relationship between the association and handlers. Their responses were consistent with those found in the mail questionnaire. At one extreme, managers would say, "Of course we have differences with processors and packers, but mutual dependence is understood. We maintain frequent contact with handlers throughout the year so that we can understand mutual needs and problems." At the other extreme, there are allegations of flagrant violations of unfair practice provisions in the Agricultural Fair Practice Act of 1967.

This introductory discussion of behavioral parameters has been an attempt to characterize overall bargaining relationships almost exclusively (there are four exceptions) on the basis of nonprocessor assessment. As such, it should be conditionally accepted. What follows is a summary of the aims pursued, information sought, and sources used by bargaining association managers.

Association Aims, Information Use, and Information Sources

For those who view the aim of the bargaining association managers as one of "getting higher prices," the responses of managers to survey questions about the aims of associations should be a revelation. Higher grower income was ranked first, but the goal of higher prices was ranked very low. In seeking higher grower incomes, managers were more concerned about price stability, assured markets, and, for annuals, expanding markets. If these are accurate reflections of association aims, they justify an inference that the bilateral monopoly model (sometimes offered as a model of the collective bargaining group-processor relationship) is not applicable to bargaining associations

in general. First, it ignores some of the main variables mentioned by managers. Second, decision makers may be more inclined to maximize quantity than total revenue. In a 100 percent participation pool, highest incomes would be attained (in the static analysis) by pricing so as to maximize total revenue and distributing those revenues in proportion to sales. In a more dynamic sense, such practices are not necessarily followed.

Kinds of information sought by managers as they attempt to achieve association objectives are also important parameters of behavior. During interviews, association managers frequently volunteered that, in bargaining, it is crucial to have more market information than anyone else. While managers in perennials and annuals were inclined to emphasize different types of information, most indicated that they spent substantial shares of their time and association resources in accumulating information on supply and demand for their commodities and those related to them. While no questions were directed in a systematic way to discover the proportion of association resources used in securing market information, interviews generally indicated that a majority of such resources are so engaged.

Whatever the findings of such an inquiry, it can safely be said that the primary activity of perennial bargaining association and a primary activity of associations for annuals is that of bringing market information to bear upon decisions with respect to terms of trade.

Bringing this information to bear upon such decisions creates a "public good" from the growers' viewpoint. To the extent that growers benefit from the accumulation and use of such information, all growers benefit if there are no mechanisms to prevent grower entry

into the market. Unless the growers represent a "privileged" or "intermediate" group,⁵⁶ the needed information is not likely to be collected and used because everyone has a positive incentive to "let George do it."

The sources of information used are also important in characterizing managers' behavior. In perennials, the most important source of information was handlers. This was also an important, though not the most important, source in annuals (ranked third). Government publications were most important in annuals. As mentioned earlier, the relationship with handlers in annuals is not, in general, as well developed as in perennials. This may explain a greater reliance upon some other sources in annuals. Managers of annuals frequently indicated that good estimates of carry over stocks are most frequently lacking in their needed data. This is crucial pricing information, largely controlled by handlers, who are understandably hesitant to divulge such information to grower associations since it would give up an advantage in bargaining.

Philosophies of fruit and vegetable bargaining can be broadly classified as the 1) "cost of production," 2) "market," and 3) "opportunity" approaches. These are philosophies which grow, in part, out of circumstances peculiar to the nature of the commodity involved and, in the latter case, to the market philosophy of those involved in bargaining. This is also true of the bargaining approach used by the NFO, which questions the certification approach.

⁵⁶Robert L. Bish, The Public Economy of Metropolitan Areas, (Chicago: Markham Publishing Company, 1971), p. 31.

The "cost of production" approach may be used to roughly characterize bargaining in annuals. Estimated production costs provide a primary guideline upon which to begin bargaining. As bargaining progresses, other considerations affecting demand are also considered. Use of the "approach" is facilitated by the fact that quantity is not established until after bargaining begins.

The "market" approach characterizes bargaining activities in perennials. From the outset, bargaining parties focus attention on all factors affecting supply, demand, and expected market clearing prices. Quantities available are more completely determined prior to bargaining than they are in annuals. This facilitates the common use (by growers and handlers) on the West Coast of Hoos' and Kuznet's fruit pricing formulas as guidelines in determining final terms of trade.

The "opportunity approach" is one of the more extreme concepts in bargaining. Its practitioners focus on taking advantage of processor ignorance of the market. This sometimes means signing a higher priced contract with one handler than another and, in general, exploiting (and enhancing) existing risk and uncertainty in the market. This can be a two-way street of course, and the strategy will probably lead to similar handler behavior toward growers.

Performance: Selected Consequences Associated with Collective Bargaining in Agriculture

A comprehensive picture of all consequences associated with collective bargaining activity is not provided by this research. For this reason, selected consequences were studied with the aim of providing fundamental information (a starting point) for discussion of

issues which have been raised about collective bargaining.

Consequences for Associations and Growers

Higher prices were mentioned as benefits to member growers. At the same time, greater price stability was allegedly achieved.

Growers and association managers claimed that grading standards and contracts themselves became more consistent as a result of collective bargaining. Standardization of grading standards, by making rewards for the achievement of these standards more certain, provides an incentive to attain improved or more consistent quality. Standardization of contracts among firms, by reducing uncertainty with respect to where growers can get the most for their product, may have helped to stabilize the patterns of commodity assembly which were alleged by some managers in extensive crops to include costly cross-hauling patterns prior to contract standardization.

Consequences for the System

Increased prices to growers are predicted by many who fear collective bargaining and suggest that it can only lead to excessive demands, prices above equilibrium, and lower levels of output. Responses to questions about these expected tendencies indicated that higher levels of grower output accompanied bargaining 45 percent of the time. In another 45 percent of the cases, there were no changes in member output. In only 10 percent of the cases were there reductions in output. These changes took place while prices increased, not only for member growers, but also for all other growers in the market. The author is aware of only short-term biologically-based excess supplies in any of the bargained perennial commodities. (This excludes those cases

in which quantity controlling market orders with "green drop" provisions were used.) If associations were bargaining prices above equilibrium, one would expect to see frequent physical excesses, particularly in perennials. In annuals, one would expect to see many nonmember growers actively seeking contracts for higher prices and tending to undermine existing associations. Instead one sees association managers acknowledging that a free rider problem exists, but widely resisting compulsory membership as a means of dealing with it. In short, the accumulated evidence does not suggest that bargaining associations alone have been responsible for raising prices above equilibrium or for reducing output.

Passed acreage has also been reduced as a result of efforts to bargain collectively. In many interviews, managers detailed the means by which some of the costs associated with passing acres had been shifted to handlers, who always made the final decision to do so. The effect was always to reduce passed acreage.

Other consequences included changes in the location of planting. In response to incentives for higher quality crops, better land was often chosen in order to produce higher quality products (e.g., fuller ears of corn). Changes in incentives presumably directed resources to higher uses.

Benefits Accruing to Growers and Handlers

Managers indicated that both buyers and sellers benefited from the collective bargaining relationship. An almost universal response was that both "sides" benefited from improved information. Frequent responses were also that quantity, quality, and variety were more in line

with market demands.

Benefits to Nonmember Growers

Responses frequently confirmed that nonmembers secure at least the same minimum terms as members. This may be a destructive incentive for the association that provides only "inclusive" goods.

Michigan's bargaining law provides a controversial means of dealing with this "free rider" problem by obliging all members of a bargaining unit to pay marketing fees. Nonlegislative means of dealing with the problem are to provide exclusive goods for members. These may be to offer market information and guidance to members or to take title and provide a "home" for the member's crop.

Chapter II has described selected components of structure, conduct, and performance in markets where associations bargain collectively for processing fruits and vegetables. Chapter III deals exclusively with components of legal structure which constrains the actions of growers and handlers engaged in collective bargaining. Together, Chapters II and III provide information which help to predict the consequences of alternative rules for collective bargaining.

CHAPTER III

THE LEGAL ENVIRONMENT FOR COLLECTIVE BARGAINING IN AGRICULTURE

Chapter II discussed at length the structure of institutions and markets surrounding collective bargaining in fruits and vegetables, the conduct of growers, their associations and the handlers operating within that structure, and selected consequences of efforts to bargain collectively. Institutional parameters not yet discussed are those which make up the legal environment for collective bargaining.

This chapter is devoted to a survey of the laws and litigation which characterize that environment. Such a survey will expand our understanding of structure and provide a foundation for the analysis of the consequences of alternative bargaining rules in Chapter IV.

Four major ideas are developed here. The first is a concept of the role of law in collective bargaining between producers and first handlers. This is followed by brief summaries of existing bargaining statutes and related laws. Third, proposed laws will be discussed. Finally, arguments in litigation surrounding existing bargaining laws will be developed.

The Role of Law in Collective Bargaining

Three "types" of bargaining legislation are discussed in this chapter. These are permissive, protective, and promotional. The

permissive type is embodied in the Capper-Volstead Act and says (by current interpretation) that agricultural producers may bargain collectively without fear of prosecution under Sections 1 or 2 of the Sherman Act. The protective type is represented by such laws as the Agricultural Fair Practices Act of 1967 and says that the public will devote resources to the prosecution of those handlers who discriminate against agricultural producers choosing to exercise their rights under permissive legislation. Promotional legislation is a public action to reduce, by methods to be discussed, those organization costs faced by diffused groups of producers who face concentrated handler markets.

Most collective bargaining activity has transpired exclusively under the provisions of the Capper-Volstead Act. The associations involved have successfully overcome or tolerated, to varying degrees, the organizational obstacles that promotional laws are designed to reduce.

It is only within the last decade that the Agricultural Fair Practices Act of 1967 and the majority of state bargaining laws have been passed. Many state laws have included provisions to specify unfair practices. Most recently, legal provisions have been promotional in nature.

A central question in this research is "What are the behavioral consequences of alternative laws--old, new and proposed?" What follows is a summary of these laws along with a comment on their apparent effect on bargaining activity in the areas of their influence.

Existing Bargaining Legislation

The major pieces of federal legislation related to collective bargaining are the Capper-Volstead Act of 1922, the Agricultural Marketing Agreements Act of 1937, and the Agricultural Fair Practices Act of 1967. State laws relating directly to bargaining are those in California, Colorado, Idaho, Maine, Michigan, Minnesota, New Jersey, North Dakota, Ohio, Oregon, and Washington. State marketing order legislation, though indirectly related to bargaining, is not considered here.

Federal Laws

Capper-Volstead Act

Capper-Volstead Act (42 Stat. 388, 7 U.S.C. 291-292) J.K. Samuels offers a fairly concise statement of the Act's aims and provisions.

The Act:

enables producers to act together through cooperatives without thereby violating Federal anti-trust laws...to secure this protection a cooperative must be composed of persons engaged in production of agricultural products; must operate on a mutual basis for the benefit of its members as producers; must not deal in the products of nonmembers to an amount greater than it handles for members; and must either allow each member no more than one vote because of the amount of stock or membership capital which he may own (and/) or limit its dividends on stock or membership capital to 8 percent per year.⁵⁷

Bargaining associations must meet Capper-Volstead requirements to avoid violating anti-trust laws. Thus, challenges to the activities

⁵⁷ J.K. Samuels, "Legal and Legislative Aspects," in Bargaining in Agriculture ed. by Harold F. Breimyer (Columbia, Missouri: University of Missouri-Extension Division-C911, June 1971), p. 24.

of bargaining associations are frequently directed at their qualifications as a Capper-Volstead cooperative, the legitimacy of their actions under the Capper-Volstead Act, or the wisdom of the Act. For example, legal challenges associated with bargaining associations have alleged that 1) an association, by joining with noncooperative members is in violation of antitrust laws,⁵⁸ 2) that cooperatives have engaged in undue price enhancement, 3) that "bargaining" is not provided for in Capper-Volstead,⁵⁹ and 4) that the Capper-Volstead Act is being abused.⁶⁰

Agricultural Marketing Agreements Act of 1937

The Agricultural Marketing Agreements Act of 1937 was passed "1) to improve price stability in specified commodity markets, and 2) to promote orderly marketing conditions in those markets."⁶¹ To achieve these purposes, the Act provided for the issuance of marketing agreements and marketing orders. Only marketing orders are discussed here. They may be voted for milk as well as perishable fruits and vegetables.

Milk marketing orders enable producers to impose minimum price provisions on handlers. Growers first vote for a market order and then pursue the details of its provisions through a hearing process.

⁵⁸Treasure Valley Potato Bargaining Association, et al., vs. Ore-Ida Foods Inc. and J.R. Simplot Company, U.S. Court of Appeals for the Ninth Circuit on Appeal from the United States District Court for the District of Idaho, No. 71-2742, April 11, 1974, p. 9.

⁵⁹Ibid., p. 18.

⁶⁰Federal Trade Commission Staff Report on Cooperatives, Bureau of Competition, Washington, D.C., September, 1975.

⁶¹Robert Jacobsen, "Marketing Aid or Vehicle" in Bargaining in Agriculture: Potentials and Pitfalls of Collective Action, ed. by Harold F. Breimyer (Columbia Missouri: University of Missouri-Extension Division-C911-June 1971), p. 34.

Fruit and vegetable growers may vote for marketing orders which oblige handlers to deduct fees for the administration of the order. These orders may provide for (1) minimum sizes and qualities of products shipped, (2) amounts handlers may purchase, (3) quantities shipped in one period, (4) equalization of the burden of a surplus among growers, (5) sizes of containers, and (6) funding market research and development.⁶²

Agricultural Fair Practices Act of 1967

The Agricultural Fair Practices Act of 1967 was passed largely in response to producer complaints of discrimination because of their membership in or efforts to organize bargaining associations. Accordingly, the act makes it illegal to:

- "a) coerce any producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association of producers, or to refuse to deal with any producers because of the exercise of his right to join and belong to such an association; or
- b) discriminate against any producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural products because of his membership in or contract with an association of producers; or
- c) coerce or intimidate any producer to enter into, maintain, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers or a contract with a handler; or
- d) pay or loan money, give anything of value, or offer any other inducement or reward to a producer for refusing to or ceasing to belong to an association of producers; or
- e) make false reports about the finances, management, or activities of associations of producers or handlers; or

⁶²Ibid., p. 36.

f) conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by this Act."⁶³

The Secretary of Agriculture may request that the Attorney General bring civil actions against those who appear to have violated provisions of the act. This authority has been delegated to the Consumer and Marketing Service of the USDA. The story of the Act is told by Randall Torgerson in Producer Power at the Bargaining Table.⁶⁴

More than 20 complaints have been filed under the Act. To date, one has been decided. This is the case of dairyman John Weir in Ohio. In that case, the Federal District Court of Cleveland concluded that Weir's rights under the Agricultural Fair Practices Act had been violated and permanently enjoined the handler involved from refusing to deal with Weir because of his membership in a bargaining association (See Appendix I).

State Laws

As one speaks with the leaders and employees of bargaining associations from Maine to California, it becomes apparent that the bargaining activity which takes place under state laws is generally unaffected by the provisions of these laws. This is emphatically not the case in Michigan where a very strong bargaining law has drawn the attention of handlers and bargaining association personnel nationwide. Neither is it the case when state laws have provided "deduct and remit" requirements for first handlers.

⁶³Section 4, The Agricultural Fair Practices Act of 1967, Public Law 90-288, 90th Congress, S-109, April 16, 1968.

⁶⁴Torgerson.

California

California first passed a bargaining law in 1961.⁶⁵ It specified unfair practices, empowered the director of agriculture to receive complaints and enjoin actions, and provided for penalties of \$50 to \$500 for each violation of the law. A 1974 amendment (SB 1941) made it an unfair practice for handlers to refuse to bargain in good faith with an association meeting specified criteria. The good faith obligations are binding upon associations as well as handlers.

There are conflicting accounts of the impact of California's collective bargaining law. If we are to measure the law's impact by the extent to which it has been used, we would conclude that impact is negligible.

The Apricot Producers of California was the first organization to file a complaint under the law.⁶⁶ There was a charge of failure to bargain in good faith (a recently adopted provision). Three observations came out of the experience. 1) The Attorney General determined that there were no guidelines by which to receive and act upon complaints. 2) There were no funds with which to enforce the law. 3) In this case, there was a clear-cut case of failure to bargain in good faith. The manager volunteered that charges would have been futile were this not the case since "when someone bargains, but not seriously, you're up the creek."⁶⁷

⁶⁵California Agriculture Code, Chapter 2, Art. 1-3.

⁶⁶Ralph N. Watters, General Manager, Apricot Growers of California, personal interview, Oakland, California, April 6, 1976.

⁶⁷Ibid.

Others claim that there is no way to determine what good faith is. There are no specific measures of good faith. For whatever reason, there has been little explicit use of the California law either prior to or after the 1974 amendment.

Others observe that the absence of active use of a law does not mean it is ineffectual. In two interviews, association managers reported knowing that the passage of the unfair practice provisions had led processors to call special meetings with their fieldmen in the interest of cautioning them to avoid actions which could be considered unfair practices.⁶⁸ Unfortunately, there are no handy measures of the reduction in unfair practices to test the effects of these cautions.

In some cases, associations appear to have failed primarily because of concerted efforts by processors to avoid collective bargaining. In the case of one vegetable crop, successful bargaining efforts in one year were met with major processor efforts in the following year to get other growers into the business.⁶⁹ The details are not known with certainty. Allegations are that the firm financed growers at a loss with the aim of breaking the association. The firm would likely call that nonsense and claim that they could finance new growers and get them to grow profitably for less than increments bargained for by the association. The growers would then reply that handlers can bring desperate people into production, pay them barely enough to keep them solvent, and hold the financing operation over their heads.

⁶⁸Cameron Girton, California Canning Pear Association, personal interview, San Francisco, California, April 5, 1976.

⁶⁹Confidential personal interview.

Another argument for the law defends those who criticize its lack of "teeth." Processors are especially sensitive to public suggestions that they have failed to bargain in good faith. Thus, they are hesitant to engage in any practices which may hurt their public images.

This research has not probed the long-term history of any single law in detail. Just the same, it is debatable at best whether the California law has achieved its objectives. On balance, those interviewed, even if they had supported the law, claimed that it was ineffectual.

Colorado

Colorado has no bargaining law per se. It does have a Cooperative Marketing Association Law⁷⁰ which prescribes a fine of \$100 for each effort to induce a member of a marketing association to break his contract. It also makes the processors or handlers "liable to association aggrieved in a civil suit in the penal sum of \$500 for each offense."⁷¹ During the 1976 contracting season, Colorado sugarbeet growers are alleged to have received substantial pressure to sign contracts in violation of their association membership agreements.⁷² During an April 1976 meeting of the Mountain State Growers, members were encouraged to record each effort by handlers or fieldmen to induce

⁷⁰Colorado Revised Statutes and Commerce V. II 7-56-101-33.

⁷¹Ibid. 7-56-128.

⁷²It is worthy of note that this is one kind of practice that is also forbidden under provisions of Michigan's Public Act 344. Under that act, it is an unfair practice to deal with a member of a bargaining unit other than through the association accredited to represent the unit.

members to go back on membership agreements.⁷³ An Agreement was reached in the dispute involving Great Western, and charges apparently were not filed under the law.

Idaho

Idaho has a law which provides for the "Deduction of Dues to Grower or Producer Organizations."⁷⁴ It requires that processors or other first handlers automatically deduct a specific amount from payments to growers requesting the deduction and that the amount be remitted to the designated association as a membership fee. The law has been crucial to the development of the Potato Growers of Idaho, by far the largest bargaining association in the state.

Maine

Maine's legislature passed a Marketing and Bargaining Act in 1973.⁷⁵ Under the Act, a five-man, governor-appointed board is to receive petitions for "qualification." Once qualified, an association has a mutual obligation with the handler to bargain in good faith.

There is a provision for dealing with the "free rider" problem. Handlers cannot deal with nonmembers while bargaining with an association which can provide "all or a substantial portion of the requirements of such handler. . ." Obviously, "substantial" is subject to much interpretation. There is no provision for resolving disputes over terms of

⁷³Meeting of the Mountain States Growers, Fort Collins, Colorado, April 12, 1976.

⁷⁴Idaho Code, Chapter 39:22-3901-6.

⁷⁵Maine Revised Statutes, Chapter 85: 13:1953-65.

trade. The key provisions are for 1) the board (one grower, one processor, and three "public" representatives), 2) the qualification of associations, and 3) the prosecution of handlers failing to bargain in good faith. Measures of good faith are not specific. The qualification is "by handler." The association must be "qualified" for each handler.

The board was quickly appointed (October 1973),⁷⁶ but no association applied for qualification. The only active bargaining group in the state (the Agricultural Bargaining Council) was growing rapidly and bargaining contracts with area potato processors. It became qualified only when the secretary to the bargaining board solicited ABC's application.⁷⁷

On the basis of this observation, one may argue that the law in Augusta was not particularly relevant to what transpired when bargaining took place in Presque Isle. This is not to say that it never could be. The ABC simply had enough growers and strong enough support, and/or processors had enough good will to bargain in good faith without the law.

The greatest legal difficulties for the ABC surrounded the Perishable Agricultural Commodities Act (PACA). Two processors, allegedly facing financial difficulties, were long overdue in payments for raw potatoes delivered. The legislative efforts of the ABC were directed toward securing PACA coverage for frozen french fries.

⁷⁶Seth Bradstreet, President, Maine Agricultural Marketing and Bargaining Board, personal interview, Portland, Maine, March 10, 1976.

⁷⁷Ralph Kierstad, Secretary, Maine Agricultural Marketing and Bargaining Board, personal interview, Augusta, Maine, March 10, 1976.

The fact that the ABC is only nominally affected by the new act seems ironic in that one of its ex-employees was a prime mover in the Act's passage.⁷⁸ Although the ABC had supported the passage of the Act, none of the organization's current principals could recall the details of the law's development. None of the state officials, university personnel, or past legislators could offer detail in the development of the law, although several mentioned the ex-ABC official who has long since left the state.

Just the same, the law was, until recently, facing considerable scrutiny. A group of broiler growers represented by an affiliate of the Maine Agricultural Marketing Association had requested qualification under the act. Bayshore Enterprises, with which they aimed to bargain, filed suit against the board and the act. The challenge will be discussed in the last part of this chapter.

Maine also has a separate check-off law⁷⁹ which obligated handlers to deduct marketing fees from payments to growers and remit them to designated associations at grower expense.

Michigan

Michigan's Agricultural Marketing and Bargaining Act⁸⁰ is unique. Two provisions in particular are unique in agricultural bargaining. First is the agency shop-type provision. All growers in a defined bargaining unit (whether association members or not) are obliged to

⁷⁸Observation by several individuals interviewed in Maine, March 8-10, 1976.

⁷⁹Maine Revised Statutes, Chapter 105:1091-6.

⁸⁰Michigan Act No. 344, Public Acts of 1972.

market their production "through or at the direction of" the "accredited" association. They must also pay marketing fees to the association. In effect, this means that all unit members market on terms bargained by the association. The Michigan Agricultural Cooperative Marketing Association (MACMA), which, to date, is the accredited association in all cases, does not take title to or redirect the flow of production except by providing market information. (The apple sales desk is an exception.)

The second unique provision is for compulsory, binding, final offer arbitration. If neither party exercises an option to "elect out" of bargaining by thirty days prior to the beginning of the marketing period (in general, when contracts are signed for annuals or when harvest begins for perennials), both are deemed to have consented to arbitration if terms of trade are not arrived at through bargaining.

The Act is implemented by a five-man, governor-appointed board. The board receives and holds hearings on applications for unit definitions and association accreditations. It also reacts to complaints of unfair practices and refusal to bargain in good faith and arranges for requested mediation and mandated arbitration, if necessary, suggesting a list of possible arbitrators.

Michigan's law has been used extensively by the Michigan Agricultural Cooperative Marketing Association (MACMA) which has secured bargaining unit definitions in apples, asparagus, cabbage, cherries, cucumbers, plums, and potatoes. All units, except for plums and cucumbers, have accredited associations. All accredited associations

are divisions of MACMA.⁸¹ Bargaining under the provisions of the law has been stayed in asparagus, cherries and potatoes, since the accreditations of those commodity associations have been challenged in court by processors and a few growers. Other litigation, involving constitutional challenges and cooperative exclusions, will be discussed later in this chapter.

Michigan also has a deduct and remit provision. Public Act 153 requires handlers to deduct marketing fees at the grower's requests and to remit them to specified associations.

Minnesota

Minnesota's legislature passed a 1973 Agricultural Marketing and Bargaining Act⁸² which is modeled in many respects on the Michigan statute. Under the Minnesota law, cooperative associations apply for accreditation to the Commissioner of Agriculture. The commissioner determines whether bargaining is to be by plant or firm and accredits associations which, among other requirements, have contracts with more than 50 percent of the growers representing 50 percent of the deliveries to the specified plant or firm. The law requires that handlers observe fair practice guidelines and bargain in good faith with accredited associations. When negotiations begin, the association is to notify the commissioner. If no agreement is reached at the end of ten days, "the association may, at any time thereafter, petition the commissioner to assume supervision over the dispute. . ." (Emphasis added).

⁸¹For a brief history of MACMA's use and assessment of the Act, see Appendix F.

⁸²Minnesota Laws, Agricultural Marketing and Bargaining Act of 1973. 17.691-700.

Up to 15 days prior to the beginning of the marketing period, if an agreement has not been reached, either party may opt out. (The handler would not buy from anyone in the association and the members of the association would not produce the commodity.) If neither party opts out by the 15th day prior to the marketing period and if no solution is arrived at, "the Commissioner shall exercise his discretionary authority, according to rules promulgated . . . in determining which disputes are arbitrable . . ." "findings . . . are to be announced by the 15th day of the marketing year in dispute."⁸³ (Emphasis added).

One association, the Southern Minnesota Cannery Growers, has been accredited under the provisions of the law. It bargained without the law in 1974 and with the law in 1975 and 1976.⁸⁴ In 1976, no agreement was reached; no one opted out, and major weaknesses in the law, already foreseen by those close to it, had become apparent to all. The Minnesota Law is worth looking at as an illustration of how unworkable and imprecise a law can be and still secure passage.

In the quotations above, concepts are underlined which have no clear meaning in the law. The commissioner may be petitioned to "assume supervision over the dispute." This suggests the exercise of power to resolve the dispute. If so, there is no mention of how or by what guidelines. From a technical point of view, the phrase is almost meaningless. The Commissioner shall "exercise his

⁸³The meaning of this authority is unclear because no relevant rules were promulgated, and the provision for arbitration was never included in the law.

⁸⁴Alan Roebke, President, Southern Minnesota Cannery Growers, personal interview, Hector, Minnesota, February 11, 1976.

discretionary authority according to rules promulgated in determining which issues are arbitrable. As of February 1976, no related rules had been promulgated, and there was no provision for any form of arbitration.⁸⁵

The provision for "opting out" is meaningless. If one does not "opt out," a resolution of the dispute seems to be implied. But there is no means of resolving the dispute. An effort to secure an arbitration provision was abandoned as a compromise move to pass the Act.⁸⁶ Thus, the Minnesota law appears to be unworkable in some respects.

There is much to be learned from the experience of those working close to the law. An Assistant Commissioner, charged with implementing the Act and in no way responsible for its design, made several observations as potential changes. Vagueness created an obstacle to implementation. 1) It was necessary to clarify the relationship which must exist between grower and association prior to accreditation. 2) There is no specification of the duration of an accreditation; it appears that association is accredited forever.

If the law were rewritten, the Assistant Commissioner observed, several administrative changes would be recommended to deal with the following problems.⁸⁷

⁸⁵On one hand, it could be argued that a weakness of the law lies in the absence of needed promulgated rules. On the other hand, the law does not explicitly grant authority to promulgate rules.

⁸⁶Senate hearings on the Act.

⁸⁷Tom Kalitowski, Assistant Commissioner, Minnesota State Department of Agriculture, St. Paul, February 12, 1976.

- 1) Formalization of relations between a grower and his association would be required.
- 2) "Association" would be defined to include non-accredited associations. (All would be protected from unfair practices.) [Some provisions would be in conflict if a processor were to deal with more than one association - Author's note.]
- 3) Information received from the associations for accreditation would be confidential as is that received from processors. [This may hinder workability, since handlers are alleged to have claimed that they cannot know whom they should not approach if they do not have a list of association members.]
- 4) The 30 day delay period between accreditation and the effective date is without any evident purpose and could be dropped.
- 5) There is no formal procedure for opting out.
- 6) It is not clear that handlers give up the right to deal with members when they opt out.
- 7) There is no specified procedure for deciding on a bargaining unit.
- 8) Since there is no provision for arbitration, the Commissioner may be backed into saying no issues are arbitrable.

Many of these problems could be readily corrected, although some could not. The point is that many details of procedure and definition affect the implementation and effectiveness of a law. The creation of workable legislation demands that such detail be attended to. The Minnesota law provides a useful illustration of problems created when these questions are not considered in the process of design.

Minnesota also has a law which provides for automatic deduction of fees and remittance to the Minnesota Potato Council. It is voluntary in that growers may request a refund of their payments. The Red River Valley Potato Growers Association (RRVPGA) submits a budget to the

Minnesota and North Dakota Council. Part of the budget is for marketing.

New Jersey

The New Jersey code⁸⁸ does not deal explicitly with bargaining associations. Bargaining is listed among the activities in which cooperative associations may legitimately engage. Provisions are made for handlers to collect marketing fees⁸⁹ and remit them to cooperatives. The law specifies a series of unfair practices with respect to cooperatives and prescribes penalties for such practices.

North Dakota

North Dakota has a checkoff law which applies to all potato growers. It is voluntary in that growers may apply for a refund of the amount checked off.⁹⁰ The checkoff (1½ cent/CWT.) goes to the North Dakota Potato Council. The association is financed through a marketing budget for which it applies to the council on an annual basis.

While there are obvious administrative advantages to the "deduct and remit" approach, there was no difficulty in securing cooperation on deductions before the law was enacted. In fact, more revenue was collected on a per-acre basis before the law was enacted.

⁸⁸New Jersey Agriculture Code 4:13-3, 43-48.

⁸⁹Ibid., 4:13-26.1

⁹⁰L.A. Schmid, Executive Vice President, Red River Valley Potato Growers Association, personal interview, Grand Forks, North Dakota, March 18, 1976.

Ohio Cooperative Law⁹¹

The Ohio Code lists unfair marketing practices by handlers, distributors, and dealers or their agents vis a vis producers of agricultural products for membership in cooperatives. There is a provision for the receipt of complaints and the conduct of hearings with respect to unfair practices. The Director of Agriculture is designated to receive and act upon complaints under the Act. The only reference to bargaining indicates that "a processor may, but shall not be required to, bargain for any of his raw agricultural product requirements. . ."

Oregon Law⁹²

The Oregon Code refers explicitly to bargaining associations, defines relevant terms, specifies unfair practices with respect to bargaining associations, and provides remedies for unfair trade practices. The managers of three main Oregon associations, when asked what the law meant to them said: 1) "didn't know about it," 2) "not much," and 3) did not acknowledge bargaining under it.⁹³

Washington

Washington's state code⁹⁴ has some provisions which are particularly applicable to collective bargaining. Sections 20.01.500-550 deal with relationships between growers and processors. The law

⁹¹Ohio Code, 1729.99.

⁹²Oregon State Statutes, 646.515, 525, 535, 545.

⁹³Fritz Collette, Oregon-Washington Growers Association; Don Maltby, Filbert Growers Bargaining Association; Kieth Tallman, Malheur County Potato Growers, personal interviews, March 1976.

⁹⁴Title 20: Commission Merchants-Agricultural Products.

requires that processors submit forms showing their maximum processing capacities and keep their grower contracts and commitments on file. It further provides that growers may file forms showing crops the processor is committed to purchase. It indicates that processors violate the act by committing to purchase more crops than their plant can process and subject themselves to denial, suspension, or revocation of their dealers' licenses. The same provision applies in the event that "any processor . . . (who) willfully discriminates between growers with which he contracts as to price, conditions for production, harvesting and delivery of crops which is not supportable by economic cost factors."

These provisions are clearly designed to deal with the problem of "passed acreage" and discriminatory activities aimed at debilitating bargaining associations. The author did not discover any actions taken under the law.

Wisconsin

Wisconsin's recently (1975) enacted statute is unique among state laws affecting collective bargaining between growers and processors of agricultural products.⁹⁵ It prohibits vegetable processors who "grow more than 10 percent of a species of vegetable processed at a single plant, from paying growers who sell vegetable crops to the processor an amount per ton less than the amount per ton incurred by the processor in growing the vegetable himself." A penalty prescribed in Wisconsin Statute 100.20 applies to violations. The state's Department of Agriculture is to develop a system of cost accounting to

⁹⁵ Wisconsin Statutes, 100.235.

be used by processors for reporting such costs and is given subpoena power to secure cost of production data.⁹⁶

Proposed Bargaining Laws

One major federal proposal and three state proposals have recently been introduced. The Sisk Bill is the main federal proposal. The state proposals are in New York, Ohio, and Pennsylvania.

Federal: The Sisk Bill

The current Sisk Bill (HR 6372) is a proposed amendment to the Agricultural Fair Practices Act of 1967. The bill includes the following provisions:

- 1) Collective bargaining in good faith is mentioned in the statement of policy.
- 2) It specifies that refusal to "bargain in good faith" is an unfair practice.
- 3) It explains how the Secretary of Agriculture will determine whether to certify an association.
- 4) It provides venue (U.S. District Court) for suit in the event of a violation of Section 4, opportunity for the Secretary to act unilaterally to enforce Section 4, subpoena power for the Secretary or his designee.
- 5) Specifies that the act does not affect state law except in cases where the Secretary has caused a complaint to be issued against a handler.
- 6) Provides for fines of at least \$500, but no more than \$1,000 for each day of each convicted violation and for a civil suit leading to the recovery of not more than \$1,000 per offense and \$100 per day it continues.

As mentioned elsewhere in this report, the certification process appears to be especially unworkable: a) because a bargaining unit is

⁹⁶Wisconsin Legislative Reference Bureau Analysis of AB 213.

not defined and b) because procedures for implementation are not specified. It does, by mentioning implications for state legislation, deal with the problem encountered by bargaining laws in Maine and Michigan which, it has been alleged, are pre-empted by the Agricultural Fair Practices Act of 1967. Furthermore, it adds more powerful incentives to follow the unfair practice provisions.

It does not specify measures (or tests) of good faith, nor does it provide a means of informing growers of their rights under the law or how to use it.

State

New York Proposal

The proposal would extend existing cooperative legislation to provide for collective bargaining to an extent not currently considered. The New York proposal would create a bargaining board. The board would receive petitions from associations desiring accreditation to represent its members and all other producers of record in bargaining with specific handlers. Associations will be accredited if they meet specific requirements of: 1) producer ownership and control, 2) having contracts with members who authorize the association to bargain, 3) probable effectiveness in bargaining, 4) representation of 55 or more percent of growers and output delivered to the specific handler in any two of the three preceding years, and 5) access to membership on the part of all growers.

The proposal specifies unfair trade practices for growers and handlers. Unfair practices include refusal or failure to bargain in

good faith. Provisions are made for filing complaints, conducting investigations, and initiating proceedings with respect to unfair practice violations.

The proposal provides for voluntary mediation if parties do not come to an agreement prior to a date specified by the board. In cases for which bargaining disputes are not settled by the established deadline, growers or handlers may request and will receive binding arbitration. It is significant that the New York proposal offers no opportunity for either party to opt out of dealing. The only way out is to quit growing or to quit handling the relevant commodities.

Ohio Proposal

This proposal would have the Governor appoint a 7-member board to receive petitions for accreditation and accredit associations having 1) contracts with members which permit the association to bargain for them, 2) members representing 60 percent of the producers and 60 percent of the commodity delivered to a handler specified in its application, and 3) the offer of membership to any producer of record for that commodity.

Handlers designated in an accreditation must submit to the association a proposed contract for production and purchase. Likewise, the association must submit a proposal. These proposals provide a basis upon which to bargain. If, after thirty days, agreement is not arrived at, the parties shall submit to compulsory mediation. If, thirty days after last terms are offered, agreement still has not been reached, the parties may jointly request arbitration and plans for

production and delivery will begin. Alternatively, they may, at this time, begin to deal with third parties.

Unfair practices are listed for growers and handlers. Provision for the filing of complaints, investigations, and penalties with respect to unfair practices and decisions of the board is also in the proposal.

Pennsylvania Proposal [HB 211, 1975]

Under this proposal, the governor would appoint a three-man administrative board. Associations desiring accreditation would petition the board. Hearings would be held to determine if those associations are directly or indirectly producer-owned and controlled, have binding contracts with members, are financially viable, and have a "sufficient" number of producers and/or a sufficient quantity of agricultural products to make it "effective."

The proposal goes on to define bargaining as "the mutual obligation of a handler and an accredited association to meet at reasonable times and negotiate in good faith . . ." and that "such obligation on the part of the handlers shall be limited only to the commodities produced by the members of the association except that when 51 percent of the producers of a commodity join a marketing association, the handler shall be required to bargain only with that association . . ." (emphasis added). "If after a reasonable period of negotiations in good faith the association and handler fail to agree on the minimum price . . . the board shall offer conciliation and mediation services for fifteen days, after which the negotiations shall be submitted to a joint settlement committee . . ." which "will resolve all issues in

dispute subject to a judicial review in the Commonwealth Court." Other important points are that:

- 1) Nothing in the proposal is to prohibit full supply contracting.
- 2) It is "unlawful for a handler, while negotiating with an accredited association able to supply all or a substantial portion of the requirements of a handler for such a product, to negotiate with individual or producer. . ." (emphasis added).

Some of the things that make it appear as if this legislation is unworkable are listed below.

- 1) The handler must bargain only with the accredited association if 51 percent of the producers of a commodity join a marketing association.
 - a) As mentioned earlier, it is extremely difficult to identify all producers in order to count them. One needs a "base" from which to compute the 51 percent. A base of commercial producers may represent a minority of the production.
 - b) Who is the handler? Must all handlers deal only with an accredited association having 51 percent of the producers?
- 2) The proposal says that an accredited association and handler not reaching agreement after a "reasonable period of negotiations in good faith" will have disputes resolved by a joint settlement committee.
 - a) What is a reasonable period? Rules must be promulgated to define it.
 - b) Because of this provision, the act of accreditation appears to guarantee that an association will be "effective" in the sense of securing an agreement with handlers. Thus, almost any number of producers of any quantity of production would be sufficient in that sense.

A complete analysis of this proposal is not within the scope of this report.

This concludes the summary of existing and proposed bargaining laws. The individual analysis of these proposals is not complete. Such treatment of each law would require substantial effort in most cases. Instead, individual rules, possibly applying to many laws, are discussed in the first part of Chapter IV. The remainder of Chapter III discusses major legal arguments surrounding existing legislation. This will complete the description and discussion of the legal framework of collective bargaining in agriculture.

Litigation Affecting Collective Bargaining

Agricultural bargaining laws and those related to collective bargaining have faced several major legal challenges. A summary of the major litigation and complaints will serve to clarify legal issues surrounding collective bargaining in agriculture. Accordingly, the final portion of this chapter is devoted to a brief discussion of the arguments in the following cases:

- 1) Treasure Valley Potato Bargaining Association, et al. vs. Ore-Ida Foods, Inc. and J.R. Simplot Company--F.2d--, (9th Cir., No. 71-2742, April 11, 1974). (Upheld by the 9th Circuit Court of Appeals.)
- 2) A charge by J.R. Simplot Co. that Potato Growers of Idaho had unduly enhanced price. (Filed with the Secretary of Agriculture.)
- 3) A series of charges involving the constitutionality and interpretation of the Michigan Agricultural Marketing and Bargaining Act.
- 4) Similar charges involving Maine's Agricultural Marketing and Bargaining Act.

1) In spite of the informal challenges it has received, the 9th District decision (Treasure Valley) remains the key to anti-trust immunity for bargaining associations. In Treasure Valley, the

plaintiff bargaining associations had charged Ore-Ida and Simplot with conspiracy to set prices. This charge was dismissed for lack of evidence and met with countercharges that the bargaining associations were not immune from prosecution under the provisions of the Sherman Act. The Capper-Volstead Act, they charged, makes no reference to bargaining, and the associations do not engage in any functions enumerated in the Act. But, the court held that the activity of the associations came under the term "marketing." Marketing, the court ruled, meant more than to sell. The court examined a Webster definition of marketing and found that it included a wide variety of functions. Among these functions are "supplying market information" and others which, the court concluded, must be carried out for the purpose of bargaining. In other words, bargaining for a price and other terms is a part of marketing.⁹⁷

The findings of the 9th Court and the Appeals Court have been informally questioned in the Federal Trade Commission Staff Report on Agricultural Cooperatives.⁹⁸ The report observes that bargaining involved only one of the specified functions supplying information in Webster's definition of marketing and that no evidence is presented to indicate that the association supplied market information to anyone.

In fact, the evidence indicates that substantial amounts of market information are generated by bargaining associations and that the flow of that information is directed toward processors, members,

⁹⁷ Summary of the opinion in the appeal from the United States District Court for the District of Idaho before Circuit Judges Carter, Goodwin, and Wallace.

⁹⁸ Federal Trade Commission Staff Report on Agricultural Cooperatives, pp. 61-62.

and potential entrants to the industry. The generation of good market information is intimately related to preparation for bargaining. The apparent importance of the information-generating function of bargaining associations is reflected in detail in data presented throughout Chapter II.

None of the formal dialogue surrounding the Capper-Volstead exemption for bargaining really deals with the effect of bargaining on vertical coordination and the wide variety of coordination functions, implicit in marketing, which appear to be achieved through the bargaining process.

2) The J.R. Simplot complaint of undue price enhancement came in May of 1974. Simplot's petition to the Secretary of Agriculture charged that Potato Growers of Idaho:

"Unduly and unreasonably monopolized and restrained trade in interstate commerce" by forcing Simplot to "either accept the unreasonable demands of the adamant association and sign a contract on its terms, or curtail processing operations."⁹⁹

The price was "unreasonably and unduly high because the increase in price exceeded the increase in production costs in 1974."¹⁰⁰ In inspecting the charges, the Secretary considered not only production costs, but also 1) potato supply and production alternatives, 2) open market prices, 3) factory prices, 4) stocks, and 5) demand.

This action is important in that it establishes precedent for future actions under Section 2 of Capper-Volstead. Its implications

⁹⁹Quoted in presentation by Dr. Ronald D. Knutson, Administrator, Farmer Cooperative Service, USDA before the International Bargaining Seminar, Scottsdale, Arizona on January 14, 1975.

¹⁰⁰Ibid.

are discussed in detail in Chapter IV.

3. Michigan's bargaining law has easily generated the most litigation. Eight major lawsuits (see Appendix F) have been filed as a result of attempts to use the law or as a result of interpretations made under its provisions. The major issues raised in the lawsuits are summarized and discussed below. Issues discussed include those still before the Michigan Supreme Court, one before the circuit court, and some that have been dropped.

The plaintiff's brief in *Michigan Cannery and Freezers et al. vs. The Agricultural Marketing and Bargaining Board et al.* (No. 56434) was heard on October 10, 1975 by the Supreme Court of Michigan. The brief is made up of constitutional, administrative, and procedural issues. The first constitutional argument is that "the Act is preempted by Federal Legislation and therefore violates the United States Constitution." The argument begins by invoking the supremacy clause of the U.S. Constitution and specifying two tests of preemption under that clause. The first is that of whether state and federal laws conflict, and the second is whether Congress has acted to provide complete regulation of a given area of commerce. The argument then cites Section 2 of the Agricultural Fair Practices Act which declares that interference with the right of farmers' freedom "to join together voluntarily in cooperative organizations" is contrary to the public interest and adversely affects the free flow of goods in interstate and foreign commerce.

The argument then jumps to the conclusion that it is "clear that Congress intended to protect . . . the basic right to select customers and suppliers and not to force a handler or producer to deal

with any association or prevent a producer from dealing with a handler." In enacting a Fair Practices Act, it continues, Congress manifested an interest to exercise its paramount authority over the subject of voluntary versus compulsory membership in associations.

The argument continues. "The Marketing Act not only interferes with the right to join voluntarily in cooperative associations, but goes so far as to eliminate this right." Since the accredited association is an exclusive agent for all members of the bargaining unit, the law "thereby compels de facto membership in the association." On the same ground, it is argued that the grower is coerced in the exercise of his right to join or "refrain from joining . . . an association of producers" (Sec. 7[a]). Further, it claims that nonmembers will be coerced "to enter into . . . a membership agreement or marketing contract" and "to enter into . . . a contract with a handler" in violation of Sec 7(c).

The defense argues that preemption requires that Congress has "unmistakeably" so ordained or that no other conclusion is possible. It argues that such conclusions are not possible and goes on to make a literal interpretation of the Fair Practices Act where reference is made to membership in associations. The defense relies implicitly on the de jure interpretation of the law. No one, it argues, is coerced to become an association member or to sign membership or marketing agreements.

The second argument is also constitutional. In claiming that the subject matter of the Act exceeds the scope of its title, the Plaintiffs argue that the law is to "permit" producers to be represented by associations . . ." but that, in effect, it "compels and requires"

representation and takes away "individual rights of bargaining and negotiations."

The defense argues that all objects of the law are included in the title. It cites sources to indicate that the title "need not serve as an index" and that the object limitation is to grant "proper notice of legislation content and to prevent deceit and subterfuge." It goes on to claim that the "title . . . puts the reader . . . reasonably on notice of the nature of the Act."

A third charge is that the "Act exceeds the states' police power and is thereby contrary to the constitutional guarantees of due process of law." To remain consistent with due process, "legislation must be grounded upon prevention of public wrong or preservation of public good and the means employed must be reasonably related to achieving these objectives." In this case, "there exists no legitimate public interest, public wrong to eliminate, or public well-being to preserve." If there were a "legitimate public purpose," the "Act is not reasonably related to preserving the public interest or correcting public evils." First, the plaintiffs say, there exist numerous statutes permitting voluntary bargaining. Second, "the labor approach to agricultural bargaining is not appropriate and will in fact offend the public interest.

After citing due process clauses of the Michigan and United States Constitutions, the plaintiffs list circumstances under which police power may be exercised without violating due process. They argue that there is no public good to be served or public wrong to eliminate. On the contrary, the Act will have the effect of promoting the

interest of growers at the expense of handlers, consumers, and (possibly) non-unit growers.

The plaintiffs then equate the aim of the Act to the guarantee of "price security" for growers and cite references to show that this is not a legitimate object of the state's police power. They allege that the Act somehow protects growers from "independents who may produce superior products or sell for lower prices." They draw on other sources to argue that the "public interest" does not lie in the elimination of risk, but in the preservation of a system in which people must deal with risk.

Plaintiffs also foresee the defensive use of a case testing the legitimacy of obligating all growers to fund a commodity promotion program. This, they say, is different than binding another group in business transactions and competitive operations.

The argument continues. If there were a public purpose, "compulsory bargaining" is "arbitrary and conspicuous" and not reasonably related to the public purpose or welfare. Further, there is ample provision under existing law for voluntary membership in collective bargaining associations.

Interestingly, plaintiffs say that "the Marketing Act only serves the purpose of taking private property rights from some in favor of others. This, of course, is not permissible." Of course, the legislative act that doesn't do this is rare to the point of being fictitious. Further, they claim, the fact that Ore-Ida went to another state to buy potatoes is evidence that the Act adversely affects the Michigan potato industry.

They go on to argue that the labor approach to agricultural bargaining is not appropriate. The law ties up the market for a period of time, and members of the bargaining unit "cannot quit and seek their own best deal." The law prevents the development of competing associations and eliminates competitions between associations for memberships." . . . The Act tends to confer upon an approved association a monopoly of the handler's business, a monopoly of the area's produce, and a monopoly of the "producer's" memberships.

The "labor approach" is not appropriate to agriculture because: 1) labor is flexible and can move elsewhere, turning its hand to other pursuits, while agriculture involves assets specialized in the production of certain commodities and 2) farmers, as businessmen, competitively decide how much they produce, while labor unions have no control over how much they produce.

In defense of the law, the claim is made that there is a difference between providing for the negotiation of a price and fixing a price. All that the law does is to establish an "equal footing" for negotiating to replace a setting in which handlers are at the mercy of handlers. This will "bring stability to the marketing procedure" which "clearly promotes the general welfare."

The determination of public need is to be made in the legislature, they say. "The legislature of this state has recognized the evils inherent in a marketing process effectively dominated by one party and has recognized the need to maintain stable flow of agricultural commodities to the public."

Nebbia vs. New York, 291 US502; 34 SCF 505; 78 ED 940 (1934) is cited as evidence of the legitimacy of encouraging "economic

activity for the benefit of the citizens of a state" as a "valid enactment under the state's police power."

The encouragement of "full production" of a quality food supply is in the interest of growers, processors, and consumers. Thus, the legislature is well within its constitutional limits on the exercise of the policy power of the state of Michigan.

Two of the Michigan suits were initiated by processing cooperatives claiming that they should have been excluded under the provisions of Section 7 (c) of the Act. In the case of the Sawyer Fruit and Vegetable Cooperative, the Manistee County Circuit Court Judge ruled that the administration had no basis upon which to refuse exclusion for Sawyer.

The Pro-Fac Cooperative, Inc. case is pending. The board determined that the "cooperative" should not be excluded because it is not "grower owned and controlled" as required by law. Pro-Fac has a management contract with Curtice-Burns. This contract appears to leave substantial control in the hands of Curtice-Burns (See Appendix E). Pro-Fac filed suit on October 8, 1975. Pro-Fac, of course, claims that it is a grower owned and controlled processing cooperative and cites as partial evidence its tax exempt status. The suit is timely and has potential national significance because many questions have recently been raised surrounding agricultural cooperatives, their role and control.

The importance of the exclusion suit will become more apparent as the exclusion issue is discussed in Chapter IV.

4) Maine's Agricultural Marketing and Bargaining Board came under fire on June 24, 1975, when a suit was filed against it by Bayside Enterprises, Inc.¹⁰¹ Among lesser charges now resolved, the suit alleged that 1) the Maine Act was preempted by the Agricultural Fair Practices Act of 1967, 2) the Maine Act "inevitably produces and encourages violation of the Sherman Act, and 3) the Maine Act unduly burdens interstate and foreign commerce, thereby bringing it into conflict with "Congress's role in regulating commerce on a uniform, national basis. . ."

A June conversation with the Assistant Attorney General¹⁰² of the State of Maine indicated that the suit remained inactive, that the charges had not been further developed, and that the board had elected to turn down the application of the broiler division of the Maine Agricultural Marketing Association.

Conclusions of the board were that the associations applying for accreditation could not be accredited because they were not producer owned and controlled, were not financially sound, and did not meet the needed volume requirements.¹⁰³

Chapter III is the second of two descriptive chapters on collective bargaining in processing fruits and vegetables. It has specified some of the legal parameters within which collective bargaining takes place.

¹⁰¹State of Maine, Kennebec, Superior Court Civil Action Docket No. 75-862.

¹⁰²Telephone conversation, Mr. David Roseman, Assistant Attorney General, State of Maine, June 1976.

¹⁰³Board decision filed on April 1, 1976.

In Chapter IV these laws, the related legal challenges, and the descriptive material from Chapter II will be drawn upon to analyze specific provisions of bargaining laws. As we have seen, provisions of bargaining laws are often not workable. Based upon these analyses, more workable rules will be proposed.

CHAPTER IV

TOWARD MORE WORKABLE LAWS: AN ASSESSMENT OF EXISTING RULES FOR COLLECTIVE BARGAINING

The basic objective of this research is to facilitate more informed public choice with respect to legislation for collective bargaining between producers and first handlers of perishable agricultural products. The preceding chapters described the economic and legal environment in which collective bargaining takes place. The objective of this chapter is to draw upon the description of that economic environment to analyze the specific rules which make up the legal environment and then to propose alternative rules expected to be more workable and effective in achieving their ends.

To guide the reader through this chapter, a preview of the rules to be analyzed and the approach to be taken is presented below. There are 10 major rule categories, each of which will be analyzed in four basic steps.

Rules to Be Analyzed

1. A Permissive Rule: The Capper-Volstead Act of 1922 and
Permission to Bargain Collectively
 - a. Capper-Volstead as a means to provide equity in the
marketplace
 - b. Specific permission to bargain collectively

2. Protective Rules: Protection of Rights to Bargain Collectively and Promotion of Collective Bargaining as a Matter of Public Policy
3. Provisions for Marketing Fee Deductions
4. Provisions for Certification of Associations and the Definition of Bargaining Units
5. Requirements for Negotiators to Bargain in Good Faith
6. Provisions for Mediation
7. An Exclusive Agent for the Bargaining Unit
8. Provisions for Arbitration
9. Exclusions from the Provisions of Bargaining Laws
10. Administration and Policy in the Implementation of Bargaining Laws

Each of these kinds of rules will be examined individually.

The Approach to analysis will, in general, follow four steps.

1. To identify the rule found in existing and proposed laws and/or in contractual relationships between growers and handlers.
2. To explain the intended effect of the rules used.
3. To evaluate the rule in terms of its intended effect.
4. To suggest specific alternative rules or interpretations of rules which, based upon the evaluation, are expected to be more workable and effective in terms of their intended effects.

Permission to Bargain Collectively

The Capper-Volstead Act of 1922 was explained in detail in Chapter III. In brief, it exempts agricultural producers from certain

provisions of the Sherman Act.

The precise intent of the Act with respect to collective bargaining cooperatives is the subject both of much debate and of the Treasure Valley case explained in Chapter III. In the broadest sense, the issue addressed by the Act is that raised by the fact that many geographically dispersed agricultural producers must deal with relatively few, large buyers of their products. The issue is one of equity. Many producers compete to sell to buyers, while relatively few buyers compete to purchase from sellers.

It is in a more narrow sense--that of which specific functions producers may collectively perform--that the question of the Act's intent arises and becomes critical for collective bargaining associations. In the Treasure Valley case, the court ruled that bargaining is a part of collectively marketing as authorized by Section 1 of the Act. That decision was drawn upon by Judge Orrick in Northern California Supermarkets, Inc. vs. Central California Lettuce Producers et al. when he denied the plaintiff's claim that Central California was not engaged in "collective marketing."¹⁰⁴

While they cite no decisions which conflict with either of those mentioned, individual attorneys for the Federal Trade Commission have offered personal opinions which challenge the Treasure Valley ruling. Their challenge appears to be based upon the argument that "market disciplines" are not imposed upon those who only bargain for price.

¹⁰⁴Northern California Supermarkets, Inc. vs. Central California Lettuce Producers Cooperative et al., United States District Court, Northern District of California, No. C-74-2602 WHO Opinion, January 30, 1976.

This is reflected in Mr. Keith Clearwaters' statement before the Dairy Conference of the American Farm Bureau Federation's 56th Annual Meeting in New Orleans on January 6, 1975,

. . . actually to possess plant and equipment devoted to handling agricultural commodities and also to have purchased or contracted to purchase agricultural commodities imposes on an organization a kind of market discipline or responsibility that a group of persons not similarly committed to participating in the business do not have. . . a bargaining association with no such facilities might well decide to insist upon extremely high prices and may even be willing to enter into agreements restricting supply in order to force the price up.¹⁰⁵

Related arguments were raised in confidential interviews with observers of collective bargaining who pointed to a distinction between associations which take title to the commodity for which they bargain and those which do not take title. They raise an argument similar to that posed by Mr. Clearwaters. The association which takes title, they say, assumes a responsibility to place a crop and is therefore subject to stringent market disciplines not faced by associations not taking title to the commodity for which they bargain.

In short, two major issues surrounding Capper-Volstead merit discussion. The first is its apparent purpose of providing agricultural producers with an equitable position vis a vis buyers in the marketplace. The second is the debate over kinds of collective action to be permitted under the Act.

What follows are discussions of the need for such an exemption as that provided by Capper-Volstead and for particular interpretations

¹⁰⁵ Keith Clearwaters, Presentation before the Dairy Conference of the American Farm Bureau Federation's 56th Annual Meeting, New Orleans, Louisiana, January 6, 1965, p. 8.

of the Act if the broad objective of equity in the marketplace is to be achieved. A discussion of the market position of agricultural producers vis a vis handlers in the studied markets will be followed by an analysis of the implications of different interpretations of Capper-Volstead and Bargaining Equity.

Capper-Volstead and Bargaining Equity

No segment of our economy approximates the perfectly competitive "ideal" contemplated in neoclassical economic theory. Thus, to flail indignantly at producer-first handler markets for not determining the kind of market price which constitutes an impersonal rationing mechanism is to attack a straw man. In very few, if any, markets do we observe so many buyers and so many sellers that no one can (within a "relevant" market) appreciably affect price or quantity exchanged by his own action.

What is suggested by the purely competitive ideal, by the more recent concept of "workable competition" attributed to J.M. Clark,¹⁰⁶ and by the Capper-Volstead Act itself is the notion that if buyers (sellers) have many alternatives to bargaining with a particular seller (buyer) and the seller (buyer) has relatively few alternatives or none at all, there is an inequitable bargaining situation. The passage of an act like Capper-Volstead, not to mention a large body of U.S. labor laws, suggests a public which is concerned with equity. Assuming that equity is a concern and that the number of alternatives open to market participants is a reflection of equity relative to those participants'

¹⁰⁶J.M. Clark, "Toward a Concept of Workable Competition," American Economic Review, 30 (Jun3, 1940).

counterparts, the following discussion draws upon the data presented in Chapter II to assess the equity of relationships between producers and first handlers in the studied markets.

Those data suggest that, in the absence of collective bargaining associations, producers of agricultural products have far fewer market alternatives than do the first handlers with which they deal. An average of 730 growers sell to handlers in the studied markets, while an average of 10.4 buyers are in the areas served by reporting associations (Tables 13 and 21). In 10 markets there is only one buyer, in 13 markets there are two buyers or less (Table 13). Market areas for individual growers (as opposed to associations) may comprise much smaller areas and include fewer alternatives.

Four firm concentration ratios for handlers in these same market areas also offer evidence of the limited alternatives facing growers. At least 90 percent of purchases were made by the top four processors in marketing areas described by 19 of 47 reporting associations (Table 12).

The largest firm purchased an average 43 percent of association members' production in annuals (Table 14). The corresponding figures for perennials and sugarbeets were 37 percent and 83 percent (Table 14). Thus, in terms of volume, some market alternatives are more important than others.

The production of other commodities represents a set of alternatives for growers. While there is an almost unlimited variety of crops that could be raised at given prices, only a few appear to be realistic alternatives which, in the experience of the association, compete with the crop bargained for. On average, annual associations reported 3.75 alternative crops, while perennial associations reported 1.11

alternatives (Table 15). The viability of these alternative crops as means of granting growers a greater degree of equity relative to handlers is thrown into question as we discover that the number of crops processed by handlers is about as high (3.89 for annuals and 4.5 for perennials) as the number of alternative crops (Table 17) growers can produce. The point is that alternative crops for growers do not really discipline the handlers if the same handlers buy the alternative crop.

The commitment of specialized, durable assets to production was also found to limit realistic alternatives to growers. Because of the difference in salvage and acquisition prices, growers frequently find themselves in a position where it is rational to produce at less than the cost of production as measured by the acquisition price of those assets. They absorb capital losses because they are drawn into production at one price level and then continue to produce as prices fall.

These data strongly suggest that, when we use alternatives available to buyers and sellers as a measure of equity, producers of perishable fruits and vegetables as individuals find themselves in woefully inequitable bargaining relationships with handlers. If the aims of Capper-Volstead, which directly address the question of equity, are to be achieved, there must be a workable means of acting collectively to reduce that inequity. In what follows, an evaluation of the collective bargaining exemption as a means of dealing with the equity question is discussed.

The Capper-Volstead Exemption for Collective Bargaining

In the preceding pages, it was assumed that there are equitable relationships between buyers and sellers when each has a similar number of market options or alternatives. Based upon this assumption, it was argued that agricultural producers in the studied markets are in an inequitable position relative to processors. The effect of collective bargaining is to reduce the number of alternatives open to handlers, thereby putting agricultural producers in a more equitable position relative to handlers.

What follows is a discussion of 1) the arguments behind challenges to the Capper-Volstead exemption for collective bargaining associations and 2) the impact of alternative interpretations of the Act with respect to collective bargaining. These will be used to argue for what is required if legislation is to be workable in terms of the broad objectives of Capper-Volstead.

The central charge against associations existing only for the purpose of bargaining and not for the purpose of performing other marketing or handling functions is that those associations are not disciplined by market forces. They are not under pressure to bargain for terms which can be expected to clear markets.

In fact, there are market pressures on bargaining association managers. The nature of this pressure varies with the nature of the commodity produced and the contractual arrangements under which the associations themselves operate.

First, none of the bargaining laws which exist or are currently proposed do anything to prevent new capital from entering into the

production of the collectively bargained commodity. If prices go too far above the cost of production, resources would be expected to follow those prices, thereby defeating the pricing objectives of the association. There is an incentive not to demand terms leading to this effect.

Second, some associations take title¹⁰⁷ to the commodity for which they bargain. When they do so, their leaders become very concerned with how much of the crop they can place. If all member production is not placed, revenues must be pooled in some fashion. This reduces the average payment to growers. The incidence of this effect depends upon the nature of the pooling arrangement. In some cases, all members share in the pool. In others, only those growers whose crop is not placed after a certain date have their crop pooled. Some would argue, as does Mr. Clearwaters, that, under such circumstances, the association can price as a monopolist. Two things are wrong with this argument, both of which stem from the inability of the association to control supply. First, there are independent growers who benefit from the bargained price without sharing in pools. This creates a disincentive to be a member of such an association. Second, as mentioned above, prices that are "too" high will draw new resources into production. Thus, there are powerful incentives to seek prices which reduce the need for pooling. These incentives provide a partial explanation of the association objectives listed by managers and summarized in Chapter II (see Table 37). Securing stable prices and assured markets were ranked far ahead of higher prices as

¹⁰⁷ The relevance of taking title to the commodity lies in the fact that it shifts incentives with respect to marketing the crop. It therefore imposes a strong discipline on those who engage in negotiations.

association goals. This was particularly true in perennials, where the association takes title most often. These motives, along with the absence of power to control supply, are inconsistent with the motives and conditions assumed by the pure monopoly model.

Third, those associations which do not take title are also subject to market disciplines in at least two ways. The association which bargains for terms of trade before contracts are signed must consider how much acreage its members can contract after terms are agreed upon. If they bargain for a price which is "too" high, they will leave their members without contracts. Also, associations run the risk of drawing new, nonmember resources into production. If handlers are interested in circumventing the association, they have incentives to contract with nonmember growers first. It is possible that reckless or inexperienced bargainers may make outrageous demands that destabilize an industry, but the fact that association managers appear to recognize that high prices may only be gained at the expense of stable markets and prices suggests that such behavior is not to be expected.

For these reasons, it is inaccurate to claim that associations which exist only to bargain for price are not subject to "market discipline." There are substantial pressures on bargaining committees and association managers to respect market forces as they approach the bargaining table.

Policy Choices and Their Implications

In the remainder of this evaluation, three interpretations of the Capper-Volstead Act are discussed. Those interpretations are

assessed in terms of the apparent aims of the Act, the structure of the markets studied, criticisms of an exemption for collective bargaining, and the nature of the commodity bargained for. The three interpretations are: 1) no exemption for collective bargaining, 2) exemption for those associations taking title to the product and, 3) bargaining under the courts' current interpretation of the Act.

Under the first interpretation, the only way growers could use Capper-Volstead to deal with the inequities described earlier would be to invest in the nonfarm capital needed for marketing or processing cooperatives. Capper-Volstead would only effectively apply to those producers possessing the resources to exploit this alternative. There is no particular reason to believe that growers are always in a financial position to, or managerially capable of performing these functions any better than proprietary firms.

That solution skirts the fundamental issue. Why can't agricultural producers just be producers and be rewarded on the basis of an equitable collective bargaining relationship in the market? The charge is that their leaders are not subject to market disciplines when they do so. That charge has been refuted above. If the charge is not well-founded, it does not seem consistent with the aims of the Capper-Volstead Act to drop the Act's exemption for collective bargaining.

Some have argued that collective bargaining should receive the exemption if the association takes title to the product.¹⁰⁸ Those who

¹⁰⁸ Confidential interview, bargaining association manager.

argue along these lines seem partially to accept the arguments of the critics that associations assuming no obligation to place the commodity for which they bargain are subject to limited market discipline. This charge has also been dealt with above. A further problem with this interpretation of the Act is that it does not appear to be especially workable or even desirable for annual crops. In none of the studied cases did associations take title to the annual crops for which they bargained. This may not be workable because the bargaining takes place before the crop is ever planted. Understandably, growers wish to know what they will receive before they commit resources to production. Furthermore, once terms of trade are established, the grower deals directly with the buyer to determine quantity. There appears to be no point in this sequence at which the association would logically take title.¹⁰⁹

¹⁰⁹The fact that associations bargaining for annual crops are not known to take title to those crops does not mean that they could not do so or that there are no conceivable reasons for doing so. If associations were to contract with processors for specific quantities of a commodity, the association would assume a need to control the quantity produced by its members. Presumably, the association would incur some penalty for falling short of the needed quantity. Alternatively, if an amount in excess of the contracted quantity were produced, the association would be obliged to seek new markets for the "excess" and/or pool the returns as a basis for determining payments to members. The association may well be expected to take title to the crop for the purpose of performing the pooling function. This appears to be an unlikely kind of occurrence. If an association had a supply contract, it would want to prevent its growers from producing more than the amount needed. If there is a desire on the part of growers to produce more than the needed quantity at the contracted price, the association would have to select some means of rationing "rights to produce" among its growers. There are means by which this could be done. Growers could simply be told to cut back production by 10 or 15 percent. Or growers could bid for rights to produce, or new growers could buy rights to produce from existing growers. Within the association the quantity could be adjusted. But, what of the desire by nonmembers to produce at the prevailing price? By offering to meet some of the handlers' needs at the same or lower terms, they would impose potentially great strains

While this question requires research, it appears that the requirement that an association take title may rule out collective bargaining for annuals. Indeed, if farmers are to take advantage of the opportunity annuals offer for knowing prices prior to planting, there is nothing for the association to take title of during bargaining. To do so may be a needless and costly exercise.

Under the third interpretation of the Act, collective bargaining would be permitted as it is now, using as a guide the landmark decision in Treasure Valley. It appears, on the basis of the arguments developed from this research, that this interpretation is the only one of the three that serves the spirit of the Act and does so for growers of annual crops as well as perennials.

Protection of Rights to Bargain Collectively

Several protective measures appearing in "fair practice" or related provisions of collective bargaining laws have been listed in Chapter III. These measures may be divided into two broad categories.

on the association. Further, members who prefer to produce greater quantities of the commodity would find that they could do so outside the association but not within it. There would be incentives for them to drop their membership.

This set of incentives may explain the extensive use of full supply contracts in dairy marketing. The same incentives suggest that the way around the potential problem in annuals would be to secure full supply contracts with handlers. Given such contracts, members and non-members would have no alternatives outside the association. They would have to get their rights to produce through the association.

Supply response differentials may help to explain why this has not occurred in annuals. First, handlers do not appear to be as concerned about getting the quantities they need in annual crops as they might be in milk. In annuals, if they are not getting the contracts they need, they can bid terms up to do so. The supply response is not so elastic in milk where the product is needed on very short notice and the ability to provide it depends upon the milk cooperatives' delivery facilities.

The first category includes provisions to prohibit discriminatory activity by handlers against organizers and/or individual members of cooperative bargaining associations. In the second category are those provisions which require or are intended to foster "good faith bargaining" between bargaining associations and handlers.

The prohibitions of the first type are discussed here. The second kind of prohibition is discussed under the heading "Requirements for Negotiators to Bargain in Good Faith." The reason for this organizational pattern will become apparent. In brief, the section on good faith bargaining is best discussed in the context of a certified association. Thus, it follows that section.

Randall Torgersen, in Producer Power at the Bargaining Table, documents several direct efforts by first handlers of agricultural products to subvert collective bargaining associations or efforts to organize them. Fair practices provisions such as those in the Agricultural Fair Practices Act and several other pieces of state legislation were enacted to deter the discriminatory practices by which these activities were carried out. They were designed to protect producers in the exercise of their right to organize collective bargaining associations under the Capper-Volstead Act.

The question addressed here is: To what extent have those laws been effective in achieving their objectives? Bargaining association managers' responses to this question were mixed. In general, it appears as if the occurrence of unfair practices of the type in the Agricultural Fair Practices Act have been reduced. Most of the persons interviewed would indicate that "unfair practices are not a problem," that they were "uncommon," and that what unfair practices were

experienced were hard to prove.

Glaring exceptions to this general rule were encountered in some associations bargaining for peas, sweet corn, and lima beans. It was in these associations that allegations of unfair practices were common. Among the charges were the following:

1. Growers are informed by fieldmen that contracts will not be offered if they continue to participate as members of the association.
2. Growers wives or children would lose their jobs in canneries if the grower was a member of the association.
3. Nonmembers receive seeds with higher levels of certification for germination than do members.
4. Growers in nearby regions where there are no associations are paid more for the same crop by the same firms with which the association deals.
5. New growers were completely financed by processors on the condition that they not participate in any bargaining association.

It is stressed that not all managers of pea, sweet corn, and lima bean associations made such allegations. It is further stressed that some managers made a point of stating that one firm or the other was exceptionally fair and good to do business with in this way. For obvious reasons, parties involved here are not identified.

A tentative conclusion is that unfair practices of this type are not a serious problem for most bargaining associations, although it is not clear that the prohibitions were responsible for the improvement. At the same time, the frequency of complaints from associations

bargaining for a particular type of commodity suggests that the prohibitions of the Agricultural Fair Practices Act have been largely ineffectual in certain crops.

A hypothesis which would partially explain this phenomenon was offered by an association manager. He argued that the handler generally provides the harvesting equipment in these crops. Since the list of potential growers is not restricted to those who have highly specialized equipment, the handler can deal with many growers, some of which may never have grown the crop. The effect of handler ownership of such equipment is to expand his sources of inputs. Handlers do not have quite as much flexibility in some of the other commodities.

But this argument does not explain why the laws prohibiting unfair practices are not effective in achieving their objectives. It only attempts to explain why their incidence is greater where certain commodities are involved. Other factors must be considered regarding an explanation for the apparent ineffectiveness of the law.

Four explanations were offered by association managers. First, one relatively new association manager was not aware of the existence of the Agricultural Fair Practices Act of 1967. Other managers observed that their members were generally uninformed of its provisions. Second, among those managers who were aware of the Act, some indicated that neither they nor their members knew how to file complaints under the Act. Third, those who knew about the Act would frequently indicate that the Act has "no teeth," involves lengthy proceedings, and provides no serious disincentive for handlers to engage in unfair practices. Fourth, managers point out that those

growers benefiting from favoritism for staying out of an association are not likely to document their complicity in violations, thereby making charges hard to prove. A related point is that there are no penalties for growers who accept such favors.

The first two arguments raise the issue of whose responsibility it is to make growers and their leaders aware of their rights under the law. It could be argued that those engaged in a business have the responsibility to and a self-interest in informing themselves with respect to legislation which affects that business. If they do not do so, this suggests that the violations are not that serious. Alternatively, it could be claimed that the ignorance of some with respect to those laws negatively affects other growers who attempt to exercise their rights to organize. That is, those who tolerate unfair practices weaken an organization for others. Furthermore, if as a matter of public policy, we wish to foster the growth of bargaining associations as a means of improving vertical coordination in a food system which affects everyone, the public has a stake in making producers better informed. This approach is consistent with the concept of an extension service which acts to inform agricultural producers of production and marketing concepts which are many and complex and about which growers are not expected to learn completely on their own.

Regarding the charge that the law has "no teeth," there is an argument to be made from a purely pecuniary point of view. Under the Agricultural Fair Practices Act, there is provision only for "preventative relief," attorney's fees for the prevailing party (The court may require that the plaintiff provide "security" for injunction in the event that a party is wrongly accused.), and suit in

the amount of damages sustained. Under these circumstances, if there is a finite, nonzero probability that an unfair practice will go undetected, there is a positive incentive to break the law. If the most a violator pays is damages and nothing is paid if he is not found out, then, on average, there is a positive value to cheating. The expected cost of cheating is less than the cost of not doing so.

Some¹¹⁰ have argued that more is to be lost through being charged with unfair practice violations than the damages paid in a single case. Processing firms fear bad publicity, they say, and have, in fact, made explicit efforts through meeting with their fieldmen to warn them about engaging in practices that may constitute violations of unfair practice provisions of the Act. Others would charge that such efforts can be performed for publicity and later used as a defense to show that they had made efforts to prevent unfair practices from occurring.

The problem of proving that there has been a violation is real if each of the participants has benefited from his actions. If a grower receives better seeds for not participating in an association, he has no incentive other than his sense of equity for revealing that the practice has occurred. If, however, he is subject to some penalty for not doing so, his incentives will surely change.

Based on this analysis, the following proposals are expected to make fair practices provisions more effective. The administrative requirements needed to implement them are discussed in the final section on administration and policy.

¹¹⁰ Emil Dietz, California Farm Bureau Federation, personal interview, Oakland, California, April 2, 1976.

First, an explicit effort to inform growers, their leaders, and the handlers with which they deal is required. Relatively simple publications directed at the parties engaged in or contemplating collective bargaining activity could be used to explain fair practice laws and how to use them. This provision could be implemented at a relatively low cost and would do much to overcome the problem of ignorance encountered in some commodity areas.

Second, a minimal filing fee, refundable if complaints are verified, would be needed. If it is easy to make charges and no risk is involved for the association, one may expect frequent and careless allegations. The processing of such complaints could then require a sizeable staff which pursues frequently frivolous charges.

Third, it is necessary to make it risky to break the law. If handlers perceive a positive value in violating the law because they are only required to pay damages, their perceptions are expected to change if treble damages are required. For that reason, treble damages are recommended.

Fourth, growers must be made liable for participating in or benefiting from a fair practices violation. Treble damages in the amount of their gain from the violation or a fine would discourage growers from taking such actions. There may be great difficulty in prosecuting such a case. The problem of grower ignorance or proof of complicity is not yet dealt with and needs to be considered.

Fifth, a complaint of some handlers has been that they did not know who grower members were. Thus, it was claimed that they could not be blamed for circumventing the association which used no check-off procedure with the handler. In the case of such associations, it

may simply be stated that the handler must be informed of who members are if it is to be held liable under the fair practice laws.

Promotion of Collective Bargaining
as a Matter of Public Policy

Two types of rules have been discussed thus far. In brief, they were designed to: 1) permit agricultural producers to bargain collectively without violating anti-trust laws and, 2) protect them from discriminatory actions in the exercise of their rights to do so. These rules suggest a relatively passive role for government.

As we shall see, the remainder of the rules to be discussed suggest a more active role for government. They include specific actions to reduce organization costs for associations, legally limit alternative actions for handlers, and actively foster the growth of collective bargaining as a means of vertically coordinating economic activity within a segment of the food system.

Provisions for Marketing Fee Deductions

Several states require that first handlers deduct a portion of the amount due a grower for remittance to a specific grower association or council. This can be done in three ways. First, the grower may indicate that he wishes to have an amount deducted and sent to a specific bargaining association. This is generally done through the grower's membership agreement with the association.

Second, all growers may have amounts deducted and sent to a commodity commission, which then allocates some portion of those monies to a bargaining association. The grower may request a refund of his check-off if he wishes.

Third, as in Michigan, all growers who are members of a "bargaining unit," whether members of an association or not, have marketing fees checked off and sent to an accredited association.

The first rule is purely voluntary. The second is technically voluntary. The third rule is mandatory.

There are several reasons for using a check-off procedure. The first is to provide an inexpensive means of collecting revenues. Fewer transactions are involved if the fee goes directly to the association. In addition, the handler check-off provides for more accurate accounting of amounts due.

Second, the check-off provision reduces organization costs. It permits the association to spend more time on nonfinancial activities, to secure more revenues, and to eliminate billing costs.

Third, as applied in the Michigan law, the provision is to secure payment from those who would not pay marketing fees voluntarily.

Association managers are virtually unanimous that a bargaining association must have an automatic and regular source of revenue if the association is to succeed over any appreciable period of time. Only one known association is operating without some form of automatic fee deduction. Thus, the question does not appear to be one of whether there should be a check-off, but whether law is needed to enforce it and, if so, what kind of law.

Many associations secure fee deductions without legislation. In explaining why firms cooperate with the check-off, managers simply say, "It's business. The check-off is a nonnegotiable part of our contract." The managers operating without laws would often state that securing the check-off provision had never been an issue. Many associations

(which bargained for perennials) received service fees averaging \$2 per ton from the handlers. One association is almost entirely financed by handlers' service fees. Member marketing fees are used to maintain a revolving fund and are returned to members regularly.

All associations do not secure voluntary agreement from firms to deduct and remit marketing fees. As Chapter III indicates, growers in many states have had to secure legislation requiring compliance with such requests. Handlers are inclined to resist such provisions because they represent a key to the organizational vitality of bargaining associations. For example, one of the demands in Great Western's 1976 contract dispute with Mountain States' Growers was that the automatic fee deduction be dropped.¹¹¹

The three types of laws for automatic deductions are expected to perform differently. The Michigan provision is designed to prevent organizational degeneration by dealing with the "free-rider" problem through an involuntary check-off. The managers of bargaining associations typically acknowledge a free-rider problem in the sense that their members complain of paying for benefits (better terms of trade through bargaining) that others receive. At the same time, few managers support compulsory payment of marketing fees. They are inclined to question the effect of such provisions on the freedom of choice by individuals, the likelihood of passing such measures, and the need for compulsion to secure adequate revenues. In general, memberships are on the increase, they say. This is supported by the findings

¹¹¹Great Western contract offer, circulated at grower meeting in Ft. Collins, Colorado, April 12, 1976.

of Chapter II. The most frequent explanation of this success, in spite of the free-rider problem, is that the association directly provides members with market information, both personal and printed.

Thus, in the experience of most existing associations, there is not a handy illustration of the degenerative effects we associate with the free-rider problem. The reason appears to be that members are paying for some exclusive goods in the form of information and/or a commitment to try to place a grower's crop. In short, the association typically does more than collect market information and bargain.

The free-rider problem and its implications were better illustrated in the difficulties encountered by the Southern Minnesota Cannery Growers in the spring of 1976. The association existed almost entirely to bargain--it was very new. Growers dropped off to sign contracts with guarantees by handlers that they would get any terms the association bargained.

State-wide check-offs for commodity commissions are somewhat successful for two reasons. First, growers receive some services besides the bargaining function. Second, the deduction is automatic. The grower must go out of his way to get his refund back. He incurs a cost on doing so. While the universal check-off with refund and the requested check-off are voluntary, they perform differently. The first takes advantage of growers' good intentions and pays their fees. The latter relies on the growers' initiative to follow through on their intentions.

Policy Alternatives for Check-offs

The evidence suggests that legislation requiring a check-off at grower request is a minimal requirement of a workable law.

Established associations seem to be able to secure adequate operating revenues through the minimal provision. They provide exclusive services to the grower or draw upon a strong community of interest among growers. After an especially bad year for prices, the sense of community is much easier to tap because growers feel a greater sense of interdependence. Active annual promotions have been used to promote memberships. Substantial increases in the membership of the Agricultural Bargaining Council were attributed to contests held by the Council which awarded prizes to members bringing in the most new members.¹¹² New associations not providing inclusive services may find the minimal provision inadequate.

Associations funded by state-wide check-off can secure greater revenues. Fees may be secured from those who would not otherwise contribute to the association. While such associations' personnel may perform very well, there are limited incentives for them to seek to serve members well. Association personnel do not need to perform so well that growers initiate action to have fees deducted. Such an association must have some standing with a state commission or council which performs other functions for growers. The initiative for such an association is really a spin-off from other organizations which were the original purpose for this type of check-off.

¹¹²Mrs. Dorothy Kelley, Executive Vice President, Agricultural Bargaining Council, personal interview, Presque Isle, Maine, March 8, 1976.

Thus, from the viewpoint of collective bargaining legislation per se, the choice is between the purely voluntary check-off and the compulsory provision such as the one in the Michigan law. The latter would logically be chosen if the degenerative impact of the free-rider problem is expected to be serious (for example, if one wishes to encourage new associations to arise), if the public sense of equity is offended by the fact that some growers pay sizable marketing fees for services that benefit others, and/or if the costs in terms of grower losses of individual freedom are not thought to be too great to justify by the body politic.

This research did not produce evidence that established associations capable of generating the information needed to bargain collectively cannot secure needed revenues through a voluntary check-off. This is not to say that the equity argument may not be adequate to justify the Michigan approach. It is only to say that the free-rider problem does not, on the basis of existing evidence, provide a compelling argument to justify the provision. The voluntary check-off has provided a vehicle through which new organizations have grown and with which established organizations successfully operate.

Another performance dimension by which to evaluate alternative fee deduction provisions is their effectiveness in securing revenues. These are discussed below.

The Michigan bargaining law provision is the strongest in a legal sense, in that it requires all members of a specified group to pay fees. Understandably, it has the highest percentage of success.

The rule which requires that all first pay and then request a refund has very high rates of retention. In North Dakota, L.A. Schmidt

estimated that no more than 5 percent of North Dakota growers requested a refund.¹¹³ It must be remembered, however, that those growers were paying for a number of activities conducted by the Council, as well as for activities of the bargaining association.

The strictly voluntary type of check-off can, in general, be expected to provide smaller amounts of revenue for a given percentage of check-off because the grower has to make an explicit effort to get money checked off. The check-off is not automatic.

Provisions for the Certification of Associations and the Definition of Bargaining Units

Existing and proposed bargaining laws provide for the certification of a particular cooperative bargaining association as an exclusive agent to represent growers in a production area. Such "certified" or "accredited" associations may bargain on behalf of their member growers or on behalf of all growers in the bargaining unit for which they are exclusive agents.

The certification process has two major aims. The first is to focus the organizational effort for collective bargaining. Organization costs for growers are reduced when one association is identified as the exclusive collective bargaining agent for a particular bargaining area.

By identifying a single association to represent all growers wishing to bargain collectively, the potential for competition among associations is eliminated. Further, the greater the distances between growers and the more diffused the production regions, the greater

¹¹³L.A. Schmidt, Red River Valley Potato Growers, personal interview, Grand Forks, North Dakota, April 19, 1976.

the need for an organizational focal point for growers. The identification of such a focal point raises the probability that the association will be cohesive.

Another objective of certification is to make it clear to the handler that a particular association represents a specific group of growers. It makes it clear that the obligations of handlers under unfair practices provisions and good faith bargaining provisions of a law apply with respect to the accredited association. But, there is no reason why certain of the unfair practice provisions could not apply as well to any cooperative bargaining association.

The second objective, that of clearly defining who represents whom, is the most important for the design of legislation. It is sometimes essential for making other rules workable. For example, in clarifying and legitimizing the role of exclusive agent for particular growers, certification provides a foundation for saying that it is a violation of unfair practice provision X for any handler to deal with this grower other than through his exclusive agent. Such a provision is designed to prevent what happened to the Southern Minnesota Cannery Growers in 1976.

Another function of the certification is to make workable a fair practice provision which requires that handlers not deal with third parties while negotiating with an accredited association. If the provision is to make sense, there must be only one accredited association. Presumably, an association put in such a position would represent enough product to supply all or a majority of the quantity required by the parties with which they deal.

A third function of the certification is intimately related to the preceding one. It clearly identifies the association with which handlers must bargain in good faith, if there is such a provision. If one association is not so specified, there may be more than one association, both of which cannot be bargained with in good faith at the same time by the same handler.

Any certification process can be complex. As we shall see, there are reasons for which it would be expected to become more complex as the certified association assumes a greater role in the marketing system. As we shall also see, all legislation providing for a certification process has not considered these complexities in its design. In what follows, bargaining bills proposed in state and federal legislatures are drawn upon to illustrate problems encountered in securing accreditation for an association and in determining what association is to be accredited.

The Sisk Bill and the Pennsylvania proposal provide for accrediting an association represent 50 percent of the growers and 50 percent of the production in "a major area of production" or when "51 percent of the producers of a commodity join a marketing association." The workability of these proposals may be questioned in several ways.

The ambiguity of these guidelines suggests a need for the definition of a "bargaining unit" or base which can be used to more readily determine whether an association meets accreditation requirements. The reasons for this need are discussed below in greater detail.

In the first place, these criteria make it very difficult to determine the base from which 50 or 51 percent of the growers or the

production is to be computed. There is much room for dispute with respect to what a "major area of production" really is. If this language is to be used, some procedure for precisely defining such an area must be established. If this is not done, frequent legal challenges to any accreditation can be expected. Such challenges have been directed at accreditations under the Michigan and Maine statutes in which bargaining units are more precisely defined.

Second, if it is required that all of the producers be included in the base, two problems arise. 1) Who is a "producer?" Does the classification include every producer of apples? Does it refer only to "commercial" producers? If so, what constitutes commercial production? 2) Can associations reasonably be expected to secure marketing or bargaining contracts from half of all producers? Harry Foster, a commodity division manager of the Michigan Agricultural Cooperative Marketing Association, argues that such a rule is equivalent to a guarantee that no association will be accredited.¹¹⁴ Many growers market such small amounts so intermittently that it is impossible to find them or even to identify them. Mr. Foster's argument is easily understood. Growers may be so many, so small, and so diffused that they are unknown to association organizers.

This raises a third question. If a base is established, is it a countable base? Contrary to the assumptions of many, precise data on the production of agricultural products is hard to secure. This is especially true as we move out of categories that may be called "commercial." Even the commercial figures are based upon estimates.

¹¹⁴Harry Foster, commodity division manager, meeting of bargaining association personnel, Chicago, Illinois, May 11, 1976.

To further complicate matters, the commodity itself is not always easily defined. Are apples for processing or fresh sales? Are there separate marketing periods during the year? Does it include quantities purchased from shippers or brokers?

Thus, a workable means of determining whether an association meets the quantitative requirements of the law requires the following:

1. The base or bargaining unit must be defined in such a way that it is feasible for an association to secure required contracts.
2. The base must be countable.
3. The commodity must be clearly defined.

Clearly, there is room for subjective interpretation of what is "reasonable" in terms of a base or bargaining unit. For this reason, guidelines must be established for use by whatever authority passes final judgment on the definition of the base. This suggests the need for an authority to implement the act. The nature and functions of that authority are discussed in the final pages of the chapter.

Some guidelines are suggested here. The bargaining unit definition would consider the past marketing patterns for the commodity. Major flows of the commodity to market should not be left out of the bargaining unit.

The bargaining unit would be as large as possible while still being feasible to represent. (The accent is on "large as possible." Presumably, this is an accreditation to represent all commercial growers. It is not to be defined just so that an association can

secure the needed contracts.) This is especially important if there are rules which prevent handlers from dealing with third parties while negotiating with an accredited association. In such a case, an accredited association would be bargaining terms for virtually all of the industry, since the overwhelming evidence indicates that nonmembers of associations almost always receive terms of trade equal to or greater than those bargained by an association.

Once the bargaining unit is clearly defined, it is possible to proceed with the accreditation process. At this point, it is necessary to determine what criteria must be met by the association applying for accreditation before it is granted.

Legally, the association would have to be a Capper-Volstead cooperative. It would have to be sound enough financially to carry out its intended function. It would have to verify that it has the required share of growers and production to meet the specified criteria. A formal procedure for establishing that the association meets these requirements would probably be necessary.

Percentages of growers and/or production required as minimums for the accreditation of an association are important in that they determine whose support an association needs to become accredited. If a large percentage of the production is required a relatively small share of growers is required, large growers are favored. Their voices count more than those of small growers. If minimal production requirements are used with higher levels of grower requirements, the reverse is true.

Another factor to be considered in the establishment of accreditation requirements is the share of production an association

must represent if it is to be an effective bargaining force. Does it represent enough production to make the association and its members a logical source of supply?

Minimum percentages of production represented by member growers take on added importance if the agency shop provision is used--that is, if all members of the bargaining unit are required to pay marketing fees and market on terms bargained for by the accredited association. Under these circumstances, the board and/or the association involved may be in violation of the Sherman Act. If, on the other hand, members of the association have production in excess of 50 percent of the amount bargained for, the association would appear to meet the requirements of the Capper-Volstead Act which states that cooperatives must do no more than 50 percent of their business with nonmembers.

Because these representation requirements are important, it is vital to the workability of a law that there be some clear procedures by which associations can establish that they meet minimum requirements. This need argues for a demonstration of proof of representation such as filing a membership agreement which indicates that members have agreed that the association shall be their exclusive bargaining agent. The absence of such an agreement caused delay in the accreditation of the association certified under Minnesota's law.

The problem of demonstrating that the associations' members produce the minimum quantities is more difficult than that of counting the members. Unless very small numbers of members are involved, the association can only estimate its members' production of the commodity in question unless it has taken title or received past remittances

from processing firms.¹¹⁵

If no countable data are available, it may be necessary for the board to draw upon the first handlers themselves. Handlers are in an excellent position to provide records on who has delivered what quantities to them in the past. If the handlers delivered to by members of the bargaining unit can be identified, subpoenas of handlers' records on a confidential basis could be used to verify whether the applying association meets the minimum requirements for accreditation.

Another consideration arises because of the potential significance of the level of representation by the association. It may be useful to establish a procedure by which associations can lose their accreditation. This may require regular reports by the association, a procedure by which growers can petition for a hearing to challenge the accreditation, or a procedure by which handlers may challenge the accreditation. This consideration is mentioned because some laws appear to accredit associations indefinitely, since no procedure for losing an accreditation is established.

A workable approach to dealing with the problems raised by the certification process is outlined below. It may not be the only approach that would work, but seems to deal effectively with the pitfalls encountered by existing laws and proposals.

¹¹⁵It is also important that growers counted in the unit and as members be "producers of record." If the competition is not based upon some historic levels of production, a question could be raised as to what the level of production or number of growers for the upcoming year will be. On the other hand, if growers are defined as those who have produced and delivered quantity in one of the last two years or if the association's members have produced and sold 50 percent of the production in the bargaining unit during the last two years, this ambiguity is removed.

Much of the procedure is similar to that employed by Michigan's P.A. 344. Additions are made to counter difficulties arising in the implementation of that statute.

The first provision for accreditation would be to establish procedures for the definition of a bargaining unit. The initiative for defining a unit would come from a grower association legally capable of ultimately qualifying as an accredited association. The association would pay a filing fee to offer a definition for a bargaining unit which it would presumably wish to represent as the exclusive collective bargaining agent.¹¹⁶ The association would specify the dimensions of the bargaining unit it proposes to represent. These dimensions would define: 1) the commodity for which it aims to bargain, 2) what constitutes a commercial grower, 3) the geographic area to be represented, and 4) the minimum volume of purchases by handlers making up the unit. The issue of possible exclusions from the unit is discussed later in this chapter.

An example of how a unit may be defined is: all processing apples sold by growers producing and selling more than 3,000 bushels in the lower peninsula of Michigan to buyers purchasing more than 50,000 bushels. This definition deals directly with those problems encountered in existing laws. First, the base is clearly defined. It is much more specific than "a major area of production." The geographic area is more clearly delineated. Second, it limits the number of growers included to a level which constitutes a feasible set to

¹¹⁶Whether this exclusive agent would represent all members of the unit or only its own members is another variable discussed later.

work with. It does not refer to all growers, but rather those producing more than 3,000 bushels. Third, the number of people falling into this category is a countable set. If there are not enough public data to accurately measure the unit, they can be subpoenaed on a confidential basis from the handlers in the bargaining unit. Their data would indicate the volume of product and the number of growers selling to them, the amounts sold by each, and the percentage of total sales they represent.¹¹⁷

A hearing process through which it would be determined whether the unit definition meets other criteria would be established. The association would be required to demonstrate that it represents some minimum percentage of the growers in the proposed unit. Estimates endorsed by market specialists would be adequate for this purpose since the objective would be to make certain that the exercise of defining the unit is not based upon the whims of a few.

The unit would have to encompass major market flows of the commodity in question. That is, if significant shares of a commodity purchased by the firms in the unit come from counties outside of the unit, marketing patterns would be disregarded, and the likely bargaining effectiveness of whatever association represents the unit would be in question. What "significant shares" are or what "bargaining

¹¹⁷ This would circumvent a problem encountered in the implementation of the Michigan law. Under that law, difficulties arose because handlers would purchase apples, potatoes, etc., from fresh shippers or brokers and then process them. There was difficulty in determining whether such commodities were part of the amount to be counted in the bargaining unit. If the definition of the bargaining unit is stated in terms of the quantities purchased by handlers, these quantities can be included in or excluded from that definition. The point is that, however the unit is defined, the quantities and growers involved are countable.

effectiveness" is must be determined by the authority charged with making decisions on whether to accept a unit definition. Precise guidelines for accepting a definition cannot be spelled out in advance. Still, the authority needs some broad guidelines with respect to the effect their decision is to have on marketing patterns.¹¹⁸

The unit definition process itself would begin with a public announcement that association X had proposed a specific definition for a bargaining unit. The announcement would indicate the time and place of a hearing to evaluate that definition.

If any association wishes to contest that definition, it must announce by the hearing date at which it will later propose an alternative definition. This would require an additional "contested" hearing, at which time it would be determined which association's definition is most appropriate in terms of the guidelines for the definition's acceptance.

If there is no counter-proposal, the authority implementing the act would determine, on the basis of the first hearing, whether the unit definition is accepted. In this case, the hearing would not be contested since it is mainly to determine whether an association meets certain legal requirements and whether, in the judgment of marketing

¹¹⁸For an example of the problems which may be encountered if the bargaining unit is not defined in a manner which considers the major flows of the commodity, we can look to the experience of the Potato Growers of Idaho. Three smaller bargaining associations within the State of Idaho originally bargained with handlers. Eventually they came into competition with each other, and costly cross-hauling of potatoes resulted. P.G.I. was formed to eliminate this competition and the cross-hauling. In defining a bargaining unit for a certification process, it would have made sense to define a broader bargaining unit from the onset. These associations were not working under a certification law and worked out their own problems. Their experience, however, is instructive to those who would implement accreditation procedures and is illustrative of the point made here.

specialists, such a definition would disrupt past-marketing patterns. As an uncontested hearing, it would not have to follow provisions of administrative procedures acts. Some legal challenges to the use of the Michigan law were based upon a claim that unit definition hearings did not follow the provisions of Michigan's Administrative Procedures Act. Prior specification that a hearing is not contested would provide a way around this problem.

Final acceptance of a unit definition would pave the way for an association to apply for accreditation as the exclusive collective bargaining agent for the unit. Again, a hearing process would be required. After written application for accreditation of the association is received by the implementing authority, a date and place for a public hearing would again be set. Such a hearing would be contested, in that information supporting or challenging whether the association meets minimum requirements for accreditation would be heard. It would, therefore, have to follow provisions of administrative procedures acts.

The criteria would include the need to establish that the association is a Capper-Volstead cooperative which is financially capable of performing the role of exclusive agent. They would also include the percentage of bargaining unit growers and production which the association must represent. Representation would have to be legally established through a demonstration by the association that it has membership agreements designating the association as the exclusive bargaining agent from the required number of growers. If the association can establish on its own that it (through its members) represents the required share of production and is not challenged on its presentation during this or the subsequent hearing, its figures would be acceptable.

A second hearing would be held to provide an opportunity for those contesting the testimony of the association to conduct research and make rebuttal, for the implementing authority to subpoena handler records if needed, and for the applicant to prepare to answer any questions posed by the handler or implementing authority. On the basis of findings in the second accreditation hearing, the authority would make a determination with respect to accreditation. It would announce that finding publicly and notify all handlers in the bargaining unit of the requirements of law with respect to the exclusive agent. Other possible requirements of the law are discussed elsewhere in the report.

Revocation of the accreditation would be provided for in the law. Annual reports with respect to membership and production represented thereby would be provided by the association to the authority. These would be based upon reports of marketing fees paid to the association by the handlers with which its members deal. These reports would ordinarily determine whether an association continues to meet accreditation requirements. If a shortfall of required members or production appears and needed membership production requirements are not reestablished by the succeeding marketing period, the accreditation will be automatically revoked.

If, at any time, other growers or handlers wish to challenge, they may, by petition of some percentage of growers or handlers in the bargaining unit, initiate a disaccreditation hearing process which would be conducted as was the accreditation procedure. In this case, however, the first hearing would be primarily for the presentation by those charging that the association no longer meets accreditation

requirements; the second hearing would provide an opportunity for rebuttal by the association. Again, the decision would be made on the basis of findings after the second hearing. In the interest of stability and the reduction of administrative costs, the number of times such a challenge may be filed should be limited.

Once a provision for accreditation is included in the law, other provisions may be introduced. These include those mentioned in discussing unfair practices.

Requirements for Negotiators to Bargain in Good Faith

The preceding discussion of bargaining unit definitions and the certification process provides a foundation upon which to discuss another set of fair practice provisions relating to a requirement that negotiators bargain in good faith. Refusal by growers or handlers to bargain in good faith is a violation of unfair practice provisions in state laws identified in Chapter III. The aim of such a provision is to prevent parties from avoiding negotiations or cutting off negotiations without agreement, just because they do not want to deal with a particular organizational structure (association or a firm). The provision originates in the assumption that buyers, for example, may refuse to arrive at what would otherwise be a mutually beneficial agreement because they want to undermine an organization with which they do not wish to deal in the future.

The difficulty in assessing the effectiveness of such a rule lies partly in the fact that it is frequently very difficult to tell whether or not a party has bargained in good faith. In the course of this research, only two formal complaints of such failure have been

encountered. One was settled out of court¹¹⁹ and another is pending.¹²⁰ At the same time, there are frequent allegations by associations that handlers refuse to "bargain in good faith" or "recognize" them. Some of these charges are mitigated by the fact that those same associations eventually reached agreements with the firms which were allegedly not bargaining in good faith.

Many of the charges of failure to bargain in good faith come from states where there is no mention of it in the law. But in those states where there is a law, managers argue that it is futile to charge a firm with bad faith in bargaining unless there is an open, outright refusal to talk to representatives of an association. In the absence of such circumstances, they argue, a refusal to bargain in good faith is very hard to document. This raises the question, "What purpose is served by a good faith provision and can it be made workable as a part of bargaining law?" This question is addressed in the following paragraphs. The aim of these discussions is to provide a foundation for proposals with respect to such a provision.

An Argument Favoring "Good Faith" Requirements as Part of a Law

Bargaining associations provide the only means by which farmers can achieve equity in the marketplace. Processing firms recognize this and attempt to undermine the organizational efforts of associations in order to prevent them from achieving equity. They do this by going out of their way to avoid dealing with bargaining associations,

¹¹⁹Confidential personal interview.

¹²⁰Michigan Agricultural Cooperative Marketing Association complaint against Ore-Ida Company, 1975.

possibly taking losses (by getting smaller quantities, hauling products from greater distances, and operating at lower levels for higher unit costs) to do so. Thus, such firms do not make honest efforts to secure mutually acceptable agreements with collective bargaining associations. Firms should be required to "bargain in good faith" with grower associations. When a firm can't find a better offer than that received through bargaining and still takes the alternative or refuses to bargain, it is guilty of a failure to bargain in good faith. Any evidence of such behavior, for example, a decision to ship a product from a great distance at a great expense and a higher delivered unit price than that offered by the association, would be grounds for a charge that the party failed to bargain in good faith. By the same token, if a buyer simply exploits opportunities that are more attractive than those offered by the association, he has not failed to bargain in good faith.

But the bargaining process is one which forces participants to devote substantial energies to the collection of market information. If this is the case, as the evidence in Chapter II indicates, astute bargaining personnel would not make demands forcing such actions. The job of a good bargaining team is to learn what the adversary's options are and take them into consideration. Indeed, the adversary would be expected to tell them what his options are.

While there are inherent difficulties in the interpretation of motives in bargaining, such a provision is needed as a minimum to prevent blatant refusal to deal with an association.

An Argument Questioning the Value of a "Good Faith"
Requirement as a Part of a Law

The argument might go as follows. A good faith bargaining requirement is meaningless. At best, it is difficult to discern intent of parties in bargaining. Unless there is a documented, outright refusal to bargain, one has a case where parties sit down and discuss terms. As long as both parties make offers, there is no way to measure their desire to seek out a mutually beneficial agreement. The proponents say, "But wait, you have a good measure of faith if processors absorb higher costs through buying elsewhere." First, it is difficult for third parties to accurately compare the costs of alternatives used to those that are foregone. If one could do so and found that the buyers had absorbed higher costs by not dealing with the association, this would not prove bad faith. It is entirely possible that higher than anticipated costs could be incurred when a buyer is using new channels. Second, there are other ways for firms to behave if they wish to avoid dealing with an association. They may simply close down for a season, claiming that they cannot even cover variable costs at prices higher than those they offer. Alternatively, and perhaps more realistically for the large, multi-state firm, the level of production may be reduced in the area where growers try to bargain and increased in other areas. If these kinds of alternatives are used, it is still more difficult to determine whether the bargaining association had offered more attractive terms. Again, even if the association had offered better terms, the firm could argue that it could not have or did not foresee that a better alternative was foregone. In short, a well-acted-out refusal to bargain in good faith is a very

low-risk kind of strategy.

If the practice of good faith bargaining is to become an institution, it must be built upon one of the following: 1) a stable, vital association of growers which assures the buyers of a reliable supply of the product at relatively stable, competitive prices, 2) control of a significant share of available sources of raw product supply, 3) an imposed third-party decision regarding terms of trade, or 4) some combination of the above.

While specific measures of good faith may be developed and instituted, there appear to be many criticisms of the concept in terms of workability. Virtually all association managers interviewed for this research viewed the concept with some cynicism. None offered proposals for specific measures of good faith.

Problems faced by associations which encounter difficulty in securing recognition by handlers are the object of another type of unfair practice provision. These provisions prohibit dealing with a member of an association as an individual and/or negotiating with third parties while negotiating with an "accredited" or "certified" association. These are separate provisions of existing state laws discussed in Chapter III. The intent of the unfair practice provisions are dealt with here because they relate directly to the "good faith" provision.

The thrust of the first provision is to shift part of the burden for keeping association members from dealing outside of their association over to the handler. The handler would be penalized. As some laws are written, there is a good faith provision, but no penalty to handlers who deal directly with association members in an attempt

to make them break their membership agreement. Thus, during the 1976 pea bargaining season in Minnesota, fieldmen went directly to growers with contracts and promised them that, if they signed, they would be assured of the same terms as those secured by the association.¹²¹

The effect of this strategy enabled Green Giant to secure 96 percent of its packing needs and leave the association with nothing to bargain for. As growers saw this happening all around them, they had few incentives to honor their membership agreements. If such a provision had been enforced, it clearly would have given the association more leverage and reduced alternatives for handlers to a point where they would have had to deal with the association if they wanted to secure their needs in that area. At the same time, the association recognized that they had to keep their demands in line with the many other pea-producing areas of the state.

In agriculture, we have limited experience with this type of provision. One exception is in Colorado where a law prohibits buyers from inducing a member of a marketing association to break his membership agreement. The other exception is in Michigan where a more complex arrangement for representation by accredited associations in in effect.

The other provision that would help to foster good faith is one which prohibits handlers from negotiating with a third party while engaged in negotiations with an association. The aim of such a provision is to focus negotiations on one association representing

¹²¹In two preceding years, growers had observed that nonmember growers did receive the same terms as members. Thus, the fieldmen's offers were credible.

members who are primary suppliers for the market area. It would force handlers to deal in good faith with the major suppliers of raw inputs before seeking out additional supplies.

As suggested above, critical issues raised by this kind of provision are: what association will represent which growers under which set of criteria. If handlers are expected not to negotiate with third parties while negotiating with the association, that association would be representing the interests of (effectively bargain prices for) many growers. Accordingly, we would expect it to have the endorsement of most of those growers. If we expect handlers to bargain with one association before dealing with third parties, the association would have to represent all or most of the quantity needed by the handlers.

The following proposals are based upon the preceding discussion and thought to be workable means of increasing the probability that accredited associations and handlers will bargain with one another in good faith. They do not guarantee that good faith bargaining will occur nor will they provide a means of measuring intent. They simply make it more difficult to exercise a desire to bargain in bad faith.

The first proposal is to maintain requirements that growers and handlers bargain in good faith. In spite of the difficulties encountered in attempts to assess intent to bargain in good faith, such a provision does provide a deterrent to those who would blatantly refuse to recognize an accredited association.

Second, bargaining laws would be more effective in achieving good faith bargaining relationships if handlers were prohibited from dealing with members of accredited associations other than through the

association. In the absence of an accreditation procedure and associated good faith requirement, a prohibition against inducing a grower to break a marketing agreement would provide a next best alternative.

Third, before associations or handlers are allowed to break off negotiations with one another, each could be required to file an offer with the administrative authority for the law. Such an offer could be used as evidence by either party if it wished to charge the other with failure to bargain in good faith. This may provide parties with an incentive to make their offers look reasonable and would, in effect, force recognition of an association.

Fourth, handlers could be prohibited from dealing with third parties while negotiating with an accredited association. This would, without drawing upon the more aggressive provisions of the agency shop approach, achieve some of the same effects. It would reduce the number of immediate alternatives open to handlers, thereby creating an incentive to deal with the accredited association seriously.

Provisions for Mediation

Once the law, as a manifestation of public choice, commits itself to an accreditation procedure and requirements for good faith bargaining, it could be argued that it commits itself to assisting associations and handlers in their efforts to arrive at workable settlements. First, to do so would be consistent with a public intent to foster collective bargaining as a mechanism for what is thought to be better vertical coordination. Second, negotiators dealing in perfectly good faith may, for very good reasons, have

difficulty finding a solution which a third party may be able to suggest. (The problem handlers face in staying competitive on input costs is a case in point and is discussed in this section.)

Two kinds of mediation provisions appear in existing and proposed laws. The most simple is a provision to make mediation available to accredited associations and the handlers with which they are dealing if either party to bargaining requests mediation through the implementing authority.

The second mediation provision (proposed in the Ohio Bill) would make mediation compulsory for the parties before either is permitted to abandon negotiations for the marketing year in question.

There are three reasons for which mediation provisions are included in bargaining legislation. Of course, all three of these aim toward an amicable, voluntary settlement on the part of the disputing parties.

The first reason is to put a third party in a position to try to identify potential areas of compromise. It assumes that, through a combination of ability to suggest compromises previously not considered, reduce tensions, and provide moral suasion, the third party can bring the parties together.

The second reason is that, by bringing a third party in, bargainers making outlandish demands may feel some pressure to compromise. One party may bring a third party into the discussion because it feels that its adversary is being unreasonable.

The third reason for mediation is related to the first, but has a unique character. One of the greatest fears of collective bargaining expressed by handlers is that, through the process, they

will get locked into agreements that leave them at a disadvantage relative to their competition. For this reason, they may try especially hard to secure low terms of trade and hold off on resolutions.

This is not done out of deviousness or ill-will. It is done with the very understandable desire to avoid putting one's self into an uncompetitive position. Handlers cannot act together without violating the antitrust laws. The service a mediator could perform under such circumstances is to sell solutions which would guarantee that handlers would not be put at such a disadvantage. If mediation were used in this way, solutions might be sooner in coming.

Mediation has been used only rarely in bargaining disputes between producers and first handlers of agricultural commodities, even though some laws make explicit provision for mediation. In one recent (February, 1976) example, the office of the Commissioner of Agriculture of Minnesota played a mediator's role in a dispute between the Southern Minnesota Cannery Growers' Association and the Green Giant Corporation of LeSeuer, Minnesota. The dispute was not (as indicated earlier) resolved through this means. The decision to use the services of the Commissioner's office was not the result of a request for mediation, but rather a step in the procedure prescribed by the Minnesota Agricultural Marketing and Bargaining Act. The Act says in part that, if an association and the firm with which it is accredited to bargain cannot reach an agreement by a specified date, the Commissioner, at the request of the association may "assume supervision over the dispute" or, depending upon the time of receipt, "exercise his discretionary authority." (According to non-existent promulgated rules). . . (determine) . . . which disputes are arbitrable."

The only formal request for mediation under the Michigan Act was acted upon in September of 1975 and involved the apple bargaining association and the Eau Clair Packing Company in negotiations over the price of juice apples. Mr. Tom Moore, the Administrator of the Michigan Agricultural Marketing and Bargaining Board served as the mediator. The Board had urged that the Administrator serve as mediator when possible because mediation is provided at state expense, and the Administrator is already on the payroll. In the juice case, the mediation was effective in facilitating an agreement.¹²²

The role of the Administrator during informal mediations has been more extensive. He acted as a "go-between" for the associations and processors in apples, asparagus, and kraut cabbage. This role has evolved in situations where negotiating parties have approached the point of going to arbitration over terms and either have not had offers or have needed assistance in determining "final" offers which would be comparable to those made by their competitors. More than 20 contacts with individual processing firms, as well as contacts with the association, were made in order to assure buyers that their offers would be very similar or equal to those of their competitors. These contacts were effective and important means in facilitating settlements, even though they were not conducted under any formal provision of the law.

Nothing in this research uncovered use of any other formal mediation processes. Thus, relatively few association managers have had exposure to the process.

¹²²Tom Moore, Administrator, Michigan Agricultural Marketing and Bargaining Board, personal interview, July, 1976.

This may explain the general skepticism about the value of a mediation provision. A typical reaction to the concept of mediation is that "it's a waste of time and money."¹²³ The reasoning behind this charge and others similar to it is that the parties involved know more about the alternatives than could any disinterested third party. Furthermore, some argue, the mediator usually would be ignored unless he had some "teeth"--that is, unless he has some authority to resolve the dispute.¹²⁴ This, of course, changes the meaning of mediator to something more akin to an arbitrator.

One manager suggested that such a mediator--one who is alternately a potential arbitrator--may have a very positive impact upon negotiations if the parties know from the outset that, in a sense, they would have to "sell" their positions to him. A very important additional benefit, according to the individual suggesting this proposal, would be that the mediator, in the process of observing arguments, could learn enough about the issues in dispute to make a reasonably intelligent decision as an arbitrator as to which of two final offers is most reasonable.¹²⁵

This suggestion really combines two quite different roles of mediator and arbitrator. The first is to actively provide information on alternatives and possibly reduce the tension in a head-to-head confrontation and the second is to have parties sell him on their

¹²³ Confidential personal interview, bargaining association manager.

¹²⁴ Ibid.

¹²⁵ Gary Van Dyke, Northwest Washington Farm Crops Association, personal interview, Mt. Vernon, Washington, March 29, 1976.

positions. It is impossible to play both roles at once. What is suggested here is really not mediation, but a different approach to arbitration. As such, it may have merit. As mediation, the author would question it.

Again, the absence of extensive experience with mediation may well explain the cynicism with which it is viewed. In addition, the fact that mediation has not been widely thought of as a potential tool for overcoming the problem of keeping competitors' costs in line with one another may explain why it has not been more actively explored. Further still, the concept of bargaining as a zero-sum game mainly affecting growers and handlers may explain why legislators have not actively advocated the use of mediation to improve vertical coordination.

The fact that mediation has led to the resolution of disputes, both in one-to-one confrontations and in cases where handlers were worried about being locked into noncompetitive prices, suggests that mediation may not be a "waste of time and money." Further, there are capable third parties in the major food production states who know the food industry. These people can be and have been drawn upon to help resolve disputes. The Administrator used in Michigan is a man of extensive experience in fruit and vegetable marketing. There are other such individuals to draw upon. Further still, even if there were a lack of knowledge of all details on the part of the mediator, he is not, by definition, in a position to impose a solution on anyone.

In a larger sense, there is an argument for designing a law which requires mediation. One argument for the enactment of bargaining laws, certification of associations, etc., is that

properly designed collective bargaining laws will lead to improved vertical coordination. Once the state has permitted such associations to be created, it may be argued that the same state has a right to enact measures believed to enhance their performance as institutions to facilitate exchange.

The brief experience in mediation and the need to find means of allaying the understandable concerns of handlers about prices paid by their competition argue for consideration of two alternative measures to use mediation provisions in collective bargaining legislation. The first provision is simply to make mediation services available at state expense as soon as an accredited association or handler dealing with that association requests those services. Along with such a provision, it could be required that the state actively encourage the use of such services where there are apparent roadblocks to the resolution of disputes.

The second provision is to require that mediation services be accepted before parties are permitted to break off negotiations. Such a provision would aim to insure that all alternatives are explored, that participants "test" their arguments on third parties, that the problem of uniform handler offers is not an obstacle and would, in general, bring more market information to bear on negotiated decisions.

Another use of the mediator that may be considered is to permit him, as a fact finder, to publicize his findings as a means of bringing public pressure to bear on the negotiation process. Such pressure may discourage parties from taking "outrageous" positions.

An Exclusive Agent for the Bargaining Unit

One of the most controversial provisions in the bargaining legislation reviewed in Chapter III appears in the Michigan law, which obliges all members of the bargaining unit to market only on terms bargained for by the exclusive agent and to pay marketing fees to that exclusive agent for its bargaining services. This does not mean that all members of the bargaining unit become members of the association. They may join the association and they may serve on marketing committees, but are compelled to do neither.

The objective of such a provision is to overcome the free-rider problem discussed earlier. In discussing different types of check-off provisions, it was pointed out that nonmembers of bargaining associations virtually always secure terms at least as good as those bargained by the association. They benefit from the association's efforts. This was used as an argument to justify the requirement that all members of a bargaining unit pay marketing fees to the exclusive agent.

It has also been observed that the efforts of handlers to directly secure contracts with producers who are members or nonmembers of the association may undermine or weaken the position of the association. One proposal to partially deal with this problem was to prohibit handlers from negotiating directly with member producers. A second proposal was to require that handlers not negotiate with "third parties" while negotiating with an accredited association.

The exclusive bargaining agent proposal would incorporate both of these ideas. Handlers would be prohibited from dealing with any member of the bargaining unit, except through the exclusive

agent. This may be stated as an unfair practice. It broadens the group for which the association is an exclusive agent to include those who would otherwise be "third parties." At the same time, the provision would require that the members of the bargaining unit market only on terms bargained by the exclusive agent.

This provision would, in addition to keeping nonmembers from benefiting from the work of the association without paying marketing fees, keep them from undermining the bargaining work of the association by providing another alternative to handlers. It, therefore, deals with the free-rider problem in two dimensions; one is financial and the other is that of the independent growers' freedom to take advantage of the handlers' desire to ignore the association.

The only experience with this kind of rule has been in Michigan where five exclusive bargaining agents have been accredited to represent entire bargaining units on these terms. There is no doubt that, if enforced, such a rule would strengthen the negotiating position of the bargaining association by reducing alternatives to handlers.

Given this, there are three key questions relative to the public decisions on whether or not to use such a rule. These are: 1) What values are at stake? 2) What have been the effects of the absence of such a rule? 3) What is the effect of a public policy designed to foster collective bargaining as a means of vertical coordination in agriculture? The first two questions are discussed here. The final question is the subject of Chapter V.

Two values are at stake when the question of whether to adopt the rule is considered. On one hand, it is clear that the individual grower, who had the freedom to negotiate terms as he wished, loses alternatives. A third party (presumably representing his interests) has been granted the right to determine the conditions upon which he will sell his own property. Understandably, the concept is repulsive to many who highly value the concept of individual freedom in the marketplace.

On the other hand, it is argued, when growers join together to bargain collectively with handlers, they improve the bargaining position of individual growers by reducing the number of alternatives open to their handlers. Such growers benefit from the efforts of the group and make no effort to assist. In fact, they detract from the group effort. Those nonmember growers act individually, not just because they valued their independence, but because they get a free-ride by so doing. The frequent observation by bargaining association managers that nonmembers often call to ask "How's the bargaining going?" appears to attest to this phenomenon. It is equally understandable that the concept of the free ride is repulsive to those who act together and, by so doing, produce benefits for those who do not contribute.

The point is that neither position can be easily argued for in terms of a common value. There is a trade off between individual freedom and equity. One value will be served at the expense of the other.

It is clearly difficult to determine whether a provision to deal with the free-rider problem would have prevented associations

from failing. A primary reason for the difficulty is that of identifying those associations which have "failed." As mentioned earlier, there is no evidence collected for this research that indicates that associations have failed because growers simply found that they could benefit without paying fees, thereby leading to the disintegration of an association. This does not mean that such events have not taken place. Furthermore, there is extensive evidence that the free-rider exists and that he offends the sense of equity of members who feel that they carry his load. The point is that those associations consulted, by providing exclusive goods and services other than the bargaining service, have managed to maintain and generally increase their memberships.

There is evidence that associations have failed or been immeasurably weakened by the efforts of handlers to "go around" the association in order to deal directly with members or to deal with third parties in the same market. The free-rider problem implied here leads to a weakening of the association, not through a lack of financial support, but through a loss of the member growers' market.

The 1976 experience of the Southern Minnesota Cannery Growers is one example of the practice. It may well be argued that this problem could be overcome by simply requiring that handlers not deal with members except through their exclusive agent. But the principle involved is the same.

A better illustration of the problem is that encountered by the officers of a defunct association that bargained briefly for annual crops in California. These confidential sources gave the

author accounts of how the association, after bargaining collectively for two years with a national processor, was undermined by the decision of that processor to finance new farming operations for Mexican-American growers who had been landless. The firm set itself up with a new set of suppliers. Those growers would understandably be hesitant to organize for purposes of dealing with their financiers. Meanwhile, the association is defunct and many of its growers have not since contracted the same crop with the firm involved.

Under the Michigan law, such new growers would have been members of the bargaining unit and would have been represented by the accredited association. This is because of the way the bargaining unit is defined. Assuming that the association still had more than half of the unit's production, the firm would still have had to deal with the association. The strategy would have been ineffective.

Individuals contacted throughout this research have mentioned other associations alleged to have failed as a result of the free-rider problem. Most of these references have not been pursued, however. Most of the research was oriented toward existing associations.

Nevertheless, there is evidence that the use of the rule under discussion may have permitted some bargaining associations to survive. Further, it appears, from a purely deductive point of view, that the rule would, by reducing alternatives to handlers, strengthen the chances for survival of bargaining associations and increase the likelihood that growers would try to organize.

The public choice with respect to this rule therefore rests on political preferences with respect to freedom versus equity and the question of whether the other benefits of collective bargaining, as a

means of coordinating economic activity between producers and processors, outweigh its other costs.

The broad public choices involved in consideration of a provision which employs an agency shop concept for collective bargaining in agriculture are outlined above. Some specific provisions that may accompany such a provision are listed below.

1. The law would do nothing to affect individual freedom of choice to enter the bargaining unit. If terms in the bargained commodity appear favorable, thereby creating incentives for new growers to enter into or expand production, they would be permitted to do so and would, upon meeting requirements for membership in the bargaining unit, be counted as members thereof. The only delay in becoming a member of the bargaining unit would result from the requirement that to be counted as a member of that unit, whether as a member or a nonmember, the grower would have to become a "producer of record."

It is important to note that there is no apparent reason to believe that the grower who is not a member of the unit would be disadvantaged in any way. Members of the House Agriculture Committee, during hearings on an amendment to extend P.A. 344, expressed concern about what happens to nonmembers of the bargaining unit who by reason of low production levels are left out. The evidence is that they are hurt in no way. In fact, they are expected to receive the same terms of

trade as do members of the unit. Furthermore, they do so without paying marketing fees.

2. The law would prohibit any discriminatory activity by the accredited association with respect to the non-associated bargaining unit members they represent.
3. The law would make it clear that members of the bargaining unit, whether members of the association or not, are free to enter their names as candidates for membership on the bargaining committee. Since the committee bargains on behalf of all unit members, the concept of equity would require this role as a minimum or perhaps state that the bargaining committee shall be composed of a number of association members and nonmembers commensurate with the proportions of membership in the preceding marketing period.¹²⁶

The benefits and costs of collective bargaining proposals are discussed broadly in Chapter V. A specific cost, that of difficulty in resolving disputes, is considered below, where rules for arbitration are discussed. It is mentioned here because many would argue that public action to vest an association with the power to bargain on behalf of nonmembers carries with it a responsibility to take actions which facilitate the resolution of disputes between the association and those who deal with it.

¹²⁶ It may be necessary to distinguish members from nonmembers if the association performs nonbargaining services. In such cases, members may be required to pay a membership fee, while nonmembers would pay only a marketing fee. If the association exists only to bargain, there would be no distinction between members and nonmembers.

Provisions for Arbitration

Again, Michigan has the only law providing for compulsory, binding arbitration. In brief, it provides that associations and handlers, which by the beginning of the marketing period have neither "opted out" of negotiations nor arrived at an agreement, will submit their final offers for binding, last offer arbitration to a Joint Settlement Committee. Clearly, some terms require definition. "Marketing period" is defined in rules promulgated by the bargaining board under separate provisions of the Act. In general, the marketing period begins at the earliest date when growers of annuals would begin to contract or at the earliest date when producers of perennials would begin to harvest and sell their crop.

There is a provision by which growers may "opt out" of negotiations as long as they do so by thirty days before the beginning of the marketing period. This means that growers elect not to grow and handlers elect not to buy in the unit for the marketing year. (As we shall see, there are real difficulties with the interpretation of this provision.)

The "final offer" is an important concept in this law in that arbitrator(s) may only select from the final offer of each party in making his (their) decision. (The final offer is not clearly defined in the Michigan law because the point in time at which the offer is the last and final is not specified.)

The Joint Settlement Committee is made up of one representative selected by the handler, one selected by the association, and a third individual who is the chairperson. He is to be selected by the other two members or, if there is no agreement, from a list of five persons

identified by the board and "knowledgeable in agriculture" from which each party can strike two names. The remaining party is the chairperson.

Although no other laws require arbitration, arbitration is a provision in most West Coast contracts between association and handler.

The arbitration provisions which appear in contracts differ from that in the Michigan law in that they do not include the last offer provision, they do not include provisions for opting out, and they either specify a chairman for the arbitration panel or a person who will select one.

The basic objective of arbitration is widely understood. It is to provide a means of resolving disputes between bargaining parties so as to maintain the flow of resources through normal channels. As with other rules discussed in this report, there are different ways to provide for arbitration. These differences may lead to different kinds of performance with respect to that basic objective.

In the Michigan law, the provision that parties to bargaining can opt out of negotiations is intended to provide a "safety valve" for parties which, based upon negotiations to date, do not believe they can reach a mutually acceptable agreement with their adversary. Since quantity is not a term negotiated for, a party could "opt out" by going through negotiations and not buying or contracting any of the crop. The provision would appear to have meaning only if quantity is involved in negotiations.

The provision that arbitration will be over final offers is intended to give each party an incentive to make its final offer more reasonable. This contrasts with a provision by which the

arbitrator can go "in between." Under such a provision, parties may intentionally make unreasonable offers to change the arbitrator's conception of a reasonable settlement. In any event, the incentives placed upon bargainers differ between proposals.

Provisions for selecting the arbitrator differ as well. There are three basic approaches in use. In the Michigan law, two partisan members of a Joint Settlement Committee have the opportunity to select the chairperson or key arbitrator. Since the obligation to arbitrate under certain circumstances is imposed by law and not, as in other cases, agreed upon by contract, there is a need to provide a mechanism for resolving disputes with respect to who the arbitrator will be. As mentioned before, the bargaining board provides five alternatives from which the parties select their preference.

In contracts which provide for arbitration, the arbitrator or his method of selection is decided by both parties in signing a contract. The person selected in Washington is the Director of Agriculture. In California, contracts specify that the arbitrator is to be chosen by a Superior Court Judge.

There is considerable variation in the extent to which arbitration provisions have been used in the states having laws or contracts involving arbitration. On the basis of information secured through this research, arbitration has been used only twice in California. In both cases, the Prune Bargaining Association was involved. The arbitrations took place in 1969 and 1970. Arbitrators used were people from the community who knew the industry. (The Prune Association's contract relies on two partisan representatives to agree on an arbitrator. In this sense, it differs from other California contracts.)

The growers were favored in both decisions. In the second case, processors refused at first to make payments. A threatened civil suit brought payment "with some modifications" in the original settlement.

In general, the use of arbitration provisions in California contracts has been rare. Frequently, managers indicated that "it would take extreme circumstances" to force an arbitration. The explanation for this relative lack of use may lie in the relatively stable nature of the relationships between growers and handlers of California perennials. Or, the functional relationship between agreements and arbitrations may be just the reverse. Bargainers' fears of arbitration may explain in part what appear to be a generally stable set of grower-handler relationships. Much uncertainty is associated with the outcome of arbitrations. To firms and associations which appear to value stability, partial control of terms, which can only be maintained through participation in negotiations, may provide a more attractive alternative than does the risk associated with arbitration.

The use of arbitration provisions has been more common in the State of Washington. To facilitate the use of multi-year contracts in peas and asparagus, arbitration has been initiated three times for two different associations in peas and three times in nine years for the Washington Asparagus Growers' Association. Stewart Bledsoe, the Director of Agriculture, with assistance from Al Harrington, Agricultural Economist from Washington State University, has been the arbitrator in these recent cases. One was for asparagus in 1976 (It affected only those firms not reaching prior agreements.), and the others were for peas (Western Washington Farm Crops Association)

in 1975 and 1976.¹²⁷ A three-member panel from the American Arbitration Association was used in 1975 by the Oregon-Washington Pea Growers.¹²⁸

One arbitration involving the Western Washington Farm Crops Association was resolved on terms which favored the processors. In the other three recent arbitrations, grower positions were favored.

The pea contracts involving arbitration were term contracts which required arbitration as a means of resolving impasses in the second and third years of use. In one of these cases (a two-year contract), pressure for an arbitration provision stemmed from the need for growers to reserve acreage in the fall for peas to be planted in the spring. The acreage was first committed, and then negotiations would take place through fall and spring. In this respect, eastern Washington peas differ from other annual crops.

In the other case, the association had a three-year contract. After settling both of these contracts for the first year, the arbitration provision was drawn upon in each succeeding year. Western peas had to be arbitrated twice and eastern peas once. In general, the handlers were so upset about arbitration outcomes that the provision is not expected to be used again in the near future. One manager predicted that the association would "get the arbitration provision back" when the handlers are "in a bind" again. Apparently, the pea

¹²⁷ Stewart Bledsoe, Director of Agriculture, State of Washington, telephone conversation, June, 1976.

¹²⁸ Tom Copeland and Dennis Rea, Oregon-Washington Pea Growers, personal interview, March 25, 1976.

growers' bargaining position is not so strong that they can say (as did the prune growers) that the arbitration provision is just "not negotiable."

The fact that arbitration was used in all possible cases by the pea growers and handlers raised an important question. Why could an agreement not be reached? One manager said that the parties just did not negotiate. Grower bids went high and handler bids went low. They assumed that arbitration was there to resolve the dispute. Bids by both sides were out of line as part of an appeal to the arbitrator.

The Director of Agriculture has attempted to get parties to use a last offer arbitration provision such as that in the Michigan law to resolve this problem. By requiring that the arbitrator choose the "most reasonable" of the last two offers, a contract is expected to encourage negotiators to make their offers "reasonable" and hopefully bring them together without arbitration.

An added benefit of this kind of provision was suggested by Ralph Bunje and others. They suggest that if a bargaining committee member has taken a strong position during negotiations and doesn't wish to concede a point for fear of "losing face," it is easier to help him save face by arguing that he can benefit the whole association by "giving in" and making the association's offer "most reasonable."

The participants have resisted this approach largely because they are unfamiliar with it. To growers, there appears to be less uncertainty with the arbitration provision which has been used in the past. This preference may reflect more of the negotiators' faith in an individual arbitrator than in the method of arbitration.

Another possible explanation of frequent resort to arbitration could be the problem of keeping prices paid by competing handlers in line with one another. As indicated earlier, this appears to be a major fear on the part of handlers. If, through negotiations, handlers may get locked into higher prices than do their competitors, they have an incentive to keep their offers low--lower perhaps than they would if they knew other handlers would pay the same prices. Washington State Director of Agriculture, Stewart Bledsoe, expressed concern over this problem, suggesting that it is an obstacle to the smooth resolution of disputes without arbitration.¹²⁹

Two Oregon association managers had arbitration provisions in contracts. The Filbert Growers is only four years old and has never had to use its arbitration provision. Its Secretary-Manager, Mr. Don Maltby, indicated that he did not expect it to be used.¹³⁰

Another manager, Fritz P. Collett, indicated that his association and handlers had, at one time, used arbitration. During an interview, he suggested that the process was inherently biased toward growers because of the appeal of grower arguments about the cost of production.¹³¹ More study is needed to determine whether this is the case. If it is, however, it suggests that the arbitration process mainly considers the factors going into the supply side of price determination. It may not put as much weight on demand side factors

¹²⁹ Stewart Bledsoe, telephone interview, July, 1976.

¹³⁰ Don Maltby, Filbert Growers' Association, personal interview, Canby, Oregon, March 30, 1976.

¹³¹ Fritz P. Collette, Oregon-Washington Growers, personal interview, Salem, Oregon, March 31, 1976.

as would be required to maintain stability and longer-term market equilibrium.

Michigan's bargaining associations and handlers have undergone several arbitrations since the passage and use of P.A. 344. Apple, asparagus, and kraut cabbage associations have all participated in final offer arbitrations. In 1975, the apple association was engaged in 10 separate arbitrations with ten processors. Some of the events which transpired prior to and during that set of arbitrations point out key problems with the application of the arbitration provision.

First, some of the processors had opted out of negotiations early in bargaining. Since quantity to be purchased was not an issue in negotiations, the meaning of their decision to "opt out" is not clear. They could have gone through negotiations and then elected not to buy any apples.

Second, processors having "opted out" later chose to enter negotiations again. This created confusion because there was nothing in the law that said they could not opt back in and there was no procedure for how they would go about it. They were permitted to take up negotiations again.

Third, for a law that was designed to encourage bargainers to complete negotiations without arbitration, this kind of performance fell short. In general, growers and handlers were more than a dollar per hundredweight apart when the marketing period began. Both sides in the dispute felt that they stood to sustain damaging losses if the other party's offer was accepted.

Fourth, in the midst of one arbitration, the chairman of the arbitration panel, Ronald Haughton of the American Arbitration Association, observed that at no point did the law clearly define a "final offer."¹³² Upon checking with the Michigan Office of Attorney General, Tom Moore, Administrator of the Bargaining Board reported that, in the judgment of the Attorney General's Office, the law was silent on the definition of a final offer. Technically, therefore, the offers made by the beginning of the marketing period were not final, as it had been widely assumed they were. Since both sides still had options to make new offers, Moore then acted as an informal mediator and, with cooperation from producers and handlers, managed to arrange settlements between the association and the ten handlers.

To date, no formal action has been taken to clearly define the final offer. In practice, the Board has received statements from bargaining parties which indicated what final offers were.

Going beyond specific arbitration provisions, whether included as part of law or as part of contracts, views on the subject of arbitration are mixed. Some say that the ideal arbitrator--one who is unbiased and knows the industry--cannot be found. They argue that anyone who knows the industry is likely to be biased. To be sure, the identification of arbitrators acceptable to all parties is bound to be difficult in most cases. Substantial sums of money may be involved for both parties. Further, as arbitrators make decisions, their reputations are likely to suggest a bias consistent with the

¹³²Ronald Haughton, arbitration proceedings, Holiday Inn, Battle Creek, Michigan, October, 1975.

direction of their past decisions. The charge of bias may not be justified, but a negotiating party who has lost a decision to a particular arbitrator may not be inclined to endorse him again. Nevertheless, difficulty in finding an "ideal" arbitrator is not an argument for not using arbitration provisions if the parties involved or the public choice process conclude that the consequences of a bargaining impasse are serious enough. Circumstances may simply compel an arbitrated solution as a course of last resort for some markets.

The experience of bargaining associations and handlers with arbitration, along with the insights of those involved, suggests that there is room for improvement in the arbitration provisions used, whether as a part of law or as part of a contract. Below is listed a series of recommendations which would make arbitration provisions more workable. As argued above, such provisions appear to be very important additions to any laws which require nonmember growers to deal only on terms bargained by an exclusive bargaining agent.

All of the below argue for the use of final offer arbitration provision: the experience in Washington pea bargaining where growers and handlers appeared to assume an arbitrated settlement; the arguments of association managers that a final offer would facilitate compromise on the grower side; the desire of one West Coast association (Freestone Peaches) to put a final offer arbitration provision in its contracts; the successful use of the provision in some commodities in Michigan; and the fact that the procedure does put an incentive on each party to make its offer the most reasonable. Some specific modifications in the provision as used in Michigan may make the rule foster fewer arbitrations and more negotiated solutions.

First, the "final offer" must be clearly defined. A date for making a final offer (beginning of the marketing period) must be specified. This could eliminate the present potential for gamesmanship which exists because neither party is technically bound to make a final offer by any particular date.

At the same time, a rigid date for the "final offer" may create difficulties when, for example, a crop is "late" in maturing or when weather patterns mandate later planting dates. Under such circumstances, a rigidly specified cut-off date for final offers may prevent negotiating parties from making their offers on the basis of an adequate supply of information. For this reason, it may be desirable to provide the board or its administrator with an option to extend the date for receiving final offers.

Second, the opt out provision should be changed to apply only when quantity to be bargained is under negotiation. As used to date, the provision makes little sense. It is not clear what parties have opted out of since, as mentioned above, they could go through negotiations and then elect to buy nothing. Given this observation, neither is it clear why parties have opted out in the past. Without passing judgment it may be argued that gamesmanship is a motive. The uses of the provision could be to intimidate the opposition, to embellish the case presented to the arbitrator, or others.

Third, the meaning of opting out and conditions under which a party could opt back in should be clearly specified. An opt out would mean that the party opting out could (as a handler) buy no quantity from the bargaining unit during that marketing period. The association which opts out would have the same obligation.

A party electing out should not be able to use that action as a tool to get its opponent to "back off" on demands. Thus, if the party opts back in, it should be only on the last terms offered by its opponent. This offer would be recorded as the party opts out.

Fourth, some broad guidelines for an arbitration panel's decision should be established as they are in Section 20 of the Michigan law. These would not guarantee that an arbitrator would not be biased toward arguments on production cost, as Fritz Collette suggests they are, but they would clearly justify the consideration of other factors in reaching a decision.

Finally, the arbitration process could be shortened. If neither party exercises the option to elect out, it will proceed with the bargaining process until the settlement deadline. By fourteen days prior to the deadline, each party will have notified the authority of its representative in arbitration. By seven days from the settlement deadline, those parties will have notified the authority of the selection of an arbitrator. If arbitration becomes necessary, parties will file written, final, unretractable offers at the settlement deadline. Arbitration will commence immediately and be based upon no more than three days of public hearings, after which the arbitrator will announce a decision to accept one offer or the other.

This design is based upon a desire to avoid arbitration but, where arbitration becomes necessary, to make it swift enough to avoid any disruptions in the physical marketing or planting process.

Exclusions from the Provisions of Bargaining Laws

The Michigan Act exempts two kinds of production from certain of its provisions. Quantities produced by proprietary handlers for their own use are exempted from provisions of the Act. Also, the Act states in Section 7A that the "quantity . . . contracted by producers with producer owned and controlled processing cooperatives . . ." may be excluded from the base quantity used to determine whether the bargaining association has contracts with 50 percent of the growers representing 50 percent of the quantity produced in the bargaining unit.

The later provision has been widely interpreted as meaning:

1) that processing cooperatives are excluded from provisions of the law and that 2) processing cooperative members are exempt from paying marketing fees. The law says nothing of the sort. A strict reading of the law indicates that processing cooperative members are to be treated as any other growers. Further, there is nothing in the law, as written, that would indicate that the processing cooperative would be expected to relate to the association differently than do proprietary firms.

The aim of the provision is not entirely clear. What is clear is the fact that it has raised very controversial issues regarding equity for members of bargaining associations, cooperatives, and proprietary firms. These issues will be discussed and analyzed below since there is an apparent need to find a workable rule with respect to how the bargaining law would affect all growers and handlers.

Processing cooperatives argue that they should not have to bargain with their own members. If they were forced to pay the

same initial prices as do proprietary firms, their entire financial structure would be upset. They typically pay about 60 percent of the commercial market value of the crop to their members and use the remainder of the market value of the crop as a source of "inventory financing" for packing the crop. Growers are later paid a supplemental amount based on the earnings of the cooperative. Under this mode of operation, member growers share the risk of packing and marketing the crop. If the cooperative were forced to pay a commercial market value for the crop, new sources of working capital would be needed. These would likely come from increased grower investments for working capital, increased pressure on cooperative banks, or a combination thereof. It is argued that the current method of finance is more workable because of the seasonal nature of the financing requirement and because it requires a lower permanent commitment of working capital by growers. For this reason, any provision requiring cooperatives to pay commercial values to members could expect strong resistance (See Appendix H).

Members of processing cooperatives also resist the idea that they should pay marketing fees. "Why," they ask, "should a processing cooperative deduct marketing fees from its own members for payment to a bargaining association?" Processing cooperative members have already used their own initiative and capital to find a means of marketing the commodity through their own cooperative processing and marketing business. And now a bargaining association, because it is accredited under a state law can charge for services that accrue exclusively to those outside the processing cooperative. The activity of the bargaining association has nothing to do with the

processing cooperative, and the processing cooperative should be excluded from the provisions of bargaining legislation.

There are two possible reasons for questioning the fundamental assumption of those defending processing cooperative exclusion--that its members do not benefit from the efforts of the bargaining cooperative. The first is that initial payments to the grower are, in general, some relatively constant fraction of the commodity's CMV (commercial market value) which is, of course, determined in large part by the bargaining association. The effect of such first payment policies in tandem with the efforts of bargaining associations is to put a "floor" under the final product price of processors, thereby increasing average expected returns to growers. In such a case, processing cooperative members would benefit from the work of the association.

A second means by which processing cooperative members benefit from bargaining is through the disciplines imposed by the bargaining association upon their cooperative management. The greater the absolute spread between bargained prices and initial payments, the more growers will be inclined to scrutinize their dividends and compare them to the higher payments received by noncooperative members. Then, they would be more likely to discount their dividends. As growers do this, managers can be expected to feel more pressure to perform than they would otherwise. Their members are considering an alternative form of marketing which threatens their jobs.

Again, processing cooperative members benefit from the efforts of bargaining associations. (It is also important to note

that the processing cooperative, which "insures" a home for the growers product, also imposes discipline on the bargaining association.)

If such arguments are well-founded, there is a basis for including processing cooperative members as growers and charging them marketing fees.

There is, in fact, precedent for such action on a voluntary basis. Many of the California bargaining associations (see Chapter II) have substantial joint memberships with processing cooperatives. In most cases, the joint members sell all of their product through the processing cooperative. Such people, according to association managers, have paid bargaining association marketing fees from the beginning because they "recognize the value of having a strong commodity association when they are in a single pool cooperative."¹³³

It is interesting to note that a major processing cooperative (California Cannery and Growers) was organized by four commodity associations. Those associations required, for a time, that new members of the processing cooperative also be members of their commodity associations.

Proprietary firms enter the dispute when they charge that any law exempting processing cooperative members from payment of marketing fees would put proprietary firms at a still greater competitive disadvantage with respect to cooperatives. In addition to existing tax advantages and sub-market interest rates enjoyed by processing cooperatives, those cooperatives would not have the added marketing costs which are paid by nonprocessing cooperative

¹³³ Robert Holt, California Tomato Growers, personal interview, Stockton, California, April 7, 1976.

members and, theory would suggest, included in the cost of their raw product purchases. Assuming production costs constant between members and nonmembers of processing cooperatives, an ad valorem increase in marketing costs for nonmembers of processing cooperatives would reduce supply and increase unit input costs for proprietary firms.

The following proposal recognizes these arguments and appears to provide a workable alternative to the Michigan law as written. It accepts the arguments of all parties, except for the allegation of processing cooperative members that they do not benefit from the efforts of cooperative bargaining associations. It rejects that claim for the reasons listed.

Under the more workable rule, quantities contracted with processing cooperatives would not be exchanged on terms bargained by the exclusive bargaining agent. Processing cooperatives would be free to pay their members the standard share of a crop's commercial market value for an initial payment. Such cooperatives would continue to pay the bargained terms on quantities not contracted.

The rule would require that processing cooperative members make payments of marketing fees to the accredited association, as do all other growers. The reasons were explained earlier. They benefit from the work of the bargaining association as do independent, nonmembers of the association. Again, the requirement that nonmembers pay is based mainly on grounds of equity. To a lesser degree it is grounded in the concern that the free-rider problem may lead to the degeneration of bargaining cooperative associations. There would exist an incentive for growers to escape the payment of marketing fees through processing cooperative membership. Awareness of this incentive, along with the

desire of proprietary firms to escape the effects of "their" growers paying marketing fees, has prompted concern that cooperatives which are not truly grower owned and controlled may arise to shelter growers from marketing fee charges. This concern explains the significance of the issues addressed in Appendix E.

Administration and Policy in the Implementation of Bargaining Laws

As we move from the provisions of permissive legislation such as the Capper-Volstead Act through the protective provisions of the fair practices legislation to the provisions of the Michigan act which effectively promote collective bargaining activity, the rules which make up those laws become increasingly complex. All of these laws rely on some form of implementation which moves from the passive to the more active. Accordingly, the number of tasks involved in the administration of the laws increase. In addition, the number of rules which require interpretation is increased. Thus, the implementation of the laws acquires a greater element of policy making because of the increase in institutional slack. For example, when there is only a set of unfair practice provisions to enforce, the task is one of receiving, investigating, and acting upon charges of unfair practices, probably through the courts. On the other hand, when the law requires definition of a bargaining unit, decisions will more directly affect the structure of marketing relationships for an industry. While decisions of the first sort may have major impacts upon relationships between growers and handlers, they are based upon fairly well-defined policy guidelines. Their impact is, in general,

marginal. The latter decision is based upon an assessment of marketing patterns, a political mandate to promote collective action where an association appears to have the capacity to represent a large share of growers and, in general, is nonmarginal. The contrast is one of administrative action versus quasi-political action (although administration and policy are rarely easy to separate). The term "quasi-political" is used because the actual political choice is made legislatively, but the opportunity for interpretation of the political choice to foster collective action relies upon an implementing authority to refine the meaning of the choice.

Given the need for some authority to implement all of these laws, a choice must be made with respect to the nature of this authority within this characterization of the nature of decisions to be made. What follows is a description of alternative types of authority upon which a legislature may draw in the enactment of laws.

A broad distinction is to be made between an authority within the Department of Agriculture and a body appointed by the governor or the President to implement the law. The contrast is between the Department, which acts primarily to carry out fairly well-specified functions, and a separate board which is to decide what the law will mean. Again, the distinction is generally, but not exclusively, between an administrative group and a quasi-political one.

There are variations on the kind of authority to be used within these broad categories. Within a department of agriculture, responsibility may be delegated to an existing bureau, a new bureau

may be established to work autonomously, or an administrative office with primary responsibility to an external board may be established.

The nature of the independent board may vary as well. Its composition may be varied to include greater or lesser numbers of growers, handlers, "public" members, Republicans, or Democrats.

The selection of different kinds of authorities from each of these categories has varying implications, as does the use of a department of agriculture versus the independent board. The use of an existing bureau implies that the task of enforcing a law will compete with existing tasks for public resources. Levels of funding may be increased to compensate for this effect, however, and the amount of political interest in performance will determine how actively the bureau pursues its role relative to the bargaining law.

The creation of a new bureau implies a more active role in the implementation of the law. The person in charge can be expected to feel an obligation to demonstrate a relatively constant level of activity to justify his bureau's existence. The creation of such a bureau implies that there is a relatively steady amount of administrative work to be done in implementing the law.

An administrative office with primary responsibility to an external board also suggests that there is a need for constant work to keep up with administrative requirements of the law. It also suggests a need to draw upon nonbureaucratic sources for decisions which have the effect of interpreting policy.

The use of such an office by an independent board implies that many functions for which it is responsible are not policy-oriented and can be carried out by an administrative office.

Another dimension to the selection of a bureaucratic authority is the degree of professional expertise required of the person responsible. Some administrative functions may require technical understanding of affected industries. The administrator would also be expected to provide the board with professional assessments of the consequences of alternative decisions.

The use of an administrator to perform functions delegated formally to a board also implies a need to reduce decision making costs which are higher when a group is involved. The act of bringing a board of several people together to formally make a decision is unnecessary if the board could outline policies which would guide an administrator toward the same kinds of decisions.

Different boards' compositions also have varying implications. The presence of members representing the grower community would, in general, represent grower interests; handler members and "public" members represent handler or broader public sets of interests. As will be argued, there is some question as to whether public or private interests are represented by particular appointees. Further, it is not at all clear what the meaning of a separation of appointees by political party would imply.

In designing a board's composition, these differences must be dealt with. The kind of grower, processor, or public representative must be specified in the context of the board's role. The balance of the board's public and private (grower or handler) members must be established. Analysis and recommendations with respect to board composition are presented below with a review of administrative

and policy demands for alternative laws. The assumption upon which that analysis is based is that the kind of legislation which would require use of a board would be intended to actively foster the use of collective bargaining as an alternative form of vertical coordination where, in the estimation of such a board, there existed an association with the willingness and ability to provide a stable, responsible bargaining service.

Based upon this assessment of the general consequences and implications of selecting alternative forms of implementing authority, the remaining portion of this discussion of administration and policy is devoted to a summary of the demands for implementation and action associated with each kind of rule. The discussion will begin with the most fundamental rules and proceed through the more complex ones.

Administrative and Policy Elements for Implementation of Alternative Bargaining Rules

Permissive Legislation

Under the Capper-Volstead Act, administrative requirements are minimal. Charges of undue price enhancement are rare, and the Office of the Secretary has provided a mechanism for responding to them. This assessment applies only to the collective bargaining issue and ignores the broader issues relative to the role of cooperatives in our food system.

Unfair Practice Provisions

The evidence gathered in this research suggests that, in certain commodities, violations of unfair practice provisions in

federal and state law have been frequent and flagrant. The reasons for these violations appeared to be ignorance on the part of growers with respect to their rights under the law, ignorance with respect to how it is used, and the absence of disincentives for growers or handlers to abstain from violations. The staff needed to make such provisions effective would have regular, well-defined responsibilities to maintain an ongoing educational program for association leaders, members, and handlers in their marketing areas. These would keep parties apprised of their rights, responsibilities, options, and possible penalties under law. A very small professional staff with an education and investigation budget would be adequate. An information specialist and an investigator would be expected to reduce violations considerably.

These observations apply to the set of unfair practices of the type included in the Agricultural Fair Practices Act. If the other fair practice provisions become a part of law, they would accompany more complex legislation. Particularly in the case of requirements for good faith bargaining, the implementing authority would have to acquire a capacity for economic analysis to assess options open to parties charged with failure to bargain in good faith. Such a capacity could be drawn upon on a temporary assignment basis from existing elements of the Department of Agriculture. This would be done at the request of a board and carried on the basis of data which may need to be subpoenaed by the board.

Check-off Provisions

The kind of function required of an authority to implement check-off provisions would be much the same as that required to improve the general fair practice provisions. Authority to subpoena handler records of check-offs may be required in the absence of regular reporting thereof to the association involved.

Certification and More Complex Provisions

The creation of a law which provides for certification of associations was assumed to reflect a public policy which promotes the use of collective bargaining as a means of vertical coordination in specified commodity areas when there exists an association with the willingness and ability to perform a stable, responsible bargaining service to its growers. It is clear that what constitutes "stability and responsibility" is a matter of judgment, even within a broad set of guidelines which serves as a prerequisite to certification. Thus, the body making a decision to certify performs a quasi-political function.

This kind of function has been performed within a department of agriculture under the Minnesota bargaining law. It has also been performed by independent boards as provided by the Maine and Michigan laws.

In general, it would appear that, given the quasi-political nature of the certification process, designers of the law would wish to put decision authority in the hands of an independent board. Although there is no evidence in this research that the Minnesota law, which requires the office of the Commissioner of Agriculture

to certify, disrupted the administrative duties of that office, there may be advantages to using an independent board for the certification process. As administrations change, the composition of the board could change to partially reflect the philosophy of the existing governor or President. Such a design would better reflect the existing balance of political will and would reduce potential political strain on an essential administrative arm of government.

Based on this analysis of the decisions to be made under the provisions of more complex bargaining laws, it appears that an authority external to the administration of a department of agriculture is the more workable alternative. Because there is relatively frequent interpretive work to be done and because that work can be of great consequence to the structure of a commodity subsector, an appointed board may put less strain on the more administrative units of government and, because members are replaced by political appointment, provide flexibility in general policy.

Because so many decisions would have to be made in executing the provisions of the law and in relating to the public it serves, workability requires that the board be empowered both to promulgate rules and to hire a professional administrator. Decision costs rise sharply if a board is required to act upon all of the decisions which must be made when bargaining accreditation and more complex rules are included among the provisions of law. The delegation of authority through the board to an administrator reduces such costs and provides a focal point through which the public can relate to the board.

In deciding upon the composition of the board, it makes sense to consider the objectives of the legislation. Suggested restrictions in existing and proposed laws relate to the number of producers, processors, "public" members, Democrats, and Republicans.

If the aim of the legislation is to foster the development of collective bargaining as a means of achieving equity for producers and processors, stabilizing prices, and improving vertical coordination, it does not make sense to have a board composed of people who perceive the structural changes inherent in the implementation of the law to be in conflict with their interests. Such persons would be expected to disrupt the operation of the board and work against its intended use. As is argued in the last part of the following chapter, in the short-run, collective bargaining has the effect of imposing some non-Pareto better changes upon members of the processing community. In practice it reduces some of the decision control possessed by buyers in the concentrated markets described in Chapter II. For this reason, handlers would not logically be members of the board.

At the same time, there is a danger in a board composed of growers who are zealots with respect to collective bargaining. While growers do not, in general, fall into this category, there should be disciplines on any growers who make up a part of the board. If grower members of a board accept definitions of bargaining units that are unworkable, they may work against the goals of the bargaining law.

As a disciplining force, the board would include a majority of public members who are committed to seeing the law work, but who, at the same time, are conscious of the potential disruptive influences that a poorly implemented law could be expected to create. Public

members would have to be knowledgeable in agricultural marketing and aware of the broad objectives of the legislation.

There is no apparent reason for establishing political party membership requirements or constraints.

There may arise a need to deal with conflicts of interest on the part of grower members of the board who are asked to make decisions with respect to unit definitions, accreditation, or other matters when one of their crops is involved. Legislative design may consider the appointment of alternate board members who could be called upon to replace the party with the conflict of interest.

Summary

This chapter has analyzed the provisions of bargaining legislation in terms of their objectives, evaluated their performance with respect to those objectives and suggested what are believed to be workable alternatives based upon the evidence about participant behavior in the past. The analysis and evaluation provides a foundation upon which interested parties can consider issues of legislative design, decide what is needed to achieve their aims, and, hopefully, make more informed decisions with respect to legislation for collective bargaining.

In what follows, collective bargaining is evaluated as an alternative to the free market in processing fruit and vegetable markets. The evaluation draws upon all of the preceding chapters.

CHAPTER V

COLLECTIVE BARGAINING AS AN ALTERNATIVE TO THE MARKET IN PROCESSING FRUITS AND VEGETABLES

The aim of this chapter is not to promote collective bargaining in agriculture, but to provide a balanced discussion of the issues involved. The discussion must be carried on in terms of some set of performance measures. These will be explicitly introduced as the analysis proceeds. It is stressed that the actual effect of collective bargaining on the performance of the food system depends, in large measure, upon the legal framework in which that bargaining is carried out. Thus, generalizations about collective bargaining which come out of the writing will be conditional upon design.

In conducting this evaluation, the following steps will be taken. First, a brief statement will summarize the perfectly competitive model which is sometimes used to justify a "free" market policy. Second, certain characteristics of agricultural markets which conflict with the assumptions of the perfectly competitive model will be pointed out. Third, the consequences of applying the model to the analysis of markets under study will be discussed. Fourth, selected food system performance dimensions will be offered as a partial guide to the evaluation of the collective bargaining alternative. Fifth, the way in which the theory avoids these performance questions will be explained. Sixth, the manner in which collective bargaining is

expected to deal with those performance issues is explained. Finally, some cautions on those conclusions are discussed.

The Perfectly Competitive Model

According to the model, when the forces of supply and demand are permitted to freely interact without government interference in the form of taxes, subsidies, or regulations, they determine a unique "market" price which provides a rationing mechanism for the "market" economy. This market price, determined not by any individual, but rather by the relative scarcity of resources and the endogenously determined preferences of all buyers, is an impersonal rationing device. It is the key to resource allocation in the free market economy.

Many sellers, competing with each other to produce at a minimum average cost, create an aggregate supply function. As prices increase, it will be profitable for individuals to produce more or for new producers to enter the market. As price goes down, the process is reversed. Competing sellers thus create an upward sloping supply curve which represents the lowest price for which each quantity will be supplied.

Similarly, many buyers will compete with each other to purchase the goods or services that maximize their individual utilities (or their profits). As prices go down, more of each commodity service will be purchased, since it becomes more attractive relative to other goods. As price increases, less of the commodity is purchased because other opportunities become relatively more attractive.

Competing buyers thus create a downward-sloping demand function which represents the most which will be paid for each quantity demanded.

It is when these functions intersect that they determine the unique equilibrium price at which quantity supplied equals quantity demanded. The price exactly equals the marginal cost of production, the last unit purchased by buyers exactly equals its marginal value product, and there is "efficient" resource allocation. There is a "Pareto optimal" allocation of resources. In no way can society's resources be reallocated so as to benefit some persons without harming someone else.

The allure of this kind of system stems from its offer of opportunity for freedom of individual action to maximize profit or utility or the basis of an "impersonal" market price which guides the economy to a globally efficient allocation of resources. Criticisms of the purely competitive model of the free market arise as we examine the model's underlying assumptions and compare them to the reality we see in markets for perishable agricultural commodities.

Assumptions of the Purely Competitive Model

1. There are many buyers and sellers. No individual or group can affect prices or quantities (Applies only to perfect competition).
2. There is perfect knowledge and foresight of market opportunities and alternatives on the part of those both inside and outside the market. (This is an assumption of the "perfectly" competitive model as opposed

to the purely competitive model).¹³⁴

3. Products are homogeneous. Market participants know exactly what is being offered. Quality is uniform.
4. All resources are perfectly mobile. One can withdraw resources from production as easily as he can commit them. Labor can move to where the jobs are.
5. Time is constant. All responses to changes in price are simultaneous with the price change.

Agriculture and the Assumptions of the Purely Competitive Model

1. In spite of nation-wide trends to fewer, larger farms, there are still many sellers of raw agricultural products. In contrast, first handlers of those products tend to be much more concentrated than are sellers. To be sure, the degree of concentration varies as we move from one commodity to the next. In part, this is because the size of the "relevant" market varies. Such factors as product perishability, value, weight ratios, uniformity of quality, and many others determine what that market is. Thus, national markets for grain, beef, and hogs more closely approximate the atomistic market structure than do markets for processing fruits and vegetables. The latter are more

¹³⁴See Richard Leftwich, An Introduction to Microeconomics, Holt, Rinehart and Winston, Inc. (1961), p. 56. The purely competitive model does not assume perfect knowledge. It assumes that imperfect knowledge is in the form of risk which can be incorporated into the calculus of the theory.

perishable, variable in quality, and, in some cases, have lower value-weight ratios. They are also more geographically specialized in production. For these reasons, they tend to be processed close to the supply areas and, for economies of scale, tend to be purchased by relatively few processors in any area. This explaining the relatively high levels of concentration found among the processors of perishable fruits and vegetables who deal with the associations surveyed for this research [see Chapter II].

Thus, in agricultural markets, the first assumption is frequently violated. There are few buyers and many sellers in the agricultural markets under study. Prices and quantities can be affected by one or a few buying firms.

In many commodities nationwide, there have been and continue to be cases in which handlers receive growers' products, process them, and later tell those growers what they will receive for the crop. The California Winegrape and Michigan Cherry industries are cases in point.¹³⁵ This is further evidence that the assumption is violated.

¹³⁵Legislation to require that winegrape buyers announce prices before receiving deliveries is now before the California state legislation (SB 1969).

For those cases in which there are local monopsonies (there are several), there is a deductive case to be made that processors buy a less than "socially optimal" quantity of the commodity and pay a price which is lower than the marginal value product, thus violating the requirement that marginal factor cost must equal the marginal value product.

2. Perfect knowledge is not even approximated in agricultural markets. In some markets, the flow of information is clearly more complete than in others. Again, in the major commodities, well-developed grading standards and procedures, as well as numerous, widespread, and well-reported cash and contract transactions take place. The relative scarcity of existing and expected future supplies is likely to be relatively well-reflected in such a market.

In contrast, markets in perishable fruits and vegetables for processing are characterized by "thin" markets (there are few transactions, all of which are based upon individual decisions which are relatively unpublicized). There is limited development of futures markets, knowledge of what is being or will be paid is often uncertain, and qualities required or paid for vary with the total supply of the crop. Furthermore, and just as important, food production as a biological process is inherently variable. Risks for participants are not always insurable.

The amount of knowledge available to those in markets for processing fruits and vegetables is in stark contrast to the kind of knowledge assumed in the idealized perfect market. Both actual and potential market participants face much uncertainty.

3. A further departure from the assumptions of the perfectly competitive model stems from the fact that commodities are not homogeneous. There is much potential variation in the quality of perishable fruits and vegetables. At the same time, quality has become more important to processors, particularly as frozen products represent increasing shares of the total food bill. If the market is to work as the "ideal," it is necessary that prices be well-established, not for "the commodity," but for specific qualities of that commodity as well. In the absence of such prices and knowledge, there are no incentives for growers to provide desired qualities.
4. Resources are not perfectly mobile in agriculture, or even remotely so. One of the layman's more frequent criticisms of efforts to support or stabilize agricultural prices is based on the notion that the producer who is not making any money in agriculture can just get out. Many assume that a reduction in price will necessarily lead to a corresponding reduction in the quantity supplied. As Johnson and Quance argue in The Overproduction Trap, this behavior assumes that salvage and acquisition prices of inputs are identical. In fact, they argue,

because of transport costs largely unique to agriculture, acquisition prices are greater than salvage prices for specialized durables. The effect of this differential is to create a range of output prices over which those durables become fixed. This is because the marginal value product (MVP) of a durable may be less than its acquisition price, but greater than the salvage price. A drop in price, while leading to a reduction in the use of nondurables, does not have the same impact on those specialized durables. Thus, while supply responds to changes in price, the responses are not as great as they would be were acquisition and salvage prices equal. The effect is that growers suffer capital losses on those inputs because their MVP's are less than their marginal factor costs (acquisition). In the same way that Johnson and Quance argue that federal policies can draw large amounts of resources into production and then let farmers absorb capital losses as prices fall,¹³⁶ it could be argued that there is a potential for local processors to draw producers into the purchase of specialized production equipment and then let them absorb capital losses through lower prices in succeeding years.

There are many examples of such fixed assets in the production for processing fruits and vegetables. They range

¹³⁶Johnson and Quance, The Overproduction Trap.

from potato diggers to fruit trees.

The implications of fixed asset theory for the production and marketing of processing fruits and vegetables, in particular, and agriculture, in general, are a matter of debate. For this reason, the implications of resource immobility and fixed asset theory are discussed in greater detail than are other violations of the theory's assumptions. Johnson and Quance argue that the effect of the acquisition-salvage price differential is to put producers in a position which enable price makers to induce producer investment in durable assets and then to drop prices to levels which do not justify those investments. Grower representatives charge that this practice does occur. Whether this is the case and, if so, to what extent it persists are not questions that this research can resolve.

If such practices do not occur, as some would argue, the position of the agricultural producer does not differ from that of any other entrepreneur. An acquisition-salvage price differential is a reality for any business investment. A legitimate risk of doing business is that prices, and therefore marginal value products, will drop below levels which justify a given investment.

Whatever the impetus for overinvestment in specialized assets, the facts of overproduction and depressed prices are much discussed. Their consequences include unharvested acreage and/or capital losses to growers. As

will be argued later in this chapter, collective bargaining may provide a means of dealing with either kind of problem. First, if conscious inducement of overinvestment does occur, there is a disincentive for handlers to engage in such practices since, when dealing with a collective bargaining association, handlers may find it more difficult to force prices down once the assets are committed to production. (Although downward pressures on price would surely persist.) Second, and more important, the collective bargaining association would be in a position to counsel members and nonmembers alike with respect to possible overproduction. Since the association is engaged in the collection of market information for use in bargaining, it has the capacity to advise growers of planting trends, possibly forestalling excessive plantings. The potential contribution of such activities would be greatest in perennial crops, where average variable costs are a small share of average total costs and where the costs of risk in overplanting are the greatest.

5. Another departure of agriculture from the assumptions of perfect competition lies in the fact of lagged responses to price signals. While many growers have had some form of contract for years, many of their production decisions, the preparation of land for annuals or the harvesting of perennials, may take place with no price certainty. As indicated earlier, some commodities have traditionally

been delivered to the handler prior to the statement of a price. The winegrape growers in California and cherry growers in Michigan are currently facing this kind of a market in which they are true "residual claimants."

Pea growers in eastern Washington must decide in the fall whether they will plant peas in the spring. Thus, all of the neoclassical assumptions are clearly violated in the markets examined in this study.

The Implications of Ill-founded Assumptions

When the assumptions do not characterize the free market, the performance we expect of it cannot be expected to prevail in the free market. 1) If there are not atomistic buyers as well as sellers, market price determination is not necessarily an impersonal process. Individuals and small groups can affect price and quantity. Further, prices paid are not necessarily equal to MVP's, and resource allocation is not Pareto-optimal. 2) If knowledge is imperfect and there are no prices which guide resource allocation, actual prices, while clearing the market for a given year, may not reflect a longer term equilibrium price. If prices are not reflective of long-run equilibrium, the result will be excess demand or excess supply, to which the market cannot respond in the short run. In general, imperfect knowledge about prices implies risk or uncertainty (increased costs of doing business) and lower levels of output. 3) If qualities of products are not consistent, price means little as a signal to those in the market. As Hurwicz has argued, price represents a "thin"

message space.¹³⁷ Price is easy to transmit, but is, by itself, inadequate to transmit technical requirements of food and incentive to meet numerous quality specifications. 4) If resources are not completely mobile, there may be a chronic tendency to overproduction. Depressed prices and/or excess supplies may be persistent. Reactions to prolonged periods of depressed prices may lead to prolonged shortages. 5) If there are lags in production, pressures on existing prices cannot bring forth necessary changes in quantity. When changes do come, it is not necessarily the case that they will meet quantity requirements at that time.

Arguments Surrounding Collective Bargaining
as a Means of Improving Equity, Stability
and Vertical Coordination

In the remainder of the chapter, the relationship of collective bargaining to three selected food system performance dimensions is discussed. The format for discussion is as follows. First, the performance dimensions are identified. Second, how the theory avoids these problems is briefly pointed out. Third, the performance dimensions are individually discussed. In each case, a performance problem is analyzed, and the means by which collective bargaining is expected to correct it is explained.

Selected Food System Performance Dimensions

Three problems arise in the food system which are not dealt with in the perfectly competitive model. First, problems of equity in

¹³⁷Lenoid Hurwicz, "Optimality and Informational Efficiency in Resource Allocation Processor" in Readings in Welfare Economics Vol. XII, Arrow and Scitovsky, eds. (Homewood, Illinois: Richard D. Irwin, 1969).

rewards for production are the foundation for agricultural policies aimed at the problem of depressed prices and for the use of quantity-controlling market orders. Numerous growers report having sold at prices below cost of production in years of excess supply. As we have seen, buyers appear to have more options than sellers in existing markets for fruits and vegetables.

Second, inter- and intra-seasonal variation in prices received for fruits and vegetables for processing was one of the reasons for the development of similar legislation to regulate the flow of products to market. Such variations represent risk and, therefore, costs which must be absorbed in terms of price variations and/or in terms of unharvested acres or orchards.

Third, costs are incurred by growers, handlers, and, ultimately, consumers because vertical coordination between growers and handlers is imperfect. Quantities produced are not harvested, desired qualities of products are not produced, growers queue to deliver products, products are damaged in handling, and cross-hauling of products takes place. This research assumes that, while such costs may be economically unavoidable (for reasons discussed later), different institutional arrangements (e.g., collective bargaining or free markets) may lead to different levels of coordination. The "problem" is one of determining which institutions lead to "optimal" levels of coordination when different transaction costs associated with different institutional arrangements are considered.

How the Theory Avoids These Problems

If the food system conformed to the assumptions underlying the perfectly competitive model, these problems would never arise. The theory assumes many buyers, many sellers, and competition among them. This would force an equilibrium at which every resource is rewarded in terms of its marginal value product. There is equity in that no individual can perceptibly affect prices or quantities changed. As we have seen elsewhere, the structure of fruit and vegetable producer-processor markets does not begin to approximate the atomistic ideal envisioned in the perfectly competitive model.

Uncertainty due to price instability does not exist in a world which assumes perfect knowledge and foresight. It does not say that prices will not vary, but only that producers will know what they are and be able to make production decisions on the basis of that knowledge.

There is no room for marketing or collective bargaining under the model's assumptions. The problem of vertical coordination is ignored when assumptions of perfect knowledge, homogeneous product, and atomistic competition are included. When the forces of supply and demand determine market price impersonally in atomistic markets, there is no way to argue for collective bargaining to achieve equity. Everyone is rewarded according to his marginal value product. Price provides all the information that is needed for production decisions since products are homogeneous. There is no problem of specifications for quality.

Performance Dimensions and Collective Bargaining

Collective bargaining may provide a means of overcoming problems ignored or assumed away in the model. The problems of equity, stability, and coordination are discussed below in the context of this assertion.

Achieving Equity

In this discussion, equity is achieved when the market alternatives open to buyers and sellers are roughly equal. Such equity is not achieved, because the processor side of the market is highly concentrated. Typically, one or a few buyers purchase most or all of the commodity produced in the local market. While buyer concentration ratios at the national level are high (see Chapter II), the ratios for market areas in which existing bargaining associations operate are higher. Locally, in fact, growers may face actual monopsonistic markets. Although an association may have a market area which includes several buyers, the individual grower is likely to have still fewer local buyers. There are often clear economic reasons for this. A single plant can achieve lower unit processing and assembly costs than it can if it must share local area production with another plant or firm. Thus, it may be perfectly reasonable for local monopsonies to appear.

Under such circumstances, the grower has little chance to do other than listen when the processor decides it is time to "talk contract." The individual grower is in no position to question an offer by a buyer. If he chooses not to accept a buyer's offer, that buyer has numerous other growers from which to purchase. The grower has no similar alternative. As the neoclassical theory of production

indicates, in this situation, the buyer will purchase a less than "socially optimal" amount of the commodity.

The critic of this line of thinking may say that this does not constitute a problem. The first buyer does not really face an upward-sloping supply curve for that commodity because there are generally other commodities that the grower can produce. The supply curve is fairly elastic, and marginal cost is close to average cost. Therefore, there is little or no problem of allocative efficiency. Further, the critic would say, a seller does not have to take any contract on which he does not make money. He clearly would not contract at a loss.

There are several weaknesses in these observations. First, resources are not perfectly mobile among commodities. Human capital must be considered in predicting supply response. Repeated interviews with bargaining association managers generated observations that "growers plant that crop because they like to." In part, the interviewers implied that growers "like to" plant the crop because they are good at it. They know, through experience, what kind of treatment their land needs to raise a good crop of commodity "X." They are semi-specialized in terms of human capital. Thus, they cannot really switch to the production of other crops.

Physical capital is also fixed and reduces the capacity of growers to move from one commodity to the next. This is true of planting and harvesting equipment as well as other major factors of production. Decisions involving investment or disinvestment in major capital items are made well in advance of production for any given production season.

Less flexible still are those acreages committed to perennial crops. Over short to intermediate periods, price elasticities of supply for these commodities are fairly low. Intraseasonal elasticities are determined mainly by harvesting costs. Thus, fixity of both human and physical capital suggest that there is potential for allocative inefficiency due to monopsonistic behavior in both annuals and perennials.

There are at least two reasons to question the suggestion that growers will not take contracts at less than the cost of production.

The most obvious case is in perennials. Once a grower commits acreage to the production of perennial crops, all that is required to keep him producing is a payment which covers variable (harvesting) costs and opportunity costs for use of the land. These costs could be covered without approaching a price to defray the cost of planting an orchard. Thus, while capital losses may be incurred because prices are lower than the cost of production, the grower still behaves rationally. Similar arguments apply to other types of assets which are fixed in the sense that their MVP's are less than their prices of acquisition, but greater than their salvage values.

A frequently stated explanation for contracting at less than cost of production is grower ignorance of production costs. Those interviewed repeatedly made this observation.

The discussion, so far, appears to suggest that contract prices at less than production cost are necessarily a function of handler efforts to take advantage of the weak market position in which growers find themselves. But, those discussing the problem

of price stability will argue, buyer overreactions to rumored trends in production may also contribute to the problem.

The manner by which collective bargaining efforts are expected to deal with the equity problem is fairly direct. By joining together in a resolve to sell only on mutually agreeable and realistic terms, growers reduce alternative sources of supply to buyers. If the volume represented by the association is great enough, the buyer can no longer tell the new association that he can go elsewhere for an adequate supply of the product if the association does not accept his terms. If the association does not ask for terms that make distant markets more attractive, and if the buyer is not willing to take losses by closing down or shipping in products from another area, the association can reasonably be expected to achieve some monetary gains for its members. There is much room for debate on this matter, especially in view of the frequent claim that excess profits are rare in the food processing industry. In short, the concept of collective bargaining to achieve equity in terms of rewards is a concept of equity in terms of market power. Those who organize for collective bargaining recognize that their effectiveness in achieving equity is limited by the fact that buyers, though monopsonists or oligopsonists, are in relatively competitive selling markets. If associations bargain too aggressively, they can force processors to operate in other producing regions, consider producing their own inputs, or cease operations. These actions have been threatened more frequently than they have been used. There is reason to believe that multi-state firms shift portions of their processing in response to

localized pressure from bargaining associations.¹³⁸

Some argue that processing firms have closed in response to collective bargaining pressure. For example, Marion Foods of Traverse City sold its apple processing facilities to Cherry Growers Inc. during the winter of 1975-6, Duffy-Mott closed processing plants in Bailey and Hartford, Michigan. While several factors were probably influential in these closings, one fruit marketing specialist at Michigan State University¹³⁹ reports an industry consensus that collective bargaining pressure was the precipitous factor.

Other observers point to the entry of new processing firms and the expansion of old ones during the same period.¹⁴⁰ For example, Tom Moore, Administrator of the Michigan Agricultural Marketing and Bargaining Act points out that Duffy-Mott closed two plants in New York State in 1974 and 1975 and was under no collective bargaining pressure at the time. He also points to the Silver Mills company which has expanded its plant in Hart, Michigan and announced plans to spend a million dollars to modernize its Eau Claire facility. Further, in 1975, Jeno's purchased processing facilities from United Foods. The same firm announced plans in the spring of 1976 to spend more than a million dollars to double its capacity for processing apples and cherries. These plans were announced after that firm had gone through compulsory arbitration.

¹³⁸Sam Ebert, President, Michigan Cannery and Freezers Association, hearings before Michigan's House Agriculture Committee, June 1976 and numerous personal interviews with other industry and academic personnel.

¹³⁹Don Ricks, Marketing Economist, Michigan State University, personal interview.

¹⁴⁰Tom Moore, personal interview.

Thus, while some firms have left Michigan since the law was implemented, others have entered the state or expanded their facilities. This behavior makes it difficult to conclude that the bargaining law has driven processors from the state.

Price-Quantity Stability or Predictability

Unstable supplies are a fact of life where a biological process is involved. This applies both to intra- and inter-seasonal periods. In the short term, a hot day can ripen a crop more rapidly than it can be processed or consumed. As we move from one season to the next, variations in rainfall and other climatological vagaries can cause instability in supply. In the absence of some environmental control or a change in the plants themselves, we cannot expect to eliminate the source of instability. We would expect, however, that the process by which resources are rationed would reflect this scarcity. This means that the idealized free market would have prices which reflect scarcity or abundance.

It can be argued that the "free market" does not accurately reflect the changes in quantity associated with biological processes. The foundation of this argument is the fact of imperfect knowledge that leads buyers and sellers to overreact to short and long supplies. In a season which is expected to be short, the buyer is under pressure to get enough volume to process at a low unit cost. He aggressively bids the suspected short crop away from other buyers. The risk of contracting short appears to be more costly than the increased price he pays for the crop. Conversely, in a long year, growers, particularly

in perennials, are concerned about "finding a home" for their product and will sell at a low price because the cost of the risk of not placing the product is greater than the loss of price taken in a low offer.¹⁴¹

The same phenomenon can take place on an intra-seasonal basis. If a crop ripens fast, the grower may price lower than he has to in trying to place his product.

Further, simple ignorance of when other parties are taking their products to market and of what they are receiving can lead to unstable circumstances. The problem of achieving orderly marketing was one reason for the AMAA of 1937. Among other things, it provides that growers can themselves vote upon schedules or rates at which commodities could be marketed.

The effects of risk and uncertainty are much discussed in the literature.¹⁴² They lead to lower equilibrium levels of output, owing to higher costs. For example, greater investments in inventory costs and storage space may be required because of quantity variations. Growers may withhold some capital investments as a precaution in the event of unusually low price. Processors may underinvest in storage facilities. This could lead to crop losses as could underinvestment in other plant facilities.

The claim that collective bargaining will help to counteract the instability in processed fruit and vegetable markets is founded in

¹⁴¹ Harry Foster, MACMA, and others have in personal interview, reported growers' concerns on this matter.

¹⁴² Frank Knight, Risk, Uncertainty and Profit heads a long bibliography on the subject.

the notion that the bargaining parties, by bringing all available information to the bargaining table, will reduce the likelihood of over-pricing or under-pricing. As long as parties to the charge view the bargaining process as an effort to "discover" a price¹⁴³ which accurately reflects the relative scarcity of the commodity and as long as each wishes to secure his best price within the framework, each party has a powerful incentive to build his case with as much favorable information as possible. Both sides of the scarcity picture are developed. There are long-term incentives for parties to be honest with one another. The existence of excesses or shortages will generally become apparent at year's end.

Vertical Coordination and Vertical Coordination Mechanisms: Analysis and Some Case Studies

The aims of this section are to: 1) distinguish vertical coordination as a process from vertical coordination as an objective, 2) define vertical coordination as an objective, and 3) illustrate how alternative vertical coordination mechanisms perform with respect to

¹⁴³It is important to note the differences between the concept of price discovery as used in talking about collective bargaining and the concept of price in "laissez faire" economics. In the latter, the independent actions of many buyers and sellers, all possessed of perfect knowledge and foresight, lead to the determination of a unique market price which leads to long and short term equilibrium. In the market referred to, there is imperfect information and there are few buyers. One price may lead to equilibrium in the short run, but not in the long run. Further, if price is to achieve its function of directing resources "efficiently" and rewarding producers equitably, effort must be expended to "discover" it.

Thus, an argument for collective bargaining does not imply a rejection of the concepts of supply and demand as some suggest. On the contrary it may be argued that collection bargaining provides a viable means of reflecting the forces of supply and demand more accurately than does the "free market."

such an objective. The approach employed in this effort involves four steps. These are: 1) to define vertical coordination as an objective and as a process, 2) to analyze some causes of variations in levels of vertical coordination as an objective, 3) to explain why alternative institutions (vertical coordination mechanisms) may alter the levels of vertical coordination, and 4) to draw upon case studies of contractually-induced changes in vertical coordination for illustration and analysis. The paper concludes that different coordination mechanisms affect the level of vertical coordination achieved and attempts to explain why. It acknowledges that some coordination mechanisms are more costly than others and that benefits from improved coordination must be weighed against the costs of achieving it. The report does not attempt to assess the level of benefits from improved vertical coordination or the costs incurred in achieving it. Its intended contribution is to show that the nature of the vertical coordination mechanism does affect coordination levels and therefore resource use.

What Is Vertical Coordination

Vertical coordination may be defined as a process or as an objective. The term is almost always used to refer to the process.

Mighell and Hoofnagle are most frequently cited for their definition:

It includes all the ways of harmonizing the successive vertical steps or stages of production and marketing. Vertical coordination may be accomplished through the market price system, vertical integration, contracting, cooperation, or any other means, separately or in combination. There is always some kind of vertical coordination if any production takes place.¹⁴⁴

¹⁴⁴R.L. Michell and W.S. Hoofnagle, Contract Production and Vertical Integration in Farming, 1960 and 1970, U.S.D.A. ERS-479, April, 1972.

Mighell and Hoofnagle go on to suggest that some of the alternative coordinating mechanisms (market price system, vertical integration, etc.) may bring about "better" vertical coordination than do others.

The notion that some vertical coordination mechanisms may be "better" than others is also implicit in the work of North Central Regional Project 117. That project is a study of the organization and control of agriculture and aims, in part, to provide information which would facilitate more informed policy decisions with respect to the question, "Who will control agriculture?" One of the project task forces is concerned with vertical coordination. Implicit in the existence of such a group is the hypothesis that some vertical coordination mechanisms may be "better" than others.

While many agricultural economists are fairly comfortable with the notion of vertical coordination as a process (as evidenced by extensive discussion and use of the term),¹⁴⁵ the concept may leave other general and agricultural economists cold. "But what is vertical coordination?" they may say. "How can you tell whether one coordination mechanism does a "better" job of coordinating than another?"

These questions address an issue which, in the author's view, is understood by those concerned with the question of alternative vertical coordination mechanisms, but which has not been explicitly addressed by those economists. One goal of this paper is to suggest a means of conceptualizing this issue so that future discussion of vertical coordination can be more precise and therefore better

¹⁴⁵See, for example, Coordination and Exchange in Agricultural Subsectors, Bruce Marion ed., N.C. Project 117, Monograph 2, January, 1976.

understood. With this aim in mind, the following paragraphs attempt to define vertical coordination as an objective.

To do this, the author first defines "perfect" vertical coordination. It is then pointed out that perfect vertical coordination is probably infinitely costly, impossible to achieve, and therefore undesirable. Just the same, the concept of perfect coordination enables us to conceive of different levels of vertical coordination relative to perfection, higher levels being preferable to lower levels for given levels of costs in coordination.

Perfect vertical coordination is achieved when 1) the quantity growers would have produced under conditions of perfect information is exactly equal to the quantity buyers would have purchased under perfect information (that is, when marginal costs equal marginal revenues), 2) the quality of the product exchanged is exactly (and uniformly) what is paid for, 3) the timing of exchange (delivery and receipt) is perfect (neither party to the exchange has to wait to deliver or receive), and 4) the location of delivery is consistent with the lowest level of total assembly costs. These dimensions of vertical coordination correspond exactly with the concepts of quantity, time form (quality), and place (location) utility.

It is stressed that it may be impossible to achieve perfect vertical coordination in terms of any of these dimensions for reasons discussed below. It is also pointed out that better coordination in one dimension may be achieved only at the expense of poorer coordination in terms of another dimension. If greater quantities of a commodity, for example, sweet corn, may be produced only by extending production to marginal land which produces smaller ears and

less uniform kernels, then, quantity coordination can be achieved only at the expense of poorer quality coordination.

Some examples of coordination problems in the various dimensions will make the concept of perfect vertical coordination clearer. They will also provide a lead-in to a discussion both of obstacles to vertical coordination and the question of whether perfect vertical coordination is possible or desirable.

Vertical coordination is imperfect if the quantity produced exceeds the quantity purchased. If the quantity produced is so great that price is driven to levels below the cost of harvesting, some portion of the crop will go unharvested even though costly resources have been used in its production. Alternatively, if there is a "short" crop, available supplies will be rationed by a higher price and the market will be cleared but at a higher price and a lower quantity than would have cleared the market had growers possessed better information.

Imperfect quantity coordination has occurred in many commodity subsectors. Buyers of sweet corn and peas for processing, because they are uncertain as to the quantity they will want to pack or because they want to make certain that they have enough to pack, may contract for more acreage than they would typically expect to harvest. By using a "bypass" clause in production contracts, processors may elect not to purchase or harvest a portion of the crop. If processors purchase exactly what is produced, vertical quantity coordination is perfect. It frequently is not perfect because processors do not know exactly what they will pack, and yields per acre cannot be predicted with certainty.

In apple (or any other tree fruit) production, quantities produced may exceed levels which can be economically harvested. The result is imperfect vertical coordination. The reasons may be traced to variations in production levels based upon price signals generated years ago and leading to excessive plantings.

Imperfect time coordination may occur in tomato, sugarbeet, and other commodity subsectors when growers must queue up to deliver their commodities to handlers. If the grower cannot simply drive to the processor's receiving lot, unload his truck, and return to his farm, he absorbs costs. These include the loss of his time for use in other activities. If the costs he incurs are greater than costs associated with better scheduling and/or the construction of better receiving facilities, timing coordination is imperfect.

Imperfect quality coordination occurs when the value of a commodity must be or logically could be discounted because it cannot be used in its entirety for reasons of quality. If potatoes produced are too large or too small for their intended purpose and they are only partially used, quality control is imperfect. Resources are expended to produce something that is not used. The reasons for imperfect vertical quality coordination may include absence of knowledge as to 1) what quality is desired, 2) how it may be produced, or 3) incentives to respond to desires for improved quality.

Imperfect location coordination occurs when the total costs incurred by all growers and handlers in assembling a commodity are not minimized. Such imperfections result in the diversion of resources from other uses. The reasons for imperfections in location coordination may include imperfect knowledge of alternatives for buyers and

sellers or price differentials inconsistent with transportation and handling cost differentials.

This series of examples illustrates three key concepts. First, there are four readily identifiable dimensions of vertical coordination which are consistent with the notions of time, form, space, and quantity utility as Mighell and Jones originally observed.¹⁴⁶ Second, we can define what perfect vertical coordination would be with respect to each of these coordination dimensions. Vertical coordination as an objective of vertical coordination as a process is to maximize the level of vertical coordination for a given level of transaction costs. Different coordination mechanisms may lead to higher levels of vertical coordination with the same level of transaction costs or existing levels of coordination may be achieved through coordination mechanisms which have lower transaction costs. Third, there are obstacles to the achievement of vertical coordination. Removal of these obstacles is a costly process. Different vertical coordination mechanisms are used to carry out this process. The underlying question addressed by this research and that in NC 117 is "Do some methods of (mechanisms for) achieving vertical coordination bring us closer to perfect coordination than others?" Another question acknowledged by the research, but not explicitly dealt with, is that of whether the greater transactions costs associated with some vertical coordination mechanisms are justified by higher levels of vertical coordination they may help to achieve.

¹⁴⁶ Ronald L. Mighell, and Lawrence A. Jones, Vertical Coordination in Agriculture, U.S.D.A., ERS-19, February 1963, p. 4.

Obstacles to Vertical Coordination

Obstacles to perfect vertical coordination are assumed to include: 1) biological, chemical, and meteorological factors which make yield levels stochastic variables, 2) lags in supply response, processing, and shipping functions, and 3) the absence of perfect knowledge and foresight with respect to supply and demand conditions. While technological and institutional innovations may provide a means to reduce the levels of and costs associated with such uncertainties, they are not usually eliminated. Perfect coordination, as defined before, is infinitely costly and not economically desirable.

Obstacles to better vertical coordination are discussed here. They are divided into market failure and imperfect competition categories. The discussion is not exhaustive, but rather draws upon selected abstractions from case studies described in succeeding pages.

It will be argued that structural obstacles to better vertical coordination appear on the seller's side of the studied markets in the form of contracts which are incomplete¹⁴⁷ or contain perverse incentives. The reason for the existence of such contracts is drawn from some of the literature on market failure. Certain provisions of contracts or quality dimensions of products have public good characteristics which prevent the completion of contracts or responses to quality demands. The effect of such market failure is to create a suboptimal level of specification in contracts.

¹⁴⁷ Incomplete contracts are those which do not specify all elements of exchange.

On the buyers side of studied markets, imperfect competition (one or a few buyers) leads to the existence of organizational slack or "X inefficiency." While opportunities seem to exist for buyers to rewrite contracts so they can capture the efficiencies lost to market failure, they do not do so. One hypothesis is that they do not face the kind of competition in input markets which would force them to do so. They do not, in Liebenstein's words, "operate on an outer-bound production possibility surface consistent with their resources."¹⁴⁸

Rather they work on a production surface that is well within that outer bound. This means that for a variety of reasons people and organizations normally work neither as hard nor as effectively as they could. In situations where competitive pressure is light many people will trade the disutility of greater effort, of search, and the control of other peoples activities for the utility of feeling less pressure and better interpersonal relations¹⁴⁹ (my emphasis).

The information gathered for this report will not facilitate a conclusion that failure of handlers to write better contracts is due to organizational slack and X inefficiency or to allocative efficiency. (The benefits to be gained from rewriting contracts may not justify the cost of the effort.) The information does justify further examination of the hypothesis that X inefficiency is present, however.

¹⁴⁸Harvey Liebenstein, "Allocative Efficiency vs. X-Efficiency," AER, June 1966, p. 413.

¹⁴⁹Ibid.

Why Different Coordinating Mechanisms Matter

The hypothesis advanced here is that collective bargaining, as a different coordinating mechanism from the "free market," provides one means to restructure incentives so that gains from better coordination are captured. A collective bargaining association may overcome the market failure problem on the seller side by diffusing the cost to growers of achieving contractual adjustments so as to overcome the "free rider" problem associated with the public goods nature of contract changes. Collective bargaining may also bring pressure to bear on organizational slack and the resulting X-inefficiency which may exist in an imperfectly competitive buyers' market. This pressure may generate search for more information with respect to potential contract provisions and create an incentive to write contracts in a way which puts risk and other production and marketing functions in the hands of those who can minimize them.

In what follows, two sets of case studies in vertical coordination changes associated with collective bargaining are outlined and discussed. The first set of examples involves cases in which contracts were made more complete. The changes enabled the system to capture efficiencies previously lost due to the absence of individual incentives to capture them.

The second set of examples involves cases when contracts were rewritten to shift costs from one party to another who could minimize them.

Type I Cases: Incomplete or
Perverse Incentive Contracts

Case #1.¹⁵⁰ Four years ago, sugarbeet processors would pay growers on the basis on a "district average" sugar content. Within the district, there was no differentiation among growers as to the sugar content of their beets. Individual growers responded with higher yields, but lower percentages of sugar--this combination brought on by increasing nitrogen levels in the soil. As some very large growers began this practice, there was a significant reduction in the "district average" sugar content. This drove down returns to growers.

The association response was to negotiate for individual measurement of sugar content. The association alleges that there was initial resistance to this request. Processors claimed that paperwork and individual measurement would be costly and unjustified. The growers won their point, and individual measurement was adopted. The result was an increase in sugar content of the district beets. Growers report that processors will now claim credit for the idea.

The contractual arrangement was characterized by a perverse incentive structure. While growers as a group were rewarded for higher levels of sugar content, they were rewarded as individuals for producing high volume which varied inversely with sugar content. The arrangement led to a "free rider" problem. While the individual grower benefited from a higher district average sugar content, he could not capture the benefits of his efforts to produce it. The incentive

¹⁵⁰ Claude Johnson, Idaho Beet Growers, personal interview, Blackfoot, Idaho, March 23, 1976.

was to let others produce beets with greater sugar content.

The firm was apparently indifferent to the incentive structure for individual growers. While interested in the sugar content of the beets, it was willing to pay for a relatively high sugar content in a low volume of beets or a relatively low sugar content in a high volume of beets. The contract apparently compensated the firm for higher sugar extraction costs associated with a higher volume of lower quality beets.

A simplified hypothetical case will illustrate the point. Assume that the firm receives 50¢/lb. for processed sugar. When beets have 15 percent extractable sugar, 6.66 pounds of beets are required to produce one pound of sugar. When beets have 17 percent extractable sugar, only 5.81 pounds of beets are required to produce a pound of sugar. Assume that the processing costs per pound of processed sugar are 40 cents per pound with 15 percent beets and 39 cents per pound with 17 percent beets. This permits the firm to pay 1.5 cents per pound for 15 percent beets and 1.72 cents per pound for 17 percent beets. The firm is willing to reward growers more for higher quality beets but is content to take lower quality beets. The firm simply reduces payments to growers to compensate for the lower sugar content and the greater associated extraction costs. Meanwhile, growers were directing costly resources to the production of heavy beets. More sugar could have been produced at the same expense. The process was therefore inefficient with respect to the production of sugar. Presumably, there was something to be gained from a more efficient allocation of resources, but growers were not in a position to capture the benefits from those gains.

Since the processor's attitude was indifferent, it appears that the growers, who were receiving progressively lower rewards for greater expenditures of resources, had to supply an incentive for handlers to change their practices. As individuals, they had no incentive to pay the processor for his trouble. There was another free rider problem. As a group, however, they could share the cost of inducing the processor to change the rewards structure because they could make a group concession on some other matter, thereby overcoming the free rider problem.

Case #2. The 1976 contract dispute between the Mountain States' Growers and Great Western Sugar centered around the fact that the "purity" of the sugar, as measured by the factory extraction of sucrose, had decreased over the last decade. Great Western came to the negotiation requesting (among other things) that the growers accept less for their beets in order to compensate for the reduction in extractable or pure sugar. Growers refused.

Both parties accepted as fact the reduced levels of purity in the factory tests. The conflict surrounded the question of responsibility. Great Western alleged that growers were producing a beet with lower pure sugar content. Growers charged that Great Western was processing faster and failing to extract all the sugar.

In fact, neither party knew for certain where the loss in purity occurred. While total sugar content can be measured easily on delivery, sucrose content is another matter. It could be lost as a result of cultural, handling, storage, or processing practices. Whatever the explanation, a contract which assigns appropriate

incentives with respect to sugar content cannot be negotiated until research has determined who is responsible for the loss.

Both parties have an acknowledged stake in securing research results. Once the information is available, the likely response of growers is implied in the first question of a Fort Collins beet grower, "What can I do to improve purity?"¹⁵¹

Because the cause of reduced levels of purity in factory tests are unknown, neither processors nor growers are in a position to make the kinds of resource allocation decisions which will optimize the level of sucrose content in the beets. Until such knowledge is acquired, the net effect of this lack of knowledge is to produce lower levels of sucrose than possible, given existing levels of resource use, or to use more resources than necessary to produce existing levels of sucrose. Assuming that the causes of low sucrose yields can be discovered and related to specific production or processing practices, property rights could be defined so that parties could internalize the costs of their actions. Presumably, the net effect would be to increase sucrose output and/or reduce resource use.

If there were a market in which handlers were terms-makers and growers terms-takers, the handler could be expected to get its way and reduce rewards to growers as a compensation for the loss of sucrose. Individual growers, as part of a diffused group, may not seek out the needed knowledge even though they, as a group, have something to gain from it. The reason is that such information has

¹⁵¹ Author's observation as guest at a meeting of the Mountain State Beet Growers, Fort Collins, Colorado, April 12, 1976.

the characteristics of a public good. Again, the incentive for the individual is to let others provide the knowledge.

Group action appears to have provided the impetus for securing the information. Neither party was in a position to dictate terms to the other. Exchange, itself, appeared to depend upon an effort to seek out technical knowledge on sucrose production. Had growers not been in a position to refuse the terms suggested by the processor, a position which grew out of the cohesiveness that led virtually all growers to commit themselves to market according to the desires of the group, the stalemate which forced inquiry into the nature of sucrose production would never have occurred in the absence of some public expenditure for research. Collective bargaining appears in this case to have provided the impetus for the generation of better information and, presumably, an improved level of vertical coordination.

Case #3.¹⁵² There are at least three ways in which vertical coordination with respect to quality has been improved in the Maine potato industry. It can be argued that three aspects of potato quality--sugar content, specific gravity, and size--have been improved because the collective bargaining process led to the inclusion of related terms in contracts, thereby providing incentives for growers to meet desired quality standards.

The marketability of frozen french fries is related to their color. If there is too much sugar in the potatoes, they turn dark brown when fried. Growers can control the sugar content of the potatoes

¹⁵²Duane Smith, Extension Economist, personal interview, Presque Isle, Maine, March 8, 1976.

by maintaining them at a temperature which prevents the starch from turning to sugar. If there is a reward in the contract for delivering a potato with low sugar content, there is reason to believe growers will do so, thereby responding to the observed market preferences of consumers.

The processed yield of potatoes is affected by their specific gravity. Specific gravity can be affected by the timing of harvest, amount of water, fertility, and maturity. Again, pecuniary incentives to follow desired cultural practices can be expected to induce profit maximizing growers to modify their behavior accordingly.

Size of tubers is also important to processors. If growers kill vines at the proper time, they increase the probability that their potatoes will have the desired size. Again, contract incentives are more likely to elicit the kind of behavior which makes what is produced and marketed more like what is wanted.

The appearance of contract incentives for desired cultural practices has coincided with the emergence of collective bargaining activity. Pressure created by the bargaining process appears to have encouraged processors to add contract provisions for quality incentives in order to provide growers with a means of increasing their profits. Processors, apparently indifferent to the quality of the crop (contract rewards corresponded to existing levels of quality), had to be rewarded for or pressured into adding contract terms. When they did so, potato quality levels were increased. Presumably, the benefits of increased quality (in terms of rewards) were greater than the costs of inducing processors to include the rewards and the

costs of changing cultural practices. This suggests that the bargaining process was a positive sum game. Individual growers could not induce the change by handlers, perhaps because of the free rider problem. Their individual rewards from inducing the change would not justify their costs.

Another possible explanation for the failure of processors to provide the additional quality incentives in contracts in a market for individual growers is that the quality changes must come in quantity. If one or a few growers produce potatoes with low sugar, the value of the total purchases to handlers may not change. On the other hand, use of a uniform contract for association members would encourage a more widespread change in cultural practices, thereby justifying rewards for desired practices.

Case #4. A related phenomenon, directly associated with collective bargaining, is seen in Oregon filberts. The filbert's main marketing season is Christmas. It is therefore important that the pack get out early or at least on its regular schedule. In some years, this is difficult because the crop is wet and would be late. At a cost of about \$50 per acre, growers can effect an early harvest. If a premium is paid for the effort, growers will arrange the early harvest. The use of this technique can help reduce inventory costs as well. The need to meet early demand has required a high planned carryover. If the early harvest can be effected by contract incentives, needed carryover and associated inventory space is reduced.

This case has striking similarities with the preceding one. Processors were induced to add new contract incentives which provided a new means for growers to increase their expected earnings while responding to consumer demands. At the same time, processor inventory costs appear to have been reduced. Earlier arguments as to the relationship between collective bargaining and the phenomenon apply.

Particularly in this case, it is not clear why the phenomenon did not occur without collective bargaining, since the processors appear to have gained from the transaction. The point remains that it did not occur until collective bargaining took place.

Analysis of Type I Cases

In the preceding cases, market failure related to the public good nature of contract revisions and to the lack of knowledge required to make such revisions was used to explain why individual growers would not respond to market signals. As individuals, growers could not obtain rewards for their efforts to change contracts, secure knowledge, or follow "desirable" cultural practices. As a group they could. Collective action was an effective means of counteracting the market failure and overcoming the free rider problem.

What remains is the question of why handlers did not see an opportunity for greater efficiency in production, rewrite contracts to reward growers as a group for following better practices, and then secure any benefits from improved quality for themselves. One hypothesis has been advanced. There exists organizational slack and, therefore, X inefficiency in handler operations, because handlers

do not operate in highly competitive buyer markets. Again, information is inadequate to accept either this hypothesis or the alternative--that the gains of better coordination to handlers were inadequate to justify the costs of contract revisions. Further research is needed if conclusions are to be drawn with respect to either hypothesis.

Type II Cases: Revision of Contractual Obligations

Case #1.¹⁵³ Upon delivery from grower to plant, sugarbeets may sit in a receiving yard long enough to have shrinkage reduce the value of the beets. At one time, all shrinkage was charged to growers, even though much shrinkage took place after delivery. There was no incentive for the processors who controlled the beets after delivery to prevent the shrinkage.

The grower association bargained for a maximum dockage for shrinkage. At that point, any shrinkage of more than 5 percent resulted in a net loss to the processing firm. The reaction of the firm was to adopt an improved storage technology for the beets. The use of canopies on piles of beets and the running of vents through the same piles led to the reduction of shrinkage and the maintenance of desired temperatures.

Again, the handler was indifferent to the shrinkage, since he did not bear its costs. There was slack in the system. Furthermore, individual growers could not bring about the change themselves. There

¹⁵³Claude Johnson, Ibid.

were no competing firms in the area. They could not exploit alternative markets as a means of disciplining the buyer. The buyer had no incentive to change the practice unless there was pressure from a grower organization. Control of the shrinkage was simply out of grower control.

Case #2.¹⁵⁴ Pea growers have in the past been "docked" for the percentage of "splits" or damaged peas in their crop. The splits and other forms of damage are the result of rapid harvesting with the combine. The combines are owned by processors and are generally operated by their employees.

A point negotiated by the Western Washington Farm Crops Association was the elimination of dockage for "splits" and "blond" peas. The incentive was placed on the shoulders of those who could control the problem situation.

Again, the handler was in position to make a decision (to harvest faster) for which he did not directly bear the consequences (more "splits"). Because of the structure of the market, it is hard to see how individual growers would have negotiated such a change in practices. The effect of the change was to shift the resource allocation decision to the firm which was in a better position to calculate the costs and benefits associated with different harvesting speeds.

¹⁵⁴Gary Van Dyke, Western Washington Farm Crops Association, Mt. Vernon, Washington, March 29, 1976.

Case #3.¹⁵⁵ Numerous processing firms contracting with growers of peas, sweet corn, lima beans, and other crops have operated with a "bypassed acreage" clause. The clause permitted the contracting firm to elect not to harvest a field if it were too dry or if, for some other reason, it were not suitable for harvest.

The most serious charge raised in connection with this practice is that processors contract acreage well in excess of their anticipated needs, in order to reduce the risk of short supplies to pack. The charge goes on to say that if, at harvest, the processor discovers that he has overcontracted, he becomes arbitrary in deciding how much acreage is unsuitable for harvesting.

Whether, or to what extent, this use of the clause is carried out is not the point. The point is that the decision control is in the hands of the processor, and the cost of a decision not to harvest falls directly upon the grower. The grower bears the processor's risk.

Growers, understandably infuriated by the practice, have, in several places and in several ways, shifted part or all of the risk back to processors. In one case, growers and processors each make a specified contribution to a pool which pays growers whose crops are bypassed. Any amount left in the pool at season's end goes back to the grower association; any amount in excess of the pooled amount is charged to the processor. Another arrangement simply requires processors to cover production costs accrued by growers in planting and raising their crops.

¹⁵⁵Ibid. and others including Alan Roebke, Dennis Rea, Alton Rosenkranz, George Webster, and Fritz Collette.

These changes do not mean that passed acreage will be eliminated. They do mean that the handler will consider both the benefits and the costs of the decisions to overplant and pass acreage.

Case #4.¹⁵⁶ Bargaining efforts of the Potato Growers of Idaho have been instrumental in refining the quality incentive provisions of contracts with Idaho processors. The contract, signed by growers with Ore-Ida, includes a "bruise free" provision. Growers charged that many of the potato bruises for which they were being docked were the result of rough handling at the plant. As a result of the need to assign responsibility to control bruises, technologies have been adapted which can distinguish "old" bruises (those attributable to the grower) from "recent" bruises (those incurred at the plant). This has led to new receiving practices at the plant. The distance potatoes drop when unloaded from trucks was significantly reduced.

Again, by changing the incidence of the costs of his actions, the handler is made responsible for those actions. He can then be expected, as an economic man, to equate marginal costs and benefits in handling procedures.

Case #5.¹⁵⁷ The Ohio Agricultural Marketing Association (OAMA) has bargained for "demurrage charges." Growers were often frustrated with long waits to deliver their tomatoes to the processor. As long

¹⁵⁶ Tom Sahlberg, Potato Growers of Idaho, personal interview, Blackfoot, Idaho, March 23, 1976.

¹⁵⁷ Paul Slade, Ohio Agricultural Marketing Association, personal interview, Toledo, Ohio, January 23, 1976.

as growers absorb the cost of the "floating inventory"¹⁵⁸ which accumulates as they (growers) wait to deliver, processors have no incentives to insure that receiving facilities continue to operate. At the same time, they receive the benefit of a steady supply of growers anxious to deliver and return to the field. OAMA growers negotiated demurrage charges, thereby shifting responsibility and reducing waiting time and/or compensating growers for it. Thus, coordination was improved in terms of growers' time.

Another change in coordination of quantity is also seen in the case of tomatoes. Growers and handlers negotiate a rate of delivery per acre per day. This prevents the possibility of excessive deliveries for existing facilities. In the past, if excesses were delivered, the grower would absorb the loss. In the absence of a specified daily quantity for all, the grower would have no guarantee that his tomatoes would be accepted on any day.

A guide to quantity on the down side has also been negotiated in Ohio. This has been in the form of a closing date for the processor. Given this guide, the grower can plan ahead for harvest. With better knowledge of closing dates, the grower will not plant a crop so late in the season that the harvest will be too late for processing.

¹⁵⁸Quantities of tomatoes that wait in growers' trucks at growers' expense.

Case #6.¹⁵⁹ A probable change in filbert contracts will be that of moving from a "95 crack" test (where all filberts in a load are accepted if 95 of 100 are free of "blanks" and "shrivels") to a "100 crack" test. Growers can control blanks and shrivels with correct fertilization, better equipment (which throws out blanks), and precleaning. The "100 crack" test would encourage growers to follow practices that improve quality.

Related changes in coordination are associated with changes in cleaning and drying charges for filberts. Instead of flat charges for cleaning and drying, processors now charge lower rates per ton for the cleaning of loads with lower percentages of debris. Again, an incentive is provided for the grower to clean the product, if he can do it for less than the handler.

Analysis of Type II Cases

The existence of market failure in Type II cases is not so apparent. In these cases, property rights were already fairly well-defined, although collective bargaining led to their redefinition. In general, those cases involved an effort to shift property rights so that the individual directly bore the consequences of his own actions. Some may be inclined to draw on the Coase theorem¹⁶⁰ as applied to externalities to argue that the effect of the change was only to shift property rights and not to change resource use. For

¹⁵⁹Don Maltby, Filbert Growers Association, personal interview, Canby, Oregon, March 30, 1976.

¹⁶⁰R. L. Coase, "The Problem of Social Cost," Journal of Law and Economics, October 1960, pp. 1-44.

example, if handlers of peas and sweetcorn growers are obliged by growers to pay the costs of rapid harvesting, they incur a cost. This cost is turned back on the growers. The cost of the "external effect" is real and, as far as resource use is concerned, the effect of the change is arbitrary. If the cost to handlers of absorbing an increase in harvesting costs is the same as the increased returns to growers, there is no change in resource use. Further, it may be argued, growers would be expected to consider the costs associated with handler harvesting practices when making planting decisions and adjust their output accordingly. It could be argued that this analysis applies to all of the Type II cases. The change, it may be said, does not apply to vertical coordination, but to property rights. The Coase theorem applies.

This analysis assumes that grower expectations adjust instantaneously to handlers' practices. It assumes that growers can accurately assess the behavior of handlers and move accordingly in order to make such adjustments. More generally, the theorem assumes no transactions costs. By engaging in some practice for which he does not directly and immediately internalize the costs, the handler creates an external effect. The Coase theorem assumes that those affected by the external effect will be able to react without turning that cost back on its initiator. If one is to argue that the Coase theorem applies in this situation, he also assumes the burden of proof with respect to the transactions cost assumption.

The following analysis of a specific "Type II" case is carried out in some detail to illustrate the concepts discussed above. It is easily generalized to all of the other Type II cases.

Growers will supply peas according to schedule S_1 if they are charged for "split" and "blonde" peas. In this case, growers absorb the cost of splits and blondes. If growers are not charged for such defects, they will behave as schedule S_2 suggests. In this case, processors absorb the cost of splits and blondes. One way of describing their offer is to say that, at price P_1 , they will sell X_1 tons of peas with no splits. Processors may discount the defects. Alternatively, growers will sell X_2 tons of peas with splits at the same price P_1 . Processors may not discount for defects.

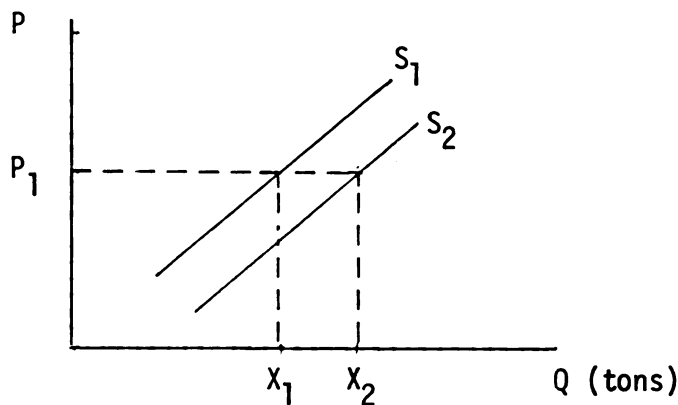


Figure I

Processors will purchase peas according to schedule D_1 if they may "dock" growers for "split" or "blonde" peas. In this case, the growers absorb the cost of splits. If processors are not permitted to discount for defects, they will purchase peas according to schedule D_2 . In this case, processors absorb the cost of defects. Their purchasing behavior may be described as follows. At price P'' , we will purchase X'_2 tons of peas with no discount for defects. Alternatively, we will purchase X'_1 tons of peas if we can discount for defects.

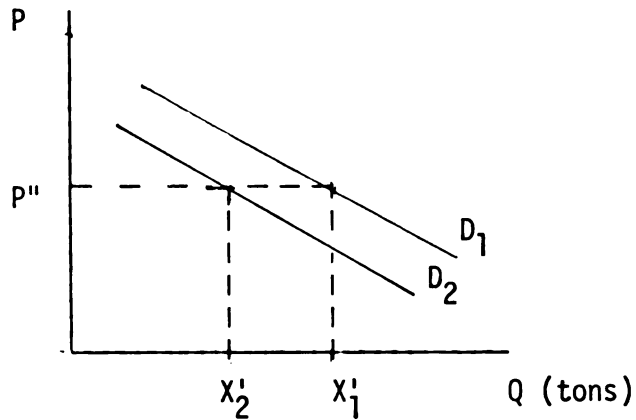


Figure II

If the contractual relationship states that processors can deduct for defects, the equilibrium condition is described by P^* , Q^* .

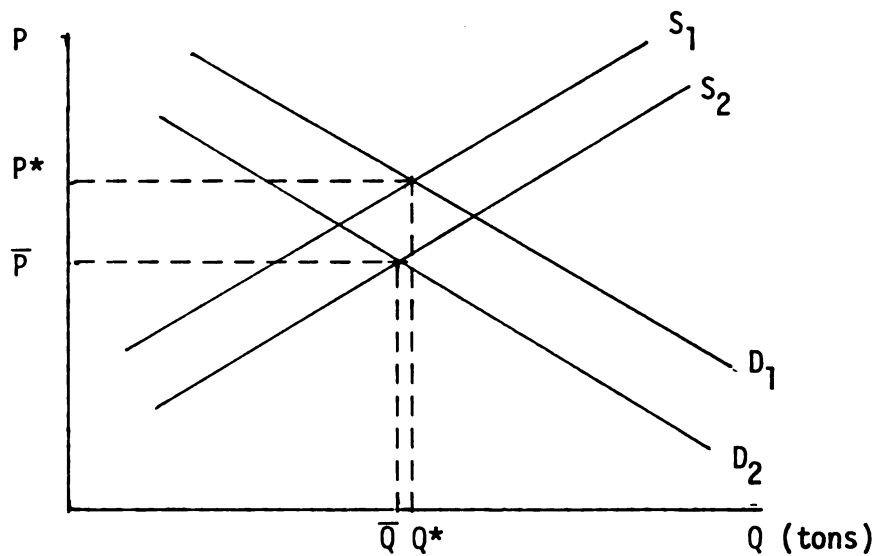


Figure III

If the contractual relationship states that processors cannot make deductions for defects, the equilibrium condition is described by \bar{P} , \bar{Q} .

For a given quantity (tons) of peas, the price differential when processors can discount for defects and when they cannot is
 $p^1 - p^2 = d$.

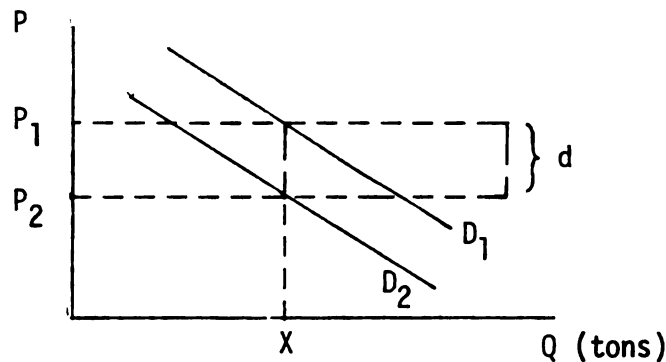


Figure IV

Assuming that there is a linear relationship between the cost of defects and the amount harvested, the demand functions D_1 and D_2 would be parallel, and d would be a constant for all levels of X . (Actually, there is cause to doubt this, since there would be greater pressure to harvest faster if large quantities are to be harvested. If this were the case, we would expect d to be greater at higher levels of output, since there would be more to lose through slow harvesting.)

If the difference between supply prices on S_1 and S_2 corresponds exactly with the differentials in demand prices for D_1 and D_2 at any level of X , there would be no difference in the tonnage of peas exchanged. Resource allocation would be identical under either definition of property rights (contract provisions). The exchange price P^* would be greater than \bar{P} by d , but $\bar{Q} = Q^*$ (Figure III).

It is not clear, however, whether the price differential for S_1 and S_2 at any particular level of output would necessarily correspond to the price differentials for D_1 and D_2 at any levels of output. If the shift in the contractual arrangements involved a shift of responsibilities for physical harvesting itself, this assertion may be tenable. The analysis would simply assess resource allocation under a shift of functions between growers and processors. In fact, the growers' separate supply functions are based on the assumption that processors will continue to harvest in a manner consistent with past harvesting practices. Price differentials for S_1 and S_2 at a given value of X are based upon the production cost per ton of peas and growers' expectations regarding levels of defects. Thus, there is reason to expect a correlation between the price differentials for S_1 and S_2 and for D_1 and D_2 at quantity level X . But the expectation is by definition a stochastic variable--the growers' best guess about defect levels based upon the past behavior of processors.

The effect of a contract which permits handlers to make deductions for defects from payments to growers is to shift risk or uncertainty to growers. Growers would be expected to discount the value of a contract on the basis of such risk.

If the contract is written so that processors may not discount for defects, what risk there is would be absorbed by processors. It seems reasonable to argue that that risk would be smaller for processors, since they would be in a better position to know (and control) rates of harvesting and, therefore, the level of defects and the level of discounting. If there is greater risk for growers, we would expect that the supply price differential at a given level

of output would be greater than the demand price differential at the same level of output. The effect of the differential on equilibrium positions is illustrated in the following diagram.

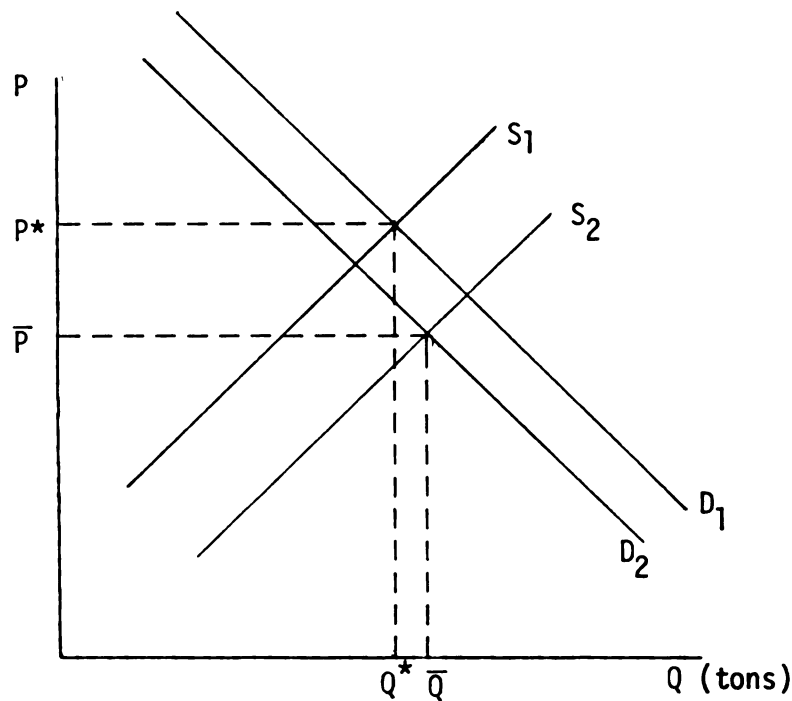


Figure V

Because the level of risk borne by the handler under the contract where he cannot discount for defects is lower than the level of risk borne by the grower when the handler can discount for risk, resources are not allocated the same under each contract. The level of resource use is higher when handlers cannot discount for defects. Moreover, costs are lower under that arrangement because the net level of risk and uncertainty is reduced.

But why, if net gain from one arrangement is greater, is there no effort by handlers to secure that benefit? The hypothesis here is the same as that applied to "Type I" cases. Because there is

little competition in the purchase of inputs, organizational slack and, therefore, "X-inefficiency" may appear. Employees or managers in the buying firm may simply trade off the effort required to seek out better coordination and lower cost arrangements in favor of less personal pressure on the job. Again, the alternative hypothesis is that the costs of such efforts exceed the expected benefits.

The above analysis can be extended to the other Type II cases. When sugarbeets shrink in storage, there is an option for growers to discount the value of their product based upon expectations regarding storage practices of handlers and, therefore, the level of shrinkage. However, if handlers bear the cost of shrinkage, their risk is less, since they are in a better position to know what their storage behavior will be. Again, this analysis would suggest a better use of resources under a contract where handlers bear the costs of risk in estimating storage loss.

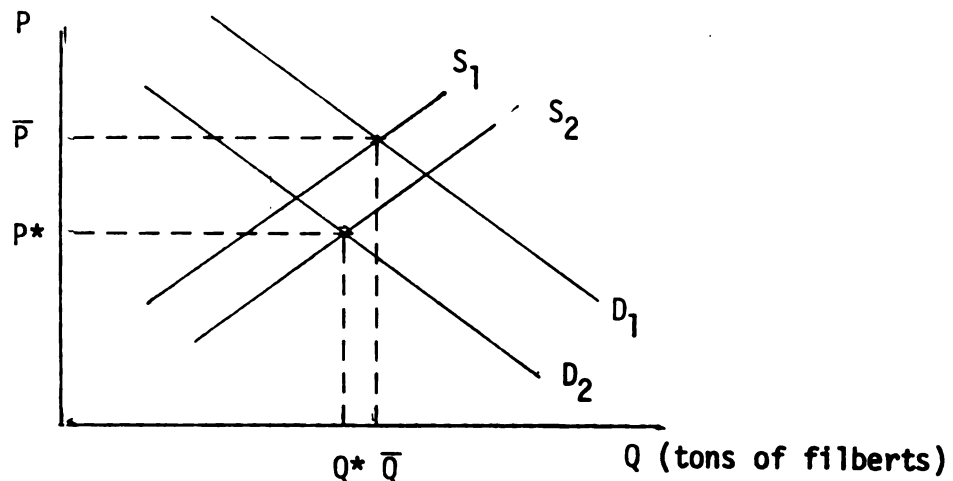
The same analysis would apply to the discounting for potato bruises and the payment of demurrage charges for delivery of tomatoes. Resource use would be greater and net costs of risk lower when borne by handlers who are in a better position to know and control the risk-generating situation.

The case of bypassed acreage is similar up to a point. Two kinds of risk give rise to the bypass clause. One is the risk with respect to packing intentions of handlers. The other is the risk with respect to yields.

If the only risk involved were that regarding packing intentions, the handler would be able to predict with a lower standard error than growers. The analysis would be identical to that for the

other cases. However, the risk associated with predicting yields may be as great for handlers as for growers. It is not clear who has the greater cost of risk in that case. This difference explains why contractual changes involving passed acreage have resulted in risk-sharing arrangements while other cases involved a complete share of the risk.

The case of Oregon filberts led to a shift in marketing/production functions from handlers to growers. The analysis in this case is just the reverse of that in other cases. The alternatives were the same. Contracts could either require that growers absorb the cost of "blanks" and "shrivels" or that handlers do so. Since growers have control over these defects, it appears that the supply price differential for a given level of output is lower under the alternative contracts than is the demand price differential. Thus, in this case, the following graph shows higher output when growers absorb the costs of defects directly.



Under contract number 1, growers assume responsibility for reducing the defects and are discounted for them. Under contract 2, the handler does not discount for defects. (As an aside, individual growers would have no incentive to reduce shrivels under the second kind of contract and the number of defects may therefore be expected to increase.)

This discussion has analyzed two distinct sets of cases in which improvements in vertical coordination have been associated with collective bargaining. In the first set of cases, it was seen that market failure associated with the public good nature of certain production practices and contractual arrangements lead to perverse incentives and an allocation of resources which was inefficient in the market sense. It was argued that collective action enabled the group to capture the benefits of efforts to respond to market demand, where individuals could not. While other institutions (vertically integrated systems, for example) may lead to similar effects, collective bargaining appears to have done so.

In the second case, it was argued that collective bargaining created pressures to allocate production/marketing risks so that they could be minimized. The preceding analysis indicated that the effect was to increase output at lower cost levels.

In both sets of cases, there was a problem of explaining why handlers, who were in a position to rewrite contracts enabling them to secure any rewards for improved vertical coordination, did not do so. Two alternative hypotheses were offered. First, organizational slack associated with imperfectly competitive buyer markets may explain such failure. Second, it may be that the gains from such changes

do not justify the costs.

The effect in both cases was to improve vertical coordination in the sense that it was defined. Again, the research did not provide information adequate to say whether or not those improvements in coordination were great enough to justify the increased transaction costs associated with the movement from a "free" market to collective bargaining.

The evidence and analysis just presented contrasts sharply with what many assume about the collective bargaining process-- that it is a zero-sum game. As we have seen in the series of examples, there are many ways in which the collective bargaining process, by reducing organizational slack, creating equitable market relationships, and giving growers as well as handlers an effective "voice,"¹⁶¹ has led to the generation of information and an internalization of production and marketing costs. This makes it more difficult to conclude that collective bargaining is a zero-sum game. Improved vertical coordination has resulted from its use. Organization costs, decision costs, and possibly political externality costs must be considered in finally deciding whether the benefits of improved vertical coordination are justified. Nevertheless, the preceding information shifts some of the burden of proof to those who question the value of collective action in the food system.

¹⁶¹ A.O. Hirshman, Exit, Voice and Loyalty, (Cambridge: Harvard University Press, 1970).

Assumptions Underlying the Arguments
for Collective Bargaining

As we have seen, performance associated with the operation of a free market is contingent upon a set of restrictive assumptions. The performance associated with collective bargaining relationships assumes that certain conditions prevail as well. The final pages of this chapter list some of the more critical conditions, all of which make up the disciplines faced by bargainers and the legal environments in which they work.

1. There are no restrictions on entry into the production of the bargained commodity. If bargaining associations somehow secure the power to prevent new growers from responding to market signals, the performance consequences previously discussed may well be undermined from the consumers and handlers point of view, but not from growers' viewpoint. The arguments for collective bargaining have assumed that bargaining associations are disciplined by the market, in that prices which are above equilibrium will lead to excess planting of perennials by members and nonmembers and/or increased opportunities for handlers to contract with nonassociation members.
2. Bargaining associations do not succeed in securing exclusively full-supply contracts with handlers. If associations have full supply contracts with all or most handlers, they create barriers to entry for nonmembers. Furthermore, since supply contracts bring with them quantity provisions, a complete or nearly complete shift to such contracts would create pressures to control member production. Such tendencies may provide a foundation for monopolistic behavior by bargaining associations. In fact, since bargaining association

managers list increased grower incomes as the top priority of their organizations, monopolistic behavior would be predicted. Associations would be expected to bargain for or simply set quantities that would maximize total revenue in a given year. Their only disciplines would be imposed by marketing patterns in competing commodities.

With regard to this assumption and the one preceding it, preponderant market control in the hands of growers can do as much to deter the achievement of desired performance as it can when in the hands of processors.

3. Association leaders and managers are cognizant of market forces created by their actions. If association officers and managers do not recognize the disciplines of the marketplace, they can work directly against the achievement of the kinds of performance discussed earlier in the chapter. If they demand and succeed in securing unrealistic terms of trade, they will draw excessive resources into production, depress and destabilize prices, and work against vertical coordination.

4. Legislation is "strong enough" to permit the development of stable bargaining relationships. In some cases, collective bargaining institutions have successfully achieved such relationships with permissive legislation alone. In other cases, they have not. If collective bargaining is to contribute to improved performance in the dimensions discussed above, bargaining associations must be recognized and respected by handlers so that negotiating parties approach the bargaining table with good will and the expectation that an agreement will be reached. This contrasts with situations

in which handlers refuse to recognize associations or try to circumvent them, thereby treating growers inequitably, destabilizing marketing patterns, and avoiding efforts to coordinate supply and demand.

5. Legislation provides mechanisms by which to resolve disputes which are deadlocked. If legislation includes agency shop provisions which reduce market alternative for handlers, instability and poor coordination may result if a bargaining impasse is reached. The goals of collective bargaining as discussed in this chapter would be undermined.

Summary

This chapter has discussed collective bargaining as an alternative to the "free market" in processing fruits and vegetables. It argued that the assumptions we associate with desirable performance from a free market are not met in the markets under study. It further pointed out why collective bargaining, under a more realistic set of assumptions, is expected to perform better with respect to selected food system performance dimensions. Although collective bargaining may perform better than the free market in terms of some performance dimensions, it is acknowledged that organization and transaction costs associated with the collective bargaining mechanism are greater for some participants than they are under a free market system.

CHAPTER VI

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS FOR FUTURE RESEARCH

Summary and Conclusions

This research had three major objectives. The first was to describe both the economic setting for collective bargaining in agriculture and the legal environment in which collective bargaining takes place. The second was to analyze alternative rules in bargaining legislation in terms of their objectives and to propose alternative rules based upon the findings of the descriptive chapters. The third objective was to evaluate collective bargaining as an alternative to the free market in processing fruits and vegetables. Pursuit of these objectives enables us to draw some conclusions consistent with past assumptions about collective bargaining in agriculture and to raise some questions about past notions on the subject. These have been detailed in the main body of the report. The major conclusions are summarized below.

Information collected for this report reinforces earlier conclusions based upon industry level studies that individual growers of fruits and vegetables for processing face highly concentrated buyer markets. The data in Chapter II more closely approximates the relevant market than does the aggregate data on concentration ratios and numbers of buyer firms. In many other respects, it is seen that

unorganized growers in such markets have far fewer selling opportunities than do the buyers with which they deal. This leaves the individual seller at a disadvantage in dealing with handlers.

To achieve equity in bargaining relationships, growers of many commodities have organized to bargain collectively with handlers. While one may expect bargaining associations to be debilitated by the "free" rider issue and while the problem does exist, bargaining associations have succeeded in increasing their memberships. They have done so by providing marketing information and other exclusive services to members and by drawing upon the sense of community among growers.

For reasons explained below, bargaining associations appear to have established more stable relationships with handlers in perennial crops than in annual crops. Processing cooperatives have been more widely used in perennial crops as well. Bargaining and processing cooperatives compete to represent growers in several major West Coast commodity markets.

When successful bargaining is defined as the achievement of viable, stable, customary bargaining relationships between growers and handlers, perennial associations appear to have more stable relationships with handlers. Among annuals, those commodity associations for which grower associations have more specialized production assets appear to have the most stable relationships. For this reason, this report concludes that the ownership of fixed, specialized assets, while weakening the individual grower's bargaining position, actually strengthens an association's bargaining position because supply responses from nonassociation sources are limited.

Reasons for greater stability in perennials, in particular, are that 1) the same people produce every year (thereby making the organization itself more stable), 2) the grower who knows he has to place and get a price for the same product year after year has a greater incentive to act with the group, and 3) that supply is established before prices in perennials, thereby narrowing the likely range of prices. These factors are thought to explain the more frequent reports of refusal to recognize or to bargain with associations in some annual crops.

In contrast to widely held assumptions that bargaining associations exist only to raise prices, it was discovered that associations, while concerned with grower incomes, view the means of raising incomes to be the maintenance of predictable prices and the assurance of markets for these products. The single-minded pursuit of higher prices frequently conflicts with these goals because bargaining associations are subject to the same market disciplines as are individual growers.

Furthermore, in pursuing their expressed goals, bargaining associations devote considerable resources to the generation of market information, which reduces price fluctuations growing out of uncertainty and ignorance of market conditions. This is reflected in the array of nonbargaining services provided by associations, in common strategies and philosophies of bargaining, and in the fact that collective bargaining has led to the increased use and complexity of processor contracting in annuals.

Thus, among the consequences of efforts to bargain collectively, are more predictable prices, the generation of more market

information surrounding transactions, and improved vertical coordination. These consequences challenge another widely held notion that collective bargaining is really a zero-sum game. As pointed out in several examples, collective bargaining has led to the restructuring of contract incentives so that growers and handlers are made more directly responsible for costs associated with their actions. It has done so by generating information and by putting pressure on both associations and handlers to eliminate internal organizational slack.

Several state legislatures and Congress have passed laws to facilitate and promote collective bargaining in agriculture. Proposals have also been recently offered at the state and national levels. Examination of many of these laws reveals that, frequently, they are not effective in terms of their aims because they are unworkable and/or internally inconsistent and/or inadequate in the eyes of the associations working under them. They are frequently poorly designed, even though the way that laws are designed determines what collective bargaining really means and whether the legislation is effective at all. This happens for two reasons. First, discussion of collective bargaining has been conducted almost exclusively in very general terms, and the question of legal design has been ignored. Second, the incentive for those who actually engage in the legislative process is simply to pass laws--not to pass well-designed laws. Thus, the legislative process is carried on at great cost to the public, frequently with little or no reward to those who have invested great political efforts to secure the passage of bargaining laws.

In the interest of more effectively informing the public decision-making process relative to collective bargaining in agriculture, specific rules which make up collective bargaining laws were analyzed in some detail. Among the conclusions of that analysis were the following.

1. The Capper-Volstead Act, as now interpreted with respect to the exemption for collective bargaining, is fundamental, particularly in annual crops.
2. Fair practices legislation, to be effective in some commodities, must be strengthened by more effectively informing both growers of their rights and possible courses of action, and informing handlers of their obligations, thus creating greater disincentives to the violation of unfair practices.
3. Legislation which provides for the certification of specific associations to bargain for growers must, to be workable, more clearly specify procedures for defining bargaining units.
4. Legislation which aims to actively foster collective bargaining as a means of improving vertical coordination must include provisions and mechanisms which facilitate the resolution of disputes arising in bargaining.
5. In general, bargaining laws must be designed with a concern about how specific provisions will be implemented and with the provision of mechanisms to do so.

Assuming a set of workable rules which successfully foster collective action by associations which operate within market constraints, collective bargaining was compared to the free market

in terms of its effect on equity in the marketplace, the stability or predictability of prices, and vertical coordination. Arguments were presented to claim that collective bargaining could be superior to the free market in terms of all three performance dimensions. By reducing alternatives open to handlers, the collective bargaining approach puts growers on a more equal footing in the market place and improves growers' chances of securing the rewards they are expected to receive in a more competitive market. By bringing more information to bear on transactions and price determination, the collective bargaining alternative will reduce undue fluctuations in prices, thereby reducing the costs associated with uncertainty.

By generating more information, by adding terms to contracts (or adding contracts), and by putting pressure on organizational slack within institutions, the collective bargaining alternative has led to improved vertical coordination between growers and first handlers.

The evidence, both in theory and in practice, indicates that equity, stability, and vertical coordination can be better served by collective bargaining (if properly instituted) than by a free market in processing fruits and vegetables. At the same time, much remains unsaid with respect to the costs, both public and private, which are associated with the collective bargaining alternative.

Recommendations for Future Research

The findings of this study suggest numerous topics for deeper analysis of this and related subject areas. Some of these are listed below.

1. The data collected on bargaining association goals offer several variables upon which researchers may begin to build a behavioral theory of the bargaining association. The bilateral monopoly model is woefully inadequate for this purpose. Public policy toward collective bargaining in agriculture could be approached more intelligently through the use of models which incorporate the objectives and constraints faced by bargaining associations. Thus, research in this area would be useful.
2. The research process revealed some grower-handler interest in the development of long-term contracts. An aim of such contracts is to reduce the costs of bargaining on an annual basis. Difficulties are encountered in developing and using such contracts because parties involved cannot agree on appropriate formulae for future terms of trade. This problem results, in part, from uncertainty surrounding their use. If the use of such contracts were modeled for selected commodities, they could be used to reduce uncertainty and provide a better decision base for negotiators designing contracts and considering their use.

Associated research would try to determine the institutions required to make use of such contracts. Would partial or full supply contracts be necessary?

If so, what implications would this have for access to markets? This research may be particularly useful in considering the possibility of long-term contracts in

perennial crops where long-term supply coordination appears to be a major problem.

3. There is a need to conduct more detailed (subsector) studies of individual markets in which collective bargaining plays a major role. This study, while attempting somewhat detailed analysis of individual associations, has been so broad as to sacrifice some richness in detail. It has focused on the bargaining association itself. A set of case studies would, in addition to studying the association in greater detail, examine the perceptions of the association held by growers, processing cooperatives, and proprietary handlers. Such research would contribute to a behavioral theory of the bargaining association, provide an opportunity to refine both the present knowledge of the bargaining association and the consequences of collective bargaining, and help to generate hypotheses for the next three kinds of inquiry.
4. A more detailed study of how vertical coordination is affected by the collective bargaining process would include an effort to collect more specific examples of improved vertical coordination, such as those at the end of Chapter V. The accumulation of more such examples, along with an examination of the forces leading to coordination changes, would contribute to the development of the theory of vertical coordination.
5. A study of relationships between bargaining and processing cooperatives would be useful in making pending

public choices surrounding the role of cooperatives in the food system. The author offers a hypothesis that such institutions discipline each other in ways which put pressure on organizational slack within processing cooperatives, within bargaining associations, and within proprietary firms. If such disciplines do exist between institutions which offer alternative marketing methods to growers, public policy may wish to foster the development of both kinds of institutions by making efforts to maintain each as a viable marketing alternative.

6. The institution of collective bargaining as perceived by handlers has been largely ignored in this research.

A parallel study of the institution from the handler point of view would be expected to balance these findings. Such research would examine the decision-making process of the processing firm with respect to buying, identify the major concerns of the firm with respect to collective bargaining, and explore, in part, the competitive environment faced by processors on the output side. This research would compliment both this study and on-going research by Larry G. Hamm who, at this writing, is exploring the buying practices of retailers.

By studying the decision-making framework and the fears of the processing firm relative to collective bargaining, the research would make its consequences more predictable. This predictability would foster more informed public decisions with respect to legislation for collective

bargaining and mechanisms (e.g., deliverable forward contracts) for vertical coordination.

7. There is a need for a comparative analysis of collective bargaining by labor. While there are some obvious similarities, there are also some important differences. Laborers and growers both face concentrated markets. But laborers do not have major capital commitment, nor do they face the same risks as do agricultural producers. These variations impose different disciplines upon participants and, logically, different behavioral expectations. For this reason and because people frequently compare the two kinds of collective bargaining, there is a need for research which identifies the key differences and their implications for policy.
8. As mentioned above, while the research identifies some of the benefits of collective bargaining in terms of certain food system performance dimensions, it discussed only a few of the associated costs. Thus, while the research argues that collective bargaining may perform better than the free market in terms of some dimensions and while it points out that some fears of collective bargaining are not justified, it does not discuss all of the relevant costs. If, for purposes of public policy, vertical coordination alternatives are to be compared to each other, a study to identify, classify, and assess the incidence of costs associated with each alternative is needed.

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APPENDICES

APPENDIX A

**HISTORY OF THE UTAH-IDAHO CANNING
CROPS ASSOCIATION**

APPENDIX A

A Brief History of the Utah-Idaho Canning Crops Association by

A. W. Chambers, President

Commercial canning of vegetables in the state of Utah dates back to the year 1868 when the cans were made by hand and the processing done with very antiquated equipment.

In 1918 Utah State Farm Bureau appointed a committee of vegetable growers from the important vegetable canning counties of the state of Utah to meet with Utah vegetable canners to talk about prices, grades, and services that the processor would give to growers, particularly of peas and tomatoes, which were then important in the state of Utah.

This committee was told that it was the vegetable growers job to grow the crops that they the processors knew all about how to process and sell them and were not very receptive to talking about any problems that confronted the grower of these crops.

In about the year 1920, after the growers of canning crops had organized a Canning Crops Association, by gentlemen's agreement the Farm Burcay Committee met with the vegetable canners in the Kiesel Building in Ogden, Utah to talk about prices, grades and services for peas and tomatoes to be grown that year and while they were talking about these problems, company officials had their fieldmen out in the field signing up the vegetable grower and telling them that there was nothing the company could do for them and that growers in other communities had already signed up, so that they just as well if they wished to grow peas or tomatoes that year, thus proving that growers needed a bonafide and legal organization where growers of all communities and counties could be signed on a membership contract binding him to the organization and giving the officers he elected authority to sell or contract for the sale of his peas and tomatoes.

Great effort was put forth to get legislation at a state and national level that permitted cooperative bargaining for farmers and by this effort the Capper-Volsted Act was passed by the Congress and similar legislation in the state of Utah in the year 1922.

Cache County was the first County in the state of Utah to take the lead in setting up the Cache County Pea Growers Association in October of 1923, with Frank Evans of Salt Lake City, their legal counsel and in the spring of 1924 attempted to negotiate with the Morgan Canning Company on Peas to be grown that year, but their lack of information and the attitude of the Morgan officials, who felt it was an insult to their intelligence for a growers committee to ask them to talk about prices, grades and services.

Knowing that the Morgan Canning Company operated a pea cannery at Morgan it was felt that it was important to sign 90% of the growers of Morgan county on a membership contract and tie Cache, Morgan and Summit county into one organization, which was done in 1924 with fruitful results, so that during the fall of 1924 and up till March 25, 1925 the growers of peas in Cache County under the leadership of A.W. Chambers and Morgan and Summit county under the leadership of Thomas Buttars of Morgan, stood together to accomplish the right that growers of peas had to have representation across the conference table from the canner.

There were many discriminations on the price and method of grading peas, as in these days the grading was done by individual employees of the company on a guess basis, as they would count out a hundred peas and if more than 7 of them were hard they lowered the price from \$50.00 per ton to \$30.00 per ton and if there were more than 14 hard peas per hundred they lowered them to \$18.00 per ton, but they paid no special premium for peas that had no hard peas in at all. There was a great variation in the judgement of men and it was felt a mechanical method of grading should be developed.

A final meeting was held in the Kiesel Building in Ogden, Utah March 25, 1925 where Simon Barlow, Judge Kimball's court reporter, took 72 typed pages of minutes on the negotiations of peas for the Cache, Morgan and Summit counties, which were the first negotiations on peas ever conducted by growers thru a bargaining cooperative in America.

The reason the Morgan Canning Company and other canning companies of Utah vigorously objected to recognizing a committee from a growers group was their fear that radicalism and impractical requests would be made; However the main objective of the Canning Crops Association was to establish a canner grower relationship that would lend stability to the industry, as we recognized that the processor had a substantial investment in buildings, equipment and a great knowledge on how to process and market peas and other vegetables, so also did the growers of peas and other vegetables have a great investment in land, farm equipment and knowledge of how to produce peas and other vegetables and that the committee representing the growers and the management of the canning plant should talk out their differences with the thought that the more that each group knew about the others business operation the easier it would be to resolve differences that may exist and establish stability in the pea canning industry of the three counties herein mentioned.

The objectives of the meeting held March 25, 1925 with A. W. Chambers spokesman for the pea growers, set out (1) on the premise herein before mentioned that the organization should be recognized by the Morgan Canning Company as the legal entity to represent the growers. (2) That the Morgan Canning Company would not go into the field in the counties of Morgan, Summit and Cache county to solicit growers for pea acreage until they had exhausted their best efforts with the growers Association officials to establish fair prices, grades and services for the peas that would be grown. (3) That there would be a clause in all contracts requiring that the grower pay dues to the Canning Crops

Association to defray the expense of its operation. (4) That the growers committee or officers have a right to check with the company on who would weigh and grade the peas at the respective viner stations before they were hired or fired. (5) That the Morgan Canning Company work with the Canning Crops officials to determine a mechanical method for grading peas. Research was conducted in Morgan County in the years 1926-1927-1928 by A. W. Chambers, and a representative from the Utah Agriculture College to show the relationship of the thumb and finger pea grading method to an electrically operated juice press that measured the juice in cubic centimeters with a range of from 32 to 70 cubic centimeters in a lb. sample of peas that provided a basis for buying peas on the juice press formula with 12 grades rather than three beginning in the year 1930. This method proved more satisfactory to industry as a whole.

In 1930 pea viners were established in Franklin County Idaho and the growers of that area became members of the Canning Crops Association and the name of the organization was changed to the Utah-Idaho Canning Crops Association, which is one of the units of the Utah State Canning Crops Association.

In 1932 the Utah-Idaho Canning Crops Association started the service of stacking and weighing out the pea silage to the growers of peas in Cache Valley with a savings in cost of 35% or 40% as many years they stacked as many as 15,000 tons of pea silage that was worth from \$3.00 to \$5.00 per ton depending on the price of hay and employed from 100 to 150 men and boys.

We are grateful for the inception of the mobile pea vine harvester, as it would be impossible to recruit that many men today to do the heavy work of stacking pea vines as many as 20 hours a day on a split shift basis.

The details of the objectives of the Canning Crops Association in the overall will be written in the report of the Utah State Canning Crops Association by A. W. Chambers, secretary of that organization.

The present officers of the Utah-Idaho Canning Crops Association are: A.W. Chambers, President, Smithfield, Utah; Jesse Zollinger, Vice President, Providence, Utah; Ted Roper, Secretary, Preston, Idaho; Thelma Doney, Treasurer, Franklin, Idaho. Other committeemen are: Ed Hill, Millville, Utah; Athen Reese, Logan, Utah; Lyman P. Maughan, Wellsville, Utah; Reed McEntire, Preston, Idaho.

APPENDIX B

MAIL QUESTIONNAIRES

APPENDIX B

Questionnaire for Bargaining Association Managers (Fruits, Vegetables, and Specialty Crops)

If your association bargains for more than one agricultural commodity, you are asked to complete one questionnaire for each. The person most directly responsible for that commodity should complete the questionnaire. If you have not been supplied with an adequate number of questionnaires or if you have questions about how to respond, please call collect (517) 355-0135 and ask for Mahlon Lang. (If you do not wish to request additional questionnaire, photocopies will be acceptable.)

I. Industry Setting and Economic Structure

1. From the following list, please identify the commodity for which you are reporting.

- | | | |
|--|---|---|
| <input type="checkbox"/> 1. Almonds | <input type="checkbox"/> 21. Cherries (Sweet) | <input type="checkbox"/> 43. Potatoes (Sweet) |
| <input type="checkbox"/> 2. Apples | <input type="checkbox"/> 22. Citrus (specify) _____ | <input type="checkbox"/> 44. Prunes |
| <input type="checkbox"/> 3. Apricots | <input type="checkbox"/> 23. Cucumbers | <input type="checkbox"/> 45. Pumpkins |
| <input type="checkbox"/> 4. Asparagus | <input type="checkbox"/> 24. Figs | <input type="checkbox"/> 46. Raisins |
| <input type="checkbox"/> 5. Avocados | <input type="checkbox"/> 25. Filberts | <input type="checkbox"/> 47. Raspberries (Black) |
| <input type="checkbox"/> 6. Barley, malting | <input type="checkbox"/> 26. Flax | <input type="checkbox"/> 48. Raspberries (Red) |
| <input type="checkbox"/> 7. Beans (dry edible) | <input type="checkbox"/> 27. Grapes | <input type="checkbox"/> 49. Rice |
| <input type="checkbox"/> 8. Beans (Lima-baby) | <input type="checkbox"/> 28. Hops | <input type="checkbox"/> 50. Soybeans (Edible) |
| <input type="checkbox"/> 9. Beans (Lima-Fordhooks) | <input type="checkbox"/> 29. Horseradish | <input type="checkbox"/> 51. Strawberries |
| <input type="checkbox"/> 10. Beans (snap) | <input type="checkbox"/> 30. Maple Syrup | <input type="checkbox"/> 52. Sugarbeets |
| <input type="checkbox"/> 11. Beans (wax) | <input type="checkbox"/> 31. Millet | <input type="checkbox"/> 53. Sunflower |
| <input type="checkbox"/> 12. Beets (red) | <input type="checkbox"/> 32. Mushrooms | <input type="checkbox"/> 54. Spinach |
| <input type="checkbox"/> 13. Blackberries | <input type="checkbox"/> 33. Olives | <input type="checkbox"/> 55. Squash |
| <input type="checkbox"/> 14. Blueberries | <input type="checkbox"/> 34. Peaches (Cling) | <input type="checkbox"/> 56. Sweetcorn |
| <input type="checkbox"/> 15. Broccoli | <input type="checkbox"/> 35. Peaches (Freestone) | <input type="checkbox"/> 57. Tomatoes |
| <input type="checkbox"/> 16. Buckwheat | <input type="checkbox"/> 36. Pears (Canning) | <input type="checkbox"/> 58. Waxy Maize |
| <input type="checkbox"/> 17. Cabbage (Kraut) | <input type="checkbox"/> 37. Peas (Green) | <input type="checkbox"/> 59. Other (Please specify) |
| <input type="checkbox"/> 18. Carrots | <input type="checkbox"/> 38. Peas (Dry) | _____ |
| <input type="checkbox"/> 19. Cauliflower | <input type="checkbox"/> 39. Peppers | _____ |
| <input type="checkbox"/> 20. Cherries (Red tart) | <input type="checkbox"/> 40. Plums | _____ |
| | <input type="checkbox"/> 41. Popcorn | _____ |
| | <input type="checkbox"/> 42. Potatoes (Irish) | _____ |

2. Please indicate the approximate dates during which the following events occur in a normal crop year.

Bargaining Dates

From _____
To _____

Planting Dates
(non-perennial)

From _____
To _____

Crop Estimate Dates (Perennial)

Harvesting Dates

From _____
To _____

Processing Dates

From _____
To _____

3. For the commodity identified in question 1, please indicate the dollar value and physical quantity sold through or at the direction of your association during the last three crop years. (Please circle the unit of measurement.) The crop year is the year of harvest. A crop planted in November '73 and harvested in March '74 records as the 1974 crop. If you do not know what the exact amounts are, please give your best estimates.

	<u>Dollar Value</u>	<u>Bu./Lb./Tons</u>
1974	_____	_____
1973	_____	_____
1972	_____	_____

4. Did bargaining result in

- _____ 1. A written master post-production contract between ass'n. and processor which is binding on members.
 _____ 2. A written master pre-production contract between ass'n. and processor which is binding on members
 _____ 3. An "approved" post-production contract for growers
 _____ 4. An "approved" pre-production contract for growers
 _____ 5. A verbal agreement between ass'n. and processor
 _____ 6. No agreement
 _____ 7. Other (please specify) _____

5. Please estimate utilization of the commodity sold by association members in a typical year. (Many handlers [e.g., freezer-canners] use commodities in more than one way.)

_____ % Freezing	_____ % Pickling	_____ % Other (please specify)
_____ % Canning	_____ % Juice	
_____ % Dehydrating	_____ % Prepared Foods	_____
_____ % Brining		

6. Does this commodity undergo any kind of processing on farms or in the facilities of the association before it reaches the processor?
(exclusive of normal husbandry practices)

___ 1. Yes ___ 2. No

If yes, please describe that process briefly. What processing is done, who does it, and where?

7. What percentage of the area's output is purchased by the largest four processors?

 %

8. How many growers are members of your association?

9. What is your best estimate of the total number of growers typically selling to the processors to whom your members deliver?

10. About how many non-memeber growers sell their products on terms bargained by your association?

11. Has the number of members in your association changed in the last five years?

a) ___ 1. Yes, it increased.

___ 2. Yes, it decreased.

___ 3. No

b) If yes please indicate the percentage change.

 %

c) If you have observed any significant membership trends, to what factors do you attribute those trends?

12. Are any of your members subsidiaries or affiliates of firms which are primarily non-farm firms?

a) ___ 1. Yes

___ 2. No

b) If yes, please indicate the number and relative size of those members.

___ number

___ % of total association production represented by those members

13. Do any of your members belong to processing cooperatives?

a) ___ 1. Yes

___ 2. No

b) If yes, please estimate the number and relative importance of those members

___ number

___ % of total association production represented by those members

14. a) Of the growers for whom you bargain, what percentage are located in a state other than that in which you conduct the majority of your operations?

b) What states are these? _____

15. Where are your growers located? Sample answer:

Along the Snake River between Boise and Idaho Falls. Forty percent of the production comes from Bingham, Bonneville, and Minidoke counties, or ninety percent of our growers are in Sacramento, San Joaquin and Stanislaus counties. They are concentrated in the Stockton area.

16. In addition to bargaining, which of the following services are provided by the association for growers?

- ___ 1. Provide information (please specify type) _____
- ___ 2. Legislative representation
- ___ 3. Fieldman to check grading, organize harvesting and deliveries, planting, spraying
- ___ 4. Research
- ___ 5. Members serve on administrative bodies in industry programs
- ___ 6. Publish newsletters and newspapers
- ___ 7. Public relations with consumers and handlers
- ___ 8. Commodity promotions
- ___ 9. Other (please specify) _____

17. What specialized production and harvesting equipment is typically owned by growers?

(Note: Tractors are not specialized. Potato diggers, viners, corn pickers are specialized.)

18. What specialized production and harvesting equipment is owned by the association?

19. What specialized production and harvesting equipment is typically owned by processors?

20. What marketing and/or production functions are typically performed by processors?

<input type="checkbox"/> 1. Harvesting	<input type="checkbox"/> 6. Spraying or dusting
<input type="checkbox"/> 2. Grading	<input type="checkbox"/> 7. Providing credit
<input type="checkbox"/> 3. Hauling to plant	<input type="checkbox"/> 8. Specifying cultural practices (other than spraying or dusting)
<input type="checkbox"/> 4. Providing seed	<input type="checkbox"/> 9. Specifying harvest schedules
<input type="checkbox"/> 5. Providing Containers	<input type="checkbox"/> 10. Other (Please specify) _____

21. a) Is your association subdivided into separate units to bargain with individual firms or production areas?

☐ 1. Yes ☐ 2. No

- b) If yes, please describe how the association is subdivided.
(By areas or firms and with how many of each)

22. How many processors of the commodity are located in the geographic area served by your members?

23. To how many of these processors do your members make deliveries in a typical year?

24. If you bargain with more than one firm, please estimate the percentage of your bargained sales going to each in a typical year.

Firm #1 #2 #3 #4 #5 #6
 #7 #8 #9 #10 #11 #12 Others

25. Please name the firms in order _____

26. What percentage of their raw product needs (if any) do the processors with whom you bargain typically receive from these sources.

___% 1. Handlers production

___% 2. Open market

___% 3. Your association

___% 4. Other (please specify) _____

27. a) Are there nearby processors who produce some part of their own raw product needs?

___ 1. Yes

___ 2. No

b) If yes, how many?

c) If yes, is their own production

___ 1. Less than 25% of their needs

___ 2. Less than 50%, but more than 25% of their needs

___ 3. Less than 75%, but more than 50% of their needs

___ 4. More than 75% of their needs

28. If your answer to 27 was yes, please indicate the number of firms with which you deal and the share of your association's production typically purchased by those firms.

Firms

% of associations' production

29. Within your market area, are there processing cooperatives which handle the commodity for which your association bargains?

___ 1. Yes

___ 2. No

If yes, please estimate the percentage of commodity processed in your market area which is handled by those processing cooperatives.

30. If processors you now supply were to refuse to bargain with your association, what long-run alternatives would be realistic? (long-run is more than one year)

___ 1. Discontinue or reduce production
 ___ 2. Custom process
 ___ 3. Ship to another market
 ___ 4. Other local processors
 ___ 5. Other (please specify) _____

31. If processors you now supply were to refuse to bargain with your association, what short-run (less than one year) alternatives would be realistic?

___ 1. Leave in the field
 ___ 2. Custom process
 ___ 3. Ship to another market
 ___ 4. Sell to other local processors
 ___ 5. Other (please specify) _____

32. a) Have your processors ever refused to bargain?

___ 1. Yes When? _____
 ___ 2. No

- b) If yes, which alternatives were actually used?

___ 1. Discontinue or reduce production by ____%
 ___ 2. Custom processing ____%
 ___ 3. Ship to another market ____%
 ___ 4. Other local processors ____%
 ___ 5. Other (specify) ____%

33. a) Have the processors with whom you deal shipped raw products in from other regions in the past?

___ 1. Yes

___ 2. No

b) If yes, when? _____

c) From where? _____

34. a) Other than the commodity for which you currently bargain, are there crops which could be produced by your growers and marketed by the association?

___ 1. Yes

___ 2. No

b) If yes, what commodities are these? _____

35. a) Would it be difficult to make this transition?

___ 1. Yes

___ 2. No

b) If yes, for what reasons? _____

36. Other than the one discussed in this questionnaire, what commodities do your processors purchase?

37. Please describe the major steps in moving your product from the beginning of harvest to delivery at the processor's place of business. Who is responsible for each step in the process?

II. Economic Behavior and the Bargaining Process

1. For which of the following terms of trade do you currently bargain?

- ☐ 1. Price
 - ☐ 2. Premiums and discounts
 - ☐ 3. Time of payment
 - ☐ 4. Quality standards
 - ☐ 5. Quality measurement procedures
 - ☐ 6. Delivery schedules
 - ☐ 7. Provision of containers
 - ☐ 8. Provision of (cost of) seeds
 - ☐ 9. Provision of transportation
 - ☐ 10. Weighing procedures
 - ☐ 11. Raw product handling procedures
 - ☐ 12. Quantity of product
 - ☐ a. by acre
 - ☐ b. by quantity of output
 - ☐ 14. Length of contract
 - ☐ 15. Responsibilities and rights during production
 - ☐ 16. Prices for provision on production inputs (other than seeds)
 - ☐ 17. Spraying and dusting
 - ☐ 18. Planting time
 - ☐ 19. Harvesting time
 - ☐ 20. Use of irrigation equipment
 - ☐ 21. Other (please specify) _____
-

2. For which of these terms of trade do you believe bargaining should take place?

- ___ 1. Price
 - ___ 2. Premiums and discounts
 - ___ 3. Time of payment
 - ___ 4. Quality standards
 - ___ 5. Quality measurements procedures
 - ___ 6. Delivery schedules
 - ___ 7. Provision of containers
 - ___ 8. Provision of (cost of) seeds
 - ___ 9. Provision of transportation
 - ___ 10. Weighing procedures
 - ___ 11. Raw product handling procedures
 - ___ 12. Quantity of product
 - ___ a. by acre
 - ___ b. by quantity of output
 - ___ 13. Bypassed acreage
 - ___ 14. Length of contract
 - ___ 15. Responsibilities and rights during production
 - ___ 16. Prices for provision on production inputs (other than seeds)
 - ___ 17. Spraying and dusting
 - ___ 18. Planting time
 - ___ 19. Harvesting time
 - ___ 20. Use of irrigation equipment
 - ___ 21. Other (please specify) _____
-

3. a) Of the terms of trade over which you bargain, which are the most difficult to resolve?

1. _____

2. _____

3. _____

b) Why is this so? _____

4. Is the price for which you bargain

___ 1. A firm price

___ 2. Pegged to some market price

___ 3. Pegged to the cost of production

___ 4. A formula price dependent upon production levels

___ 5. Other (please specify) _____

5. Do you believe members would support formula pricing?

___ 1. Yes

___ 2. No

6. Do you believe processors would be willing to bargain for formula prices?

___ 1. Yes

___ 2. No

7. For how long has your association been involved in bargaining?

___ years

8. a) During this time, have new terms of trade been added to contracts?

___ 1. Yes

___ 2. No

b) If yes, what terms of trade are now discussed that were not discussed before the association bargained.

- ___ 1. Price
- ___ 2. Premiums and discounts
- ___ 3. Time of payment
- ___ 4. Quality
- ___ 5. Quality measurement procedures
- ___ 6. Delivery schedules
- ___ 7. Provision of containers
- ___ 8. Provision of (cost of) seeds
- ___ 9. Provision of transportation
- ___ 10. Weighing procedures
- ___ 11. Raw product handling procedures
- ___ 12. Quantity of product
 - ___ a. by acre
 - ___ b. by quantity of output
- ___ 13. Bypassed acreage
- ___ 14. Length of contract
- ___ 15. Responsibilities and rights during production
- ___ 16. Prices for provision on production inputs (other than seeds)
- ___ 17. Spraying and dusting
- ___ 18. Planting time
- ___ 19. Harvesting time
- ___ 20. Use of irrigation equipment
- ___ 21. Other (please specify) _____

9. Please rank the following goals in terms of their importance to the association. (1 is most important, 2 is second most important, etc.)

- ___ 1. Assured markets
- ___ 2. Stable prices
- ___ 3. Higher prices
- ___ 4. Expanded markets
- ___ 5. Expanded membership
- ___ 6. Better market information
- ___ 7. Higher grower incomes
- ___ 8. Third party grading and/or weighing
- ___ 9. Other (please specify) _____

10. Please rank the problems you encounter in pursuit of these goals. (1 is the greatest, 2 is second greatest problem, etc.)

- ___ 1. Securing member agreement
- ___ 2. Securing an adequate number of grower members
- ___ 3. Refusal of handlers to bargain (security recognition)
- ___ 4. Coming to an agreement with handlers
- ___ 5. Securing market information
- ___ 6. Other (please specify) _____

11. In bargaining, who presents the association position

- ___ 1. Bargaining committee
- ___ 2. General manager or executive secretary
- ___ 3. Commodity division manager
- ___ 4. Special negotiator
- ___ 5. Other (please specify) _____

12. a) Who makes final decisions on whether to accept or reject terms of trade?

- b) What process is involved here? _____

13. Please rank the following kinds of information in terms of their importance for use in planning and conducting bargaining activities. (1 is most important, 2 is second most important, etc.)

____ 1. Projections of production, consumption, and "market clearing" price levels

____ 2. Processor cost

____ 3. Producer costs

____ 4. Investment plans by processors (locally or elsewhere)

____ 5. Substitute procurement markets for processors

____ 6. Substitute market for producers

____ 7. Public opinion

____ 8. Alternative crops for producers

____ 9. Other (please specify) _____

14. What sources of information do you find most important? (Please rank: 1 is most important, 2 is second most important, etc.)

____ 1. Professional research personnel employed by association

____ 2. Government publications

____ 3. University and extension publications and personnel

____ 4. Other farm organizations (please specify) _____

____ 5. Contact with handlers to assess their needs

____ 6. Private consultants

____ 7. Other trade journal (please specify) _____

____ 8. Other (please specify) _____

15. What kind of important information is most difficult to secure?

16. How would you characterize the bargaining process in terms of the relationship between association and processors? (You may check more than one.)

- ☐ 1. Adversary relationship with considerable conflict
- ☐ 2. Tough, but with mutual respect and acceptance
- ☐ 3. Dominated by growers
- ☐ 4. Dominated by processors
- ☐ 5. The ability to bluff and "drive a hard bargain" is more important than a well-documented case.
- ☐ 6. The party with a carefully researched and well-documented case has the bargaining advantage.
- ☐ 7. Other (please specify) _____
(Please feel free to expand on your response.) _____

17. What have been the major obstacles to effective bargaining by your association? (Rank 1 as the greatest obstacle, 2 as the second, etc.)

- ☐ 1. Failure of members to work together and support association.
- ☐ 2. Lack of bargaining experience
- ☐ 3. Lack of market information
- ☐ 4. Lack of recognition by handlers
- ☐ 5. First handlers create incentives for non-member growers not to join the association. (How?) _____
- ☐ 6. Failure to attract new members
- ☐ 7. Bargaining rules and unfair practices are not enforced. (Which ones?) _____

- ___ 8. Bargaining legislation is inadequate
 - ___ 9. Lack of control over the volume produced
 - ___ 10. Growers have unreasonable expectations
 - ___ 11. Processors have too many alternatives source of supply
 - ___ 12. Other (please specify) _____
-

III. Farm Bargaining and Food System Performance

1. Please rank the areas in which the association has benefited most from bargaining. If there has been no benefit, leave the box blank. (As before, 1 is the greatest benefit, 2 is the second greatest, etc.)

- ___ 1. Increased prices received
- ___ 2. Stabilized prices received (relatively stable from year to year)
- ___ 3. Secure reliable markets
- ___ 4. Grading standards are consistent
- ___ 5. Higher returns when products are high in quality--quality differences are reflected in prices
- ___ 6. Standardized contracts
- ___ 7. Planting and harvesting times are coordinated with handlers and other growers
- ___ 8. Growers are rewarded for particular handling and cultural practices
- ___ 9. Inputs or credit on inputs are more easily acquired
- ___ 10. Shorter settlement period
- ___ 11. Other (please specify) _____

2. Have your bargaining activities led to any adjustments in member cropping patterns?

- ___ 1. Yes
- ___ 2. No

3. If yes, were these changes

- ☐ 1. Increased plantings of this commodity
 - ☐ 2. Decreased plantings of this commodity
 - ☐ 3. Changed location of planting (different grower distribution of planting)
 - ☐ 4. Changed time of planting
 - ☐ 5. Other (please specify) _____
-

4. a) Has the amount of unharvested or "passed" acreage on member farms been reduced as a result of bargaining?

- ☐ 1. Yes
- ☐ 2. No, it has been increased.
- ☐ 3. No, it has not changed.

b) If 1 or 2, how would you describe the extent to which this has occurred?

5. What is your best estimate of the percentage change in the volume produced by members since the beginning of bargaining?

- ☐ % 1. Increase ☐ % 2. Decrease ☐ % 3. No change

6. a) Have there been shifts in decision control as a result of the bargaining arrangement? (i.e., a change in who makes particular decisions.)

- ☐ 1. Yes
- ☐ 2. No

b) If yes, indicate what decisions have been affected and how decision control has shifted.

- ☐ 1. When to plant
- ☐ 2. Seeds to plant
- ☐ 3. Whether to spray or dust
- ☐ 4. When to spray or dust

- ___ 5. Quantity to plant
- ___ 6. When to harvest
- ___ 7. Other (please explain) _____
- c) If yes, to whom has this control shifted? _____
7. a) Has your association ever failed to agree upon terms with first handlers?
- ___ 1. Yes
- ___ 2. No
- b) If yes, what precipitated this failure, and how were productive relations restored?
- _____
- _____
8. a) Have new handling procedures or marketing patterns developed as a result of your bargaining efforts?
- ___ 1. Yes
- ___ 2. No
- b) If yes, please describe them briefly and indicate the effect, if any, on costs, quality, returns, etc. _____
- _____
- _____
9. What complaints are most frequently voiced by members regarding the operation and effectiveness of the bargaining association? (Rank the complaints as 1, most frequently voiced; 2, second most frequently voiced, etc.)
- _____
- _____
- _____

10. What compliments have been most frequently voiced by members regarding the operation and effectiveness of the association? (1 is most frequent, 2 is second most frequent, etc.)

- ___ 1. Higher prices
- ___ 2. More stable prices
- ___ 3. Grower is rewarded for improved handling and other aspects of quality he can control
- ___ 4. Marketing costs are reduced
- ___ 5. More of the product is sold, less wasted
- ___ 6. Timing of marketing is more certain
- ___ 7. Facilities for hauling are provided
- ___ 8. Prices are determined in advance of production period
- ___ 9. Other (please specify) _____

11. In what ways do non-members benefit from your association's bargaining activities?

- ___ 1. Price increases through our bargaining strength
- ___ 2. Price increases through our efforts to reduce acreage
- ___ 3. Handlers give non-members preferential treatment
- ___ 4. Non-members get same prices and don't pay marketing fees.
- ___ 5. Other (please specify) _____

12. What complaints are most frequently voiced by processors regarding your bargaining activities?

13. In what ways have both growers and processors benefited from bargaining activity?

- ☐ 1. Quality and variety are more in line with market demands
- ☐ 2. Increased quality control-reduced product loss
- ☐ 3. Assembly efficiency
- ☐ 4. Improved information about mutual needs and problems
- ☐ 5. Stability of prices and quantities exchanged
- ☐ 6. Other (please specify) _____

14. What are the most important and/or difficult lessons regarding bargaining for new participants to learn?

for members _____

for processors _____

IV. Organizational characteristics and legal environment

1. a) Is your cooperative affiliated in any way with other cooperatives? (e.g., Farm Bureau, a federation, etc.)

☐ 1. Yes

☐ 2. No

- b) If yes, please identify the other cooperatives and indicate the nature of the affiliation _____

2. If your answer to IV 1. was yes, please identify the services received from that affiliation.

☐ 1. Market information

☐ 2. Technical information

- ☐ 3. Credit
 - ☐ 4. Legal services
 - ☐ 5. Coordination of marketing effort
 - ☐ 6. Source of agricultural inputs
 - ☐ 7. Pricing recommendations
 - ☐ 8. Other (please specify) _____
3. a) Do you bargain under state legislation?
- ☐ 1. Yes
 - ☐ 2. No
- b) If yes, has that legislation ever been challenged in court?
- ☐ 1. Yes
 - ☐ 2. Not to my knowledge
- c) If you answered yes to 3b, when was the challenge brought, in what court, and what were the major charges? _____
- _____
4. a) Do you anticipate the introduction of new legislation in your state within the next year?
- ☐ 1. Yes
 - ☐ 2. No
- b) If yes, what major challenges do you expect that legislation to face? _____
- _____
- _____

5. During the last decade, considerable interest in state legislation to facilitate farm bargaining has been expressed. The following are among the proposed provisions for such legislation. Your reactions to these proposed provisions are needed. Please read each provision, its explanation, and then indicate whether you would oppose it or support it, and whether you would find it politically feasible to enact. Your assessment of growers' and processors' views is also desired. Therefore, please indicate whether, in your opinion, a majority of growers and handlers would favor the provision. In each of the following cases, an explanation of your answer would be helpful, although not essential.

Provision A: To define the failure to bargain in good faith as an unfair practice subject to penalty of law.

Explanation: If it can be shown that a party to bargaining made no serious attempt to reach a mutually beneficial agreement, that party would be subject to a fine.

(Please check 1 or 2 and 3 or 4 and 5 or 6 and 7 or 8.)

- ☐ 1. I would favor provision A.
- ☐ 2. I would not favor provision A.
- ☐ 3. I believe the provision is politically feasible.
- ☐ 4. I believe the provision is not politically feasible.
- ☐ 5. I believe that a majority of growers would favor the provision.
- ☐ 6. I believe that a majority of growers would not favor the provision.
- ☐ 7. I believe that a majority of handlers would favor the provision.
- ☐ 8. I believe that a majority of handlers would not favor the provision.

Reason: _____

Provision B: To establish a procedure by which to accredit associations of growers as sole, exclusive agents for all growers wishing to bargain collectively with processors.

Explanation: Growers wishing to bargain collectively may make agreements to do so only through the accredited association, although they would also be free to deal with processors on an individual basis. Processors would be obliged to bargain in good faith with the accredited association.

(Please check 1 or 2 and 3 or 4 and 5 or 6 and 7 or 8. _

- ___ 1. I would favor provision B.
- ___ 2. I would not favor provision B.
- ___ 3. I believe the provision is politically feasible.
- ___ 4. I believe the provision is not politically feasible.
- ___ 5. I believe that a majority of growers would favor the provision.
- ___ 6. I believe that a majority of growers would not favor the provision.
- ___ 7. I believe that a majority of handlers would favor the provision.
- ___ 8. I believe that a majority of handlers would not favor the provision.

Reason: _____

Provision C: To provide that all growers, members and non-members alike, who fall within a designated group (a bargaining unit), must market their products through or at the direction of the accredited, exclusive agent association. This assumes that the association is "elected" by the growers to represent them.

Explanation: Unorganized growers typically benefit from the bargaining efforts of organized growers. This creates an incentive for growers not to join an association and hampers organizational efforts. This provision would eliminate this incentive without obligating growers actually to become members of the association. Associated with the provision would be some measure to limit the number of growers so obliged. For example, non-commercial growers and growers of commodities for fresh use would not logically market through an association dealing with processors.

(Please check 1 or 2 and 3 or 4 and 5 or 6 and 7 or 8.)

- 1. I would favor provision C.
- 2. I would not favor provision C.
- 3. I believe the provision is politically feasible.
- 4. I believe the provision is not politically feasible.
- 5. I believe that a majority of growers would favor the provision.
- 6. I believe that a majority of growers would not favor the provision.
- 7. I believe that a majority of handlers would favor the provision.
- 8. I believe that a majority of handlers would not favor the provision.

Reason: _____

Provision D: Four different kinds of authority could be used to implement and administrate the legislation. They would accredit associations, define bargaining units, receive complaints, conduct investigations, etc.

- 1. A board appointed by the governor and composed of growers and public representatives (neither growers nor processors).
- 2. A board appointed by the governor and composed of a balanced number of growers and processors, as well as an odd number of public representatives.
- 3. A board appointed by the governor and composed entirely of public members.
- 4. An administrator (director of agriculture or other appointed official).

(Please identify the kind of authority you believe would be preferred by each of the following. Do so by marking 1, 2, 3, or 4 next to each of the following categories.

- 1. I prefer
- 2. I believe the voting public would prefer

___ 3. I believe growers would prefer

___ 4. I believe processors would prefer

Reason: _____

Provision E: To provide compulsory mediation for accredited associations and processors who fail to reach an agreement by 30 days before the beginning of the commodity's customary marketing period.

Explanation: Mediation is the use of a third party to listen to opposing positions, offer advice, and suggest alternatives which may facilitate an agreement. His recommendations are not binding.

(Please check 1 or 2 and 3 or 4 and 5 or 6 and 7 or 8.)

___ 1. I would favor provision E.

___ 2. I would not favor provision E.

___ 3. I believe the provision is politically feasible.

___ 4. I believe the provision is not politically feasible.

___ 5. I believe that a majority of growers would favor the provision.

___ 6. I believe that a majority of growers would not favor the provision.

___ 7. I believe that a majority of handlers would favor the provision.

___ 8. I believe that a majority of handlers would not favor the provision.

Reason: _____

Provision F: To employ compulsory, binding arbitration as a means of resolving disputes between negotiating parties failing to reach an agreement by the first day of the marketing period.

Explanation: An arbitration panel composed of equal number of growers and processors and a chairman acceptable to both sides would investigate the bargaining record and relevant facts. It would then impose binding terms of trade on bargaining parties.

(Please check 1 or 2 and 3 or 4 and 5 or 6 and 7 or 8.)

- ___ 1. I would favor provision F.
- ___ 2. I would not favor provision F.
- ___ 3. I believe the provision is politically feasible.
- ___ 4. I believe the provision is not politically feasible.
- ___ 5. I believe that a majority of growers would favor the provision.
- ___ 6. I believe that a majority of growers would not favor the provision.
- ___ 7. I believe that a majority of handlers would favor the provision.
- ___ 8. I believe that a majority of handlers would not favor the provision.

Reason: _____

Provision G: To require that the arbitration settlement committee choose between the last offers of each party in making its decision.

Explanation: This has been suggested as a means to provide an incentive for each party to make reasonable offers so as to avoid arbitration or, in the case of arbitration, to stand a good chance of having their terms accepted.

(Please check 1 or 2 and 3 or 4 and 5 or 6 and 7 or 8.)

- ___ 1. I would favor provision G.
- ___ 2. I would not favor provision G.
- ___ 3. I believe the provision is politically feasible.

- ___ 4. I believe the provision is not politically feasible.
- ___ 5. I believe that a majority of growers would favor the provision.
- ___ 6. I believe that a majority of growers would not favor the provision.
- ___ 7. I believe that a majority of handlers would favor the provision.
- ___ 8. I believe that a majority of handlers would not favor the provision.

Reason: _____

Provision H. To permit associations or processors to exercise an option to elect out of bargaining with their opposites at any time prior to the 30 day before the marketing period.

Explanation: This would provide participants with a means of avoiding binding arbitration if, on the basis of preliminary negotiations, it appears that no mutually acceptable agreement can be worked out.

(Please check 1 or 2 and 3 or 4 and 5 or 6 and 7 or 8.)

- ___ 1. I would favor provision H.
- ___ 2. I would not favor provision H.
- ___ 3. I believe the provision is politically feasible.
- ___ 4. I believe the provision is not politically feasible.
- ___ 5. I believe that a majority of growers would favor the provision.
- ___ 6. I believe that a majority of growers would not favor the provision.
- ___ 7. I believe that a majority of handlers would favor the provision.
- ___ 8. I believe that a majority of handlers would not favor the provision.

Reason: _____

Provision I: To provide that processing cooperatives, as handlers, would not be subject to the provisions of the bargaining law.

Explanation: This would prevent grower members of the processing cooperative from having to bargain with the cooperative to which they belong and sell.

(Please check 1 or 2 and 3 or 4 and 5 or 6 and 7 or 8.)

- ____ 1. I would favor provision I.
- ____ 2. I would not favor provision I.
- ____ 3. I believe the provision is politically feasible.
- ____ 4. I believe the provision is not politically feasible.
- ____ 5. I believe that a majority of growers would favor the provision.
- ____ 6. I believe that a majority of growers would not favor the provision.
- ____ 7. I believe that a majority of handlers would favor the provision.
- ____ 8. I believe that a majority of handlers would not favor the provision.

Reason: _____

APPENDIX C

INTERVIEW QUESTIONNAIRES

APPENDIX C

OMB No. 40-576006
Exp. Date 4-30-77

Questionnaire for Interviews with Bargaining Association Managers

INTRODUCTION

The interviewer will have introduced himself to the person to be interviewed by telephone prior to the interview itself. In securing the interview, the interviewer will indicate,

- 1) the purpose of the research (in simple terms, to learn what the effects of different bargaining laws are),
- 2) the reason for coming to the association manager (he is in the best position to answer these questions), and that
- 3) the results of the research will be passed on to the association.

A. Descriptive and Operational Information on Bargaining

1. For what commodity do you bargain? _____
2. For how long has your association bargained? _____
3. How many members does your association have? _____
4. How many non-member growers sell to the same handlers as does your association? (estimate) _____
5. How many of your members (if any) belong to processing cooperatives?

6. How many of your members (if any) are subsidiaries or affiliates of firms which are primarily non-farm firms? _____
7. In what states and which counties are your growers located?
(Which counties are the greatest production regions?)
8. Please indicate the names of the firms with which you bargain and the share (by dollar volume) done with each.

Firm Name	% of total bargained sales
_____	_____
_____	_____
_____	100%

9. How do each of these firms utilize the commodity?
10. What is your best estimate of your bargained, dollar share of these firms purchases?
11. Do your growers sell to any processing cooperatives?
12. Are there any local processors with whom you do not deal? (if yes, why not?)
13. For what kinds of contracts do you bargain? ("master," "approved," pre or post-production, written or verbal contract)
14. For what kind of price do you bargain? (Fixed, formula, other)
15. What physical handling of the product is performed by growers?
16. What physical handling of the product is performed by processors?
17. Does your association organize to bargain by plant or by firm?
18. Information collected (production, consumption and price projections, costs, investment plans, alternative markets, public opinion, alternative crops, other).
19. What information is most important?
20. What information is most difficult to secure?

21. What "rules of thumb" or other guidelines are used in implementation of plans to bargain? Example: One bargaining association used the "rule of thumb" that 40% of a processor's price increase can be bargained away from him.
22. Who proposes specific bargaining objectives? (bargaining committee, general manager, or exec. secretary, commodity division manager, members-at-large)
23. Who determines which objectives will be pursued?
24. Who decides whether terms of trade will be accepted?
25. Who represents handlers in the bargaining process? _____
 What are the key dates in the bargaining year (bargaining personnel selection, when they work, when handlers are contacted, when bargaining ends, planting, harvesting, crop estimates)?
26. What are the approximate dates of key events in the bargaining year? (bargaining personnel selection, when they work, when handlers are contacted, when bargaining ends, planting, harvesting, crop estimates)?

____ bargaining personnel selection	____ planting dates
____ when preparations are made	____ harvesting dates
____ when handlers are first contacted	____ crop estimates
____ when bargaining begins	____ other
____ when bargaining ends	
27. What are the major issues in bargaining sessions?
28. Which of these issues are hardest to resolve?

29. Which of these issues are most important to members?

Use the items in this list to prompt respondent after initial responses to 27, 28, 29.

1. Price
2. Premiums and discounts
3. Time of payment
4. Quality standards
5. Quality measurement procedures
6. Delivery schedules
7. Provision of containers
8. Provision of (cost of) seeds
9. Provision of transportation
10. Weighing procedures
11. Raw product handling procedures
12. Quantity of product
 - a. by acre
 - b. by quantity of output
13. Bypassed acreage
14. Length of contract
15. Responsibilities and rights during production
16. Process for provision on production inputs (other than seeds)
17. Spraying and dusting
18. Planting time
19. Harvesting time
20. Use of irrigation equipment
21. Other (please specify) _____

30. Have you ever failed to secure an agreement with handlers? (If yes, when and under what circumstances?)

31. In either case

a) How did your association respond?

or b) How would you respond?

c) How did the handlers respond?

or d) How would you expect them to respond?

Examples: Grower: discontinue or reduce production, seek alternative outlets, custom process, leave in field. Handlers: reduce production, process elsewhere, ship in from elsewhere.

B. Association Objectives and Factors Affecting Their Achievement

1. What are the major objectives pursued by the association? (assured markets, stable prices, higher prices, expanded markets, expanded membership, better market information, higher grower incomes, other)
2. Please rank these objectives in terms of their priority.
3. What are the most important achievements of the association? (higher prices, stable prices, secure markets, grading standards consistent, quality differences are reflected in prices, harvesting times are coordinated with growers and handlers, growers are rewarded for specific cultural and handling practices, credit is more easily acquired, settlement period is reduced, others)
4. To what specific factors do you attribute your successes? (explain)
5. In what ways are you disappointed with the performance of your association?
6. To what factors do you attribute your difficulties in this regard? (lack of member support, lack of bargaining experience, lack of market information, no recognition by handlers, discrimination against grower members, inability to attract new members, unfair practice legislation is not enforced, bargaining legislation is inadequate, no supply control, growers expectations are unreasonable, etc.)

7. What have been the effects of bargaining upon the following?

a) Contracts used (pre-post production, master-approved, written-verbal, none)

b) Terms discussed

1. Price
2. Premiums and discounts
3. Time of payment
4. Quality standards
5. Quality measurement procedures
6. Delivery schedules
7. Provision of containers
8. Provision of (cost of) seeds
9. Provision of transportation
10. Weighing procedures
11. Raw product handling procedures
12. Quantity of product
 - a. by acre
 - b. by quantity of output
13. Bypassed acreage
14. Length of contract
15. Responsibilities and rights during production
16. Prices for provision on production inputs (other than seeds)
17. Spraying and dusting
18. Planting time
19. Harvesting time
20. Use of irrigation equipment
21. Other (please specify) _____

c) Production (e.g., cropping patterns), harvesting (e.g., passed acreage), handling responsibilities.

d) The distribution of risk (e.g., use of formal pricing, ownership of specialized equipment, other).

e) Price levels.

f) Production levels.

g) Production practices.

h) Handling procedures.

i) Behavior of handlers.

8. What complaints about bargaining have been issued by processors?

9. What favorable comments are issued by processors?

C. Questions Relating to the Manager's Insights Regarding Needed Legislation and the Effects of Proposed Laws.

1. On the basis of your experience with bargaining associations, what changes (if any) would you recommend for state or federal bargaining legislation?

2. For what reasons would you recommend these changes?

3. What would be the effects of such changes on the items listed in B-7?

4. What would be the reactions of manager, member and non-member growers, handlers, and other parties to the following rules?

a) A rule which makes it an unfair practice for processors of agricultural products to refuse to bargain with cooperative bargaining associations if some portion of their members have established a prior course of dealing with that processor.

b) A rule like that in "a" which includes the same obligation for grower associations.

c) A provision by which funds are provided to create a board to receive, investigate, and act upon complaints of unfair practices.

- d) A rule-establishing board empowered to accredit particular associations as "exclusive agent" cooperatives which would be the sole bargaining agents for growers within some formally defined bargaining unit. (e.g., plant firm, geographic area).
 - e) A rule compelling associations and handlers to accept mediation if they fail to reach an agreement within some specified period of time in the marketing period.
 - f) A rule which obligates all members of a bargaining unit to market their products through or at the direction of the bargaining accredited "exclusive agent."
 - g) A rule compelling growers and processors which fail to reach an agreement by some specified date in the marketing year to accept binding arbitration.
 - h) A rule providing that production of grower members of processing cooperatives which is contracted to the processing cooperative and that produced by handlers for their own processing use are excluded from the provisions of the law.
- D. Existing and Proposed Bargaining Legislation. (Specific questions will vary by state. The interviewer has studied individual state laws.)
- 1. What have been the effects of specific provisions of the state legislation. (positive, negative:)
 - 2. What specific modifications would you recommend?

APPENDIX D

**PERSONS INTERVIEWED AND
QUESTIONNAIRES RECEIVED**

APPENDIX D

Persons Interviewed and Questionnaires Received

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
<u>California</u>					
Apricot Producers of California Ralph N. Watters, Manager 5923 College Avenue #300 Oakland, CA 94618 (415) 655-5959	Apricots			4/6/76	
Avacado Growers Bargaining Council Mr. G. J. Clasen, President 907 East Mission Road Fallbrook, CA 92028 (714) 728-6004					
California Asparagus Growers Association Wm. DePaoli, General Manager Box 1762 Stockton, CA 95201 (209) 465-3482	Asparagus		yes	4/6/76	
California Canning Peach Association Ronald Schaler, President 3708 Mt. Diablo Boulevard, #220 Lafayette, CA 94549 (415) 284-9171	Peaches (cling)		yes	4/5/76	

Persons Interviewed and Questionnaires Received (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
California Canning Pear Association Cameron Girton, General Manager 100 Bush Street San Francisco, CA 94104 (415) 982-3076	Pears		yes	4/5/76	
California Tomato Growers Association Robert F. Holt, Manager 9036 Thornton Road Stockton, CA 95207 (209) 478-1761	Tomatoes		yes	4/7/76	
California Freestone Peach Association Dave L. Zollinger, Manager Box 3004 Modesto, CA 95353 (209) 524-6231	Peaches (freestone)		yes	4/9/76	
California Beet Growers Association Malcomb Young, General Manager 2 West Swain Road Stockton, CA 95207 (209) 477-5596	Sugarbeets		yes	4/7/76	

Persons Interviewed and Questionnaires Received (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
Monterrey County Growers Bob Mills, Manager Greenfield, CA (408) 674-5547			yes	7/22/76	
Prune Bargaining Association Ken Davis, Manager 1307 Grey Avenue Yuba City, CA 95991 (916) 674-5636	Prunes		yes	4/1/76	
Raisin Bargaining Association Kalem Barsarian, Manager 1111 Fulton Mall Helm Building Fresno, CA 93721 (209) 233-8304	Raisins		yes	4/8/76	
<u>Colorado</u> Mountain States Beet Growers Lee Johnson, Manager 1000 10th Street #209 Greeley, CO 80631 (303) 352-6875	Sugarbeets		yes	4/12/76	

Persons Interviewed and Questionnaires Received (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
<u>Idaho</u>					
Idaho Beet Growers Association Claude Johnson, President Rt. 1, Box 210 Blackfoot, ID 83221 (208) 785-3345	Sugarbeets		yes	3/23/76	
Potato Growers of Idaho Jerry Murphy, Manager Box 949 Blackfoot, ID 83221	Potatoes		yes	3/23/76	
Idaho Farm Bureau Marketing Association Orlo S. Carver, Manager Box 167 Boise, ID 83701 (208) 342-2688	Peas		no	3/24/76	
<u>Indiana</u>					
Indiana Agricultural Marketing Association Robert (Bob) Brenneman 130 E. Washington Street Indianapolis, IN 46204	Popcorn, Tomatoes		yes	no	

Persons Interviewed and Questionnaire Received (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
<u>Iowa</u>					
National Farmer's Organization Oren Lee Staley, President Corning IA 50841 (515) 322-3131			no	5/12/76	
<u>Maine</u>					
Agricultural Bargaining Council Dorothy Kelley, Executive Vice President Agricultural Center Presque Isle, ME 04769 (207) 769-2711	Potatoes		yes	3/8/76	
Maine Agricultural Marketing Association Richard Thomas, General Manager Box 190 Augusta, ME 04330 (207) 622-4111	Broilers		yes	no	
<u>Michigan</u>					
MACMA Noel Stuckman, Manager 7373 West Saginaw Lansing, MI 48904 (517) 485-8121	Asparagus Potatoes Cherries Kraut Cabbage Apples	Cucumbers Plums	yes (Foster) yes (Butler)	5/18/76 5/18/76	

Persons Interviewed and Questionnaire Received (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
Michigan Blueberry Growers Association J.P. Holbein, General Manager Drawer B Grand Junction, MI 49056	Blueberries		no	no	
<u>Minnesota</u>					
Southern Minnesota Cannery Growers A. Roebke, President Hector, MN 55342	Sweetcorn Peas		yes	2/11/76	
Red River Valley Potato Growers Association Stan Erickson, Market Analyst Box 301 East Grand Forks, MN 56721 (218) 773-1197	Potatoes		yes	3/19/76	
<u>Nebraska</u>					
Central Nebraska Beet Growers Coop Association Route 1 Holdredge, NB 68949	Sugarbeets		yes	no	

Persons Interviewed and Questionnaire Received (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
<u>New York</u>					
New York Farm Bureau Marketing Cooperative, Incorporated Mike Muscarella, Manager 17 East Bank Albion, NY 14411 (716) 589-6209	Tomatoes Apples Grapes		no	no	
<u>Ohio</u>					
Ohio Agricultural Marketing Association Paul Slade, Commodity Division Manager 245 North High Street Columbus, OH 43216 (614) 225-8911	Limas, Grapes Tomatoes Sweetcorn Peas Cabbage		yes	1/23/76	
<u>Oregon</u>					
Nyssa-Nampa District Beet Growers James Elgin, Manager 106 Main Nyssa, OR 97913 (503) 372-2904	Sugarbeets		yes	3/24/76	
Malbeur Potato Bargaining Association Keith Tallman Homedale, OR (503) 339-3785	Potatoes		yes	3/24/76	

Persons Interviewed and Questionnaire Received (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
Oregon-Washington Growers Association Fritz Collett, General Manager 4821 River Road, North P.O. Box 7133 Salem OR 97303 (503) 393-5487	Sweetcorn Purple Plums Strawberries Bushbeans		yes	3/31/76	
Filbert Growers Bargaining Association Don Maltby, Manager Canby, OR (503) 266-2604			yes	3/30/76	
<u>Utah</u> Utah State Canning Crops Association Joe Moser, President Merlin Stevensen, Officer RFD #1 Preston, UT 83263 (208) 852-2355	Snapbeans Sweetcorn Green Peas Cabbage for Kraut		yes	3/22/76	
<u>Washington</u> Central Washington Farm Crops Association Jerry Williams, Manager 320 South 7th Street Sunnyside, WA 98944 (509) 837-4621	Sweetcorn Carrots Peas Lima Beans	Sweet Cherries Grapes Potatoes	yes	3/25/76	

Persons Interviewed and Questionnaire Received (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
Washington-Oregon Berry Growers R.H. Cook, General Manager Box 217 Sumner, WA 98390	Raspberries		yes	3/29/76	
Western Washington Farm Crops Association Gary Van Dyke, General Manager 1354 Old Highway 99, North Mt. Vernon, WA 98273	Carrots Cauliflower Peas Cucumbers Sweetcorn		yes	3/29/76	
Washington-Oregon Canning Pear Association Clay Whybark, Executive Secretary 202 Holtzinger Building Yakima, WA	Pears		yes	3/26/76	
Washington Asparagus Growers Association, and Washington Agriculture Marketing Association Gene R. Coe, Manager 318 South 7th Street, P.O. 757 Sunnyside, WA (509) 837-6022	Asparagus		yes	3/25/76	

Persons Interviewed and Questionnaire Received (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
Washington Sugarbeet Growers Association J. Ford Smith Executive Secretary P.O. 1002 Pasco, WA 99301			no	no	
Oregon-Washington Pea Growers Dennis Rea or Tom Copeland 300 South 2nd Walla Walla, WA 99362			no	3/25/76	
Blue Mountain Growers Walla Walla, WA 99362			no	no	
<u>Wisconsin</u>					
Farm Bureau Marketing Association Alton Rozenkranz, General Manager P.O. 1150 7010 Mineral Point Road Madison, WI 53701	Beets Cabbage Cherries Pears Sweetcorn		yes	2/13/76	
Central Wisconsin Farm Crops Frederick Reid, President Plainfield, WI 54966		Peas	no	no	

Inactive or Defunct Associations

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
<u>California</u>					
Central Vegetable Marketing Association John Frassetti, Past President 1735 Cunlap Avenue Gilroy, CA 95020		Tomatoes Cucumbers		4/2/76	
California Cucumber Growers Association S.E. Williams, Past Secretary Box 666 Freemont, CA 94536					
<u>Colorado</u>					
Colorado Farm Bureau Marketing Association Donald Bottom Controller Box 5647 Denver, CO 80217 (303) 455-4553					(L)Suspended Operations "have suspended our operations and have nothing to report"
<u>Florida</u>					
Hi-Quality Growers Forrest City, FL 32751					

Inactive or Defunct Associations (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
<u>Illinois</u>					
Illinois Contract Marketing Association				2/9/76	
Jeff Gain					
Commodity Division Manager					
Dale Butz, General Manager					
1701 Towanca Avenue					
Bloomington, IL 61701					
(309) 828-0021					
<u>New Jersey</u>					
New Jersey Agricultural Marketing Association			yes	3/11/76	
George Webster, Manager					
Glassboro, NJ 18028					
(609) 881-6672					
<u>Washington</u>					
Walla Walla Vegetable Growers Association				3/25/76	
Leonard Rizzutti, Past President					
Walla, Walla, WA					

Other Contacts

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
<u>California</u>					
Ralph Bunje, Manager California Winegrape Growers Association Builingame, CA				4/1/76	Long time observer of fruit marketing. Former manager of California Freestone Peach Association.
Richard Cunan, Assistant Secretary California Cannery and Growers 3100 Gerry Building San Francisco, CA 94106				4/9/76	Official of major processing cooperative
Ernest Bedrosian, President National Raisin Company 626 South Fifth Street P.O. 305 Fowler, CA 93625				4/8/76	Organizer of Raisin Bargaining Association, Raisin processor
Charles and Gus Bonner Bonner Packing Company No. 64 Fulton (P.O. 2072) Fresno, CA 93718				4/8/76	Raisin packers
<u>Colorado</u>					
National Beet Growers Association Lee Johnson, Manager 1000 10th Street #205 Greeley , CO 80631			yes	yes	

Other Contacts (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
<u>Maine</u>					
Duane Smith, Extension Economist Cooperative Extension Service P.O. 1117 Presque Isle, ME 04769 () 764-3361				2/8/76	Close observer of bargaining in Maine--has contacts in grower and pro- cessor communities
Mr. Charles Schroeder, Mr. Arnold Davis R.T. French Company Washburn, ME 04786				2/9/76	Buyer and fieldman for potato processor
Glendon Wathen, President Agricultural Bargaining Council Fort Fairfield, ME 04742				2/9/76	
Bernard Shaw, Past President Ag. Bargaining Council Limestone, ME 04750				2/9/76	
Frank Hussey Presque Isle, ME				2/9/76	Long time observer of Main potato industry
Drs. Richard King and Neil Pelson Department of Agricultural Economics University of Maine Orono, ME 04473				2/10/76	

Other Contacts (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
Mr. Ralph Kierstad, Secretary Maine Agricultural Marketing and Bargaining Board Office of the Commissioner of Agriculture Augusta, ME 04330				2/10/76	
<u>Michigan</u>					
Tom Moore, Administrator Michigan Agricultural Marketing and Bargaining Board 1020 Longs Blvd. Lansing, MI 48910					Numerous informal interviews
<u>Minnesota</u>					
Bill Walker, Lobbyist Minnesota Farmers Union 1275 University Avenue St. Paul, MN 55104				2/10/76	Key person in pas- sage of Minnesota Law and one-time Assistant Commissioner
Tom Kalitowski Assistant Commissioner of Agriculture State Office Building St. Paul, MN 55102				2/12/76	Charged with im- plementing Minnesota Law

Other Contacts (Continued)

Association Name, Address, Phone, Person Interviewed	Commodities Reported	Commodities not Reported	Questionnaire Received	Interview	Comments
<u>Washington, D.C.</u>					
Randall Torgerson, Administrator Farmer Cooperative Service U.S. Dept. of Agriculture Washington, D.C. 20250					
<u>Washington</u>					
Independent Red Raspberry Growers Association Melvin Moon, President 2615 Tacoma Road Pagillip, WA 98371				3/29/76	Blocks quality berries and sells for highest bidder

APPENDIX E

DE HORN ANALYSIS OF PRO-FAC-CURTICE- BURNS RELATIONSHIP

APPENDIX E

De Horn Analysis of Pro-Fac-Curtice-Burns Relationship

Department of
Attorney General

MEMORANDUM

TO: Thomas J. Moore, Administrator
Agricultural Marketing and Bargaining Board
Michigan Department of Agriculture
August 5, 1975

FROM: Jon M. DeHorn
Assistant Attorney General

RE: Request of Pro-Fac for Exclusion from 1972 PA 344

Pro-Fac Cooperative, Inc. and Curtice-Burns, Inc. have requested an exclusion from the Agricultural Marketing and Bargaining Act, 1972 PA 344. The Act provides for the exclusion of "any quantity of the agricultural commodity contracted by producers with producer owned and controlled processing cooperatives." MCLA 290.707; MSA 12.94 (107). The response to Pro-Fac's request turns upon whether the intricately interrelated corporate structures of Pro-Fac and Curtice-Burns afford to Pro-Fac's Michigan producer-members sufficient control of the cooperative so as to qualify Pro-Fac Cooperative, Inc. as a producer owned and controlled processing cooperative. If so, the Act clearly requires that the requested exclusion be granted, and, conversely, if not, the request must be denied. The purpose of this memorandum is to investigate the facts and documents related to this request and advise whether, as a matter of law, the exclusion must be granted. Throughout this investigation, its focus will be whether the scheme involving Pro-Fac and Curtice-Burns is genuine or is instead a veiled attempt by a large out-of-state processor to evade the Act and its beneficial effects.

Historically, the agricultural industry in Michigan has been comprised mainly of individual and family producers and numerous small-scale, Michigan-owned processors. Michigan Fruit Cannery, Inc. was such a processor. In recent years, however, a trend toward larger, conglomerate processors has been noted, with a resulting economic imbalance to the agricultural industry. The Agricultural Marketing and Bargaining Act, 1972 PA 344, was enacted by the Michigan Legislature in an effort to redress that imbalance. The Act requires farmers to band together for bargaining purposes and also requires that the processing industry negotiate with the authorized bargaining representative of the producers. To say that this requirement to bargain has been unpopular with the processing industry is to understate the case, but this unpopularity with processors was certainly predictable, given the purposes of the Act. What was also predictable was that fertile minds in the processing

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equipment formerly operated by Michigan Fruit Cannery for approximately \$5,800,000 and leased those facilities back to Curtice-Burns. Pro-Fac has since attempted to recruit members in Michigan, no doubt using the proceeds from the sale of its stock to its members to meet its obligations to Curtice-Burns for the purchase of Michigan Fruit Cannery's assets.

It is obvious from these facts that Pro-Fac would not have come to Michigan and would not have requested an exclusion from the Act without Curtice-Burns' prior involvement here. The impact of this observation on the exclusion request will be discussed below.

LEASE

There is no doubt that the transaction between Pro-Fac and Curtice-Burns involving the purchase of the assets of Michigan Fruit Cannery is a sale and lease-back arrangement. The terms of the lease must be scrutinized, then, to determine whether the Michigan producer-members of Pro-Fac really own the processing cooperative or whether their ownership is merely a facade.

As annual rental, Curtice-Burns pays a sum equal to: the total annual depreciation; all taxes, charges for water, and assessments against the premises; the cost of insurance; and interest on certain promissory notes held by third parties. There is no allowance in the rental payment for "profit;" thus, Curtice-Burns, by covering only Pro-Fac's costs, is paying no more than if it owned the facilities.

The lease also provides Pro-Fac with the right to terminate the lease if certain specified events of default occur. Termination, however, triggers Curtice-Burns' right to purchase the facilities at book value. Again, there is no allowance made for "profit" to Pro-Fac. The lease, then, is atypical in that it does not assure the landlord control and return on investment. Not only is there no return on investment, but also the portion of the rental which covers depreciation reduces book value, with the result that, in the event cooperation between the parties becomes impossible, Curtice-Burns holds the power to divest Pro-Fac of the facilities and at a very favorable price. Clearly, Curtice-Burns holds the upper hand. Rental of the facilities costs Curtice-Burns no more than if it owned them.

The lease does, however, provide the following significant indicia of ownership in Pro-Fac. At the expiration of the original ten-year term, Curtice-Burns has a right of renewal for two five-year terms, but the rental may be changed at the request of either party. If agreement cannot be reached, the dispute is subject to arbitration before a three-member panel. Furthermore, at the expiration of the term and

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all renewals, the premises and equipment are to be surrendered and delivered to Pro-Fac in good repair and condition, with the exception of tenant-added property, which Curtice-Burns may remove.

The conclusion to be derived from examining the lease is mixed. The arrangement provides no return to the landlord and permits divestiture by the tenant of the landlord's interest at book value if Pro-Fac evicts or otherwise terminates its relationship with Curtice-Burns. Standing alone, this would indicate that the facilities are processor-owned; however, the termination and expiration provisions would indicate the opposite. That there is any question regarding ownership militates against granting the exclusion request.

Even if there were no doubt that Pro-Fac owns the processing cooperative, there would still be a question whether ownership by Pro-Fac is sufficient or whether only ownership by Michigan producers satisfies the intentions of the Legislature as expressed in the Act. Those who seek the exclusion as producers must own and control the processing facilities. Pro-Fac has several hundred members in several states. To say that "Pro-Fac owns" is to say that all of these members wherever situated own. This is far afield from the situation contemplated by the Legislature in enacting 1972 PA 344. In attempting to stabilize the agricultural industry in this state, the Legislature mandated certain activities. Recognizing that stability could also be achieved by permitting Michigan producers to form processing cooperatives, the Legislature permitted these organizations to form. Stability in Michigan's agricultural industry is not promoted in accord with legislative intent by a processing cooperative with headquarters in New York, with members in many states, and with only a minority of its members in Michigan.

LOAN AGREEMENT

A second contractual aspect of the relationship of Pro-Fac and Curtice-Burns is embodied in the loan agreement. Under this agreement, Pro-Fac has agreed to lend to Curtice-Burns for working capital all funds of Pro-Fac not immediately needed for its own operations. There are three sources for these funds: the proceeds received from the issuance of Pro-Fac's capital stock; the proceeds received from loans to Pro-Fac from the Springfield Bank for Cooperatives or other sources; and funds due Pro-Fac members but retained by Pro-Fac. Interest is paid only on the preferred stock of Pro-Fac and on the bank loans to Pro-Fac; no interest is paid on funds due Pro-Fac members, which funds are convertible into preferred stock. The preferred stock earns dividends of not less than 6% nor more than 8%, as determined by the board of directors. All funds lent by Pro-Fac to Curtice-Burns are repayable, with interest as specified below, either at termination of the agreement or

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at such earlier time as is desired by either party. Pro-Fac's right to recall funds is, however, limited to funds sufficient to meet its requirements in conducting its business, which provision leads one to ask "what business": Pro-Fac has no employees or independent operation. The interest Curtice-Burns pays on the proceeds from the preferred stock is equal to that charged by the Springfield Bank for Cooperatives on term loans to Pro-Fac. Curtice-Burns also pays Pro-Fac interest on proceeds from bank loans at the rate charged by the bank.

Capital contributed by Pro-Fac's producer-members and that borrowed from banks, then, is lent to Curtice-Burns, enabling it to operate. One must wonder why Curtice-Burns does not obtain all bank loans for itself directly. The conclusion suggested by this arrangement is that, were Curtice-Burns to do so, it would be much more difficult to argue that the processing operation is producer owned and controlled. What emerges from the loan agreement, then, is a feeling that a facade of producer control is being maintained.

MANAGEMENT AGREEMENT

As has already been noted, the Act contemplates producer ownership and control of the cooperative. A third contractual arrangement--the management agreement--provides that all operations of Pro-Fac, including supervision and management of its business and properties, are handled by Curtice-Burns under the policy direction of the Pro-Fac board of directors. For the purpose of carrying on the cooperative's business, Curtice-Burns has possession of all of the real and personal property, money, and all other assets of Pro-Fac and, in return, has agreed to pay all costs and expenses of the business. Control over the operations by Pro-Fac's board of directors derives from two features of this agreement: Pro-Fac's officers and directors are afforded free access to all relevant books and records and may request desired operating and financial statements; and the delegation of authority to Curtice-Burns is limited by the general policies formulated and approved by the board and is limited to matters in the ordinary course of business. Matters which, by reason of their size or nature, are not in the ordinary course of business require consultation with Pro-Fac's board.

Any control that Pro-Fac has over the processing of its members' products, then, is vested in its board of directors. An inquiry into the structure of the board is thus relevant to a discussion of control of the cooperative. According to Article III of the By-Laws of Pro-Fac Cooperative, Inc., the board shall consist of not less than eleven nor more than fifteen members. With the exception of one director representing Curtice-Burns, Inc. and one director representing Agway, Inc., the membership of the board is elected at annual meetings of the members of the cooperative. Although the presence of the two directors

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representing Agway and Curtice-Burns contributes to a surmised that the processor is the moving force rather than the producers, clearly the majority of the board is drawn from the producer-members of the cooperative. Presumably, then, the board stands ready to exercise the control prerogatives that the management agreement affords to it. Two questions flow from this observation: are the prerogatives given to the board a true basis for the exercise of control; and, if so, how does the board exert this control.

There is nothing within the bounds of the management agreement to suggest that the board lacks the power to exercise general policy control. The provisions noted above are rather typical of statements describing the powers of boards of directors and are a sufficient basis for an alert and aggressive board to exercise general policy control. As long as the working relationship between the Pro-Fac board and Curtice-Burns is smooth and there are no disputes, the question of how the board exerts control is abstract and unimportant. But the possibility of disputes is real: Curtice-Burns' employees are not employees or agents of Pro-Fac. Where a dispute arises, potential problems will also arise. Pro-Fac and Curtice-Burns are represented by the same counsel. In the event that the Pro-Fac board should need the advice of counsel in attempting to exercise its power of control over a fractious Curtice-Burns management, that advice cannot be impartially rendered, particularly as Curtice-Burns is clearly the more important client. If litigation must be brought in order to achieve control, this cannot be accomplished. Without the prospect of forceful legal representation unhampered by conflicting interests, provisions for exercise of control are rendered meaningless in the face of discord.

There is an additional control issue here. Even if the Pro-Fac board were deemed able to control the processing cooperative, the distinct minority status of the Michigan members in Pro-Fac demands a conclusion that the control being exercised by the Pro-Fac board would not necessarily reflect the wishes of the Michigan membership and could easily be against their wishes. Such a result makes the entire scheme incompatible with the Act, which was intended to benefit the agricultural producers of this state. If the Michigan producers in Pro-Fac's membership cannot control Pro-Fac--and they cannot, realistically--then it is impossible to argue that Pro-Fac is producer controlled, within the meaning of that term as contemplated in the Act.

MARKETING AGREEMENT

Other control issues are raised by the marketing agreement concluded between Pro-Fac and Curtice-Burns. Under the terms of this agreement, Pro-Fac agrees to sell and deliver and Curtice-Burns agrees to accept and pay for crops in the amounts set forth in the profit plan adopted

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annually by the boards of directors of the two parties. The purchase price is the "commercial market value" of the crops, plus a share of the earnings or minus a share of the losses of Curtice-Burns from the sale of Pro-Fac products and from the sale of products not purchased from Pro-Fac. The "commercial market value" is determined by employing any of a sequence of four methods enunciated in this agreement. On its face, this plan appears well-conceived and likely to be successful in determining the price to be paid. On closer inspection, however, a problem involving control arises. The last resort provided for determining "commercial market value" is the submission of the dispute for binding arbitration to a three-member committee consisting of the Chairman of the Board of Curtice-Burns, the President of Pro-Fac, and, most notably, the General Manager of Pro-Fac, who, as it happens, is also Senior Executive Vice President and a Director of Curtice-Burns. Assuming arguendo that resort to binding arbitration becomes necessary, Curtice-Burns has the votes on the binding arbitration committee to determine the "commercial market value" to be paid to Pro-Fac members.

Coupling this arbitration-control feature with the delivery-payment timetable (the producer receives a first partial payment based on the estimated "commercial market value" thirty days after delivery of his crop with final determination and payment occurring in July of the year following delivery), it becomes evident that, where a dispute arises over price, the producers lack the bargaining option of withholding product. They have long since delivered their crops to the processor before they learn, with dismay, that the "commercial market value" has been determined by arbitration and is unsatisfactory, in their judgment. In determining the most important detail in the whole complex arrangement--the price to be paid for crops produced--the producers are conceivably at the mercy of their processor, the majority of whose voting stock is owned and the majority of whose directors are chosen, not by Michigan producers or even by the Pro-Fac membership but by Agway, a huge agricultural cooperative with over 110,000 members and annual sales of nearly a billion dollars. While the discordant scenario just described may appear unlikely, it is nevertheless possible, and its very possibility raises the specter of processor control over what is supposed to be a producer-controlled processing cooperative. In a processing cooperative truly producer owned and controlled, there would be no strangling over prices and there would be no need for elaborate mechanisms to avoid or settle disputes over prices between the processor and the producers: disputes of that kind could not arise. That such mechanisms are deemed necessary here--and really are necessary here--is further evidence of Pro-Fac's lack of control over Curtice-Burns.

More evidence in the marketing agreement of Pro-Fac's lack of control is that Curtice-Burns is given "sole discretion" in determining in what form the finished products shall appear for marketing. In a producer-controlled cooperative, it might not be unusual for this important

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determination to be subject to processor discretion in conjunction with the producers, but never would this decision be made totally without producer input.

Still more evidence in the marketing agreement of Pro-Fac's lack of control concerns the allocation of net earnings or losses. One of the indicia of ownership of an enterprise is the right to enjoy the profits that might result from its operation. In this agreement, the producers are not entitled to receive more for their crops than the net proceeds obtained from sale of the finished product after deduction of related processing, marketing, and other operating costs of Curtice-Burns. Thus, if the net proceeds are less than commercial market value, the aggregate payments to Pro-Fac are less than commercial market value of the raw products delivered to Curtice-Burns and are limited to the amount of the net proceeds. If the net proceeds from sales of finished products exceed commercial market value, then the resultant earnings are divided on the basis of the respective contributions by Curtice-Burns and Pro-Fac to the overall equity invested by the two companies. This latter arrangement--dividing net proceeds in excess of the commercial market value--coupled with the objectionable procedure for determining commercial market value discussed above can result in the following situation, incompatible with the notion of producer control: lowering the commercial market value paid to producers increases the amount but not the percentage Curtice-Burns receives. One would expect that, in a producer owned and controlled cooperative, decreasing the costs of the enterprise would increase the total return to the producers. But here, decreasing the major cost to the processor, farm produce, would increase the size of Curtice-Burns' share of total profits while decreasing the producers total return.

CONCLUSION

This examination of the purposes for the enactment of 1972 PA 344 and of the four agreements defining the relationship between Pro-Fac and Curtice-Burns demands a conclusion that the proposed operation is not a Michigan "producer owned and controlled processing cooperative," within the meaning of that term contemplated by the Legislature. Further, the possibility of discord exists, and, under the terms of the agreements, in a pitched battle, Curtice-Burns can be the victor, if it chooses to be. In a cooperative truly characterized by producer control, this result is inconceivable. We must conclude that Curtice-Burns is the dog and Pro-Fac is the tail, and not even a Michigan tail at that. Pro-Fac and Curtice-Burns are clearly entitled to operate in Michigan, but they must do so without benefit of an exclusion from 1972 PA 344.

JMD:sa

APPENDIX F

STUCKMAN SUMMARY OF ACTIVITY UNDER
MICHIGAN BARGAINING LAW

APPENDIX F

Stuckman Summary of Activity Under Michigan Bargaining Law

A Review of P.A. 344 The Michigan Agricultural Marketing Bargaining Act

The Michigan Agricultural Marketing and Bargaining Act, Act No. 344 of the Public Acts of 1972, was passed by the Michigan Legislature in 1972, signed by the Governor on January 9, 1973, and became effective on March 30, 1973. Major amendments in the Michigan Legislature to the bill, S. 1225 and House Substitute for S. 1225, were the limitation of eligible agricultural commodities to "perishable fruits and vegetables" and an expiration date of September 1, 1976.

SCOPE

This comprehensive farm bargaining legislation provides for: the 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 utilization of a commodity, minimum size of producers to be included, and geographic area of the state; associations may become accredited upon application to the board if they meet certain standards, the primary one is having more than 50 percent of the production and more than 50 percent of the producers in a bargaining unit as members; processors must recognize accredited associations and bargain with them in good faith; accredited associations represent all producers in a bargaining unit, both members and non-members; all producers must pay marketing service fees to an accredited association; and provides for mediation and arbitration.

ADMINISTRATION

Members of the Agricultural Marketing and Bargaining Board are Chairman James Shaffer, East Lansing; First Vice Chairman John Babcock, Hartford; Second Vice Chairman Berry Brand, Sparta; Secretary Clara McManus, Traverse City; and Assistant Secretary Frank Smith, Jr., Carleton. Mr. Thomas J. Moore is the Administrator. Office of the Board are located at 1020 Long Boulevard, Lansing, Michigan.

BARGAINING UNITS

The Agricultural Marketing and Bargaining Board established bargaining units for asparagus for processing, potatoes for freezing, cabbage for sauerkraut, red tart cherries for processing, apples for processing, pickling cucumbers, and plums for processing. The Board has received inquiries for bargaining units for potatoes for chips, sugarbeets, celery, and other fruits and vegetables.

ACCREDITED ASSOCIATIONS

The Agricultural Marketing and Bargaining Board accredited the following associations with accreditations effective on the dates listed: Michigan Asparagus Growers, February 21, 1974; Kraut Cabbage Growers, May 8, 1974; Michigan Potato Growers, May 20, 1974; Michigan Red Tart Cherry Growers, July 1, 1974; and Michigan Processing Apple Growers, May 24, 1975.

1974 NEGOTIATIONS BETWEEN ACCREDITED ASSOCIATIONS AND PROCESSORS

Asparagus: Processor demand was strong as canned and frozen inventories were manageable and consumer purchasing power was strong. A base price of 32 cents per pound was negotiated. Grades were determined by arbitration. Processors paid over the base price at an average of 33.3 cents per pound resulting from their competition to secure asparagus.

Red Tart Cherries: Processor demand was strong and crop size average. Negotiated an 18.5 cents per pound price although several major processors wanted to only pay 15 cents. Orderly negotiations resulted in an additional \$6 million to growers.

1975 NEGOTIATIONS BETWEEN ACCREDITED ASSOCIATIONS AND PROCESSORS

Asparagus: Processor demand was weak due to excessive carryover of canned asparagus. Negotiated 24 cents per pound base price and more stringent grade standards. Cannery packed 45 percent less than previous year. Freezers packed 100 percent more and fresh market sales increased by 50 percent.

Kraut Cabbage: Processor demand strong and grower cost of production up. Negotiated \$31.50 per ton late delivery and \$33 per ton early delivery in pre-planting contract.

Potatoes: Processor demand weak due to heavy inventories and plentiful supply of low-priced potatoes in storage from previous crop. Major processor refused to negotiate, blaming requirements of P.A. 344. Processor continued to refuse to negotiate, even though on April 8 the Michigan Court of Appeals put a stay on the accreditation. No growers in the bargaining unit contracted with the company as terms offered no profit potential. Most growers grew other crops. Several growers grew potatoes which were sold to the processor at prices much higher than the offered contract price.

Red Tart Cherries: Accreditation was not in effect due to Michigan Court of Appeals April 8 stay. Processor carryover large and USDA predicted crop large, although amount actually harvested was 30 percent under USDA estimate. The association asked 13.9 cents per pound with best processor payments at 10.5 cents per pound. Some processors did not announce price until early months of 1976. Cherry growers lost upwards to \$8 million due to chaotic pricing circumstances.

Processing Apples: Processor demand weak due to large carryovers. USDA predicted a record U.S. apple crop. Juice apple price was mediated and negotiated at \$1.75 per cwt. Arbitration procedures were initiated with

applesauce and frozen apple slice processors. Compromise settlements were reached while the arbitration was in process. Agreed upon base prices were mostly \$3.25 per cwt. for Northern Spy's, \$3.00 for Hard Varieties, and \$2.75 for Soft Varieties. From the producers' standpoint, negotiated prices were low relative to cost of production, but they were the highest prices received in the nation.

1976 NEGOTIATIONS BETWEEN ACCREDITED ASSOCIATIONS AND PROCESSORS

Kraut Cabbage: Processor demand moderate. Negotiated 1976 pre-planting contract terms and \$31 per ton price.

Potatoes: Processor demand moderate due to manageable carryover and high priced potatoes in storage from the previous crop. Michigan Court of Appeals stay on the association's accreditation continued. Terms of pre-planting contract negotiated with the major processor and growers have contracted their 1976 production.

Asparagus: Processor demand moderate to strong due to average inventory of canned and low inventory of frozen. Acreage for harvest in other major states expected to be down substantially from 1975. New grade standards negotiated. Association is asking 30 cents per pound for No. 1 Grade under the new grade standards. The start of the marketing period is April 23.

LITIGATION

Opposition to P.A. 344 by some fruit and vegetable processors has been expressed through litigation in the state courts. A focal point in the extensive litigation in process is whether or not P.A. 344 is within the scope of the Constitution of the State of Michigan. This question is before the Supreme Court of the State of Michigan and decisions by that court are anticipated at any time.

Significant allegations contained in the various lawsuits include: that the act violates the State Constitution by exceeding the state's police power, is contrary to the guarantees of due process of law, and 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 accredited associations do not meet the requirements of the Capper-Volstead Act and their actions are in violation of the Sherman Anti-Trust Act; and the Agricultural Marketing and Bargaining Board did not comply with the Administrative Procedures Act in bargaining unit and accreditation procedures.

The major lawsuits are as follows:

Michigan Cannery and Freezers Association, et al. v. Agricultural Marketing and Bargaining Board and Michigan Agricultural Cooperative Marketing Association (Asparagus Case - Supreme Court No. 56434). Filed in Ingham County Circuit Court on March 8, 1974. Judge Brown's decision that the Circuit Court does not have jurisdiction was appealed in the Court of Appeals, which dismissed the appeal. The suit was filed in

the Supreme Court appealing the decision of the Court of Appeals. On January 15, 1975 the Supreme Court determined that it would determine issues of law. The case was argued before the Michigan Supreme Court on October 10, 1975. The court was not yet made a decision.

Ore-Ida Foods, Inc. v. Michigan Agricultural Marketing and Bargaining Board and the Michigan Agricultural Cooperative Marketing Association (Potato Case - Court of Appeals No. 20347). Filed in Court of Appeals on May 15, 1974. On April 18, 1975 the court granted leave to appeal, combined the suit with the red tart cherry suit and stayed the accreditation of the Michigan Potato Growers until further order of the court. On February 18, 1976 the Court of Appeals stayed its proceedings until such time as the Michigan Supreme Court has rendered a decision on the asparagus lawsuit or until such time as the Michigan Legislature re-enacts or amends P.A. 344.

Michigan Canners and Freezers Association, et al. v. Agricultural Marketing and Bargaining Board and the Michigan Agricultural Cooperative Marketing Association (Red Tart Cherry Case - Court of Appeals No. 20750). Filed in the Court of Appeals on June 21, 1974. On April 8, 1975 the court granted leave to appeal, combined the suit with the potato suit and stayed the accreditation of the Michigan Red Tart Cherry Growers until further order of the court. On February 18, 1976 the Court of Appeals stayed the proceedings until such time as the Michigan Supreme Court has rendered a decision on the asparagus lawsuit or until such time as the Michigan Legislature re-enacts or amends P.A. 344.

Belding Fruit Sales, et al. v. the Agricultural Marketing and Bargaining Board and Michigan Agricultural Cooperative Marketing Association (Apple Case - Ionia County Circuit Court No. 75-4510 AZ). Filed in Ionia County Circuit Court on September 18, 1975. The suit is an action by approximately 30 apple growers who claim they should not be included in the processing apple bargaining unit and represented by the accredited Michigan Processing apple bargaining unit and represented by the accredited Michigan Processing Apple Growers because of previous contracts they had entered into with Belding Fruit Sales with exclusive sales representation for their apples. A preliminary injunction has been issued by the court permitting the plaintiffs to sell their apples through Belding Fruit Sales Company rather than through Michigan Processing Apple Growers. Parties in the suit have not pushed to bring the matter to trial because many of the issues raised in the suit have not pushed to bring the matter to trial because many of the issues raised in the suit would be answered by the Supreme Court on the asparagus case.

Michigan Canners and Freezers Association, et al. v. Agricultural Marketing and Bargaining Board and Michigan Agricultural Cooperative Marketing Association (Asparagus Case - Court of Appeals No. 22403). An appeal of the Bargaining Board's accreditation of the Michigan Asparagus Growers. No action by the Court of Appeals as the issues are the same as in the Asparagus Case in the Supreme Court.

Hoffmann Brothers v. Vlasic Food Products Company, Agricultural Marketing and Bargaining Board, and the Michigan Agricultural Cooperative Marketing Association (Cabbage Case - Saginaw County Circuit Court No. 75-01650 CZ). Filed on July 1, 1975. Request for preliminary injunction to exclude the plaintiff from the kraut cabbage bargaining unit. Request denied on August 25, 1975 pending Supreme Court decision on the Asparagus Case.

Sawyer Fruit and Vegetable Cooperative Corporation v. Agricultural Marketing and Bargaining Board (Processing Cooperative Exclusion Case - Manistee County Circuit Court No. 75-1990). Filed August 12, 1975. The judge ruled in favor of the plaintiff's plea that the administrator's determination that a producer owned and controlled processing cooperative exclusion required annual application and one year's record of operation was not supported by law.

Pro-Fac Cooperative, Inc. v. Agricultural Marketing and Bargaining Board (Processing Cooperative Exclusion Case - Berrien County Circuit Court No. 75-2819 CZ). Filed on October 8, 1975. Request preliminary and permanent injunction against the Bargaining Board's determination that the plaintiff did not qualify for exclusion as a producer owned and controlled processing cooperative. No hearing date has been set.

OBSERVATIONS

P.A. 344 has proven its value under all kinds of crop and market conditions during its short two years of experience. For the fruit and vegetable commodities involved in accreditations, 1974 was a year when market conditions were excellent and crop sizes were about average. 1975 was a year of extremely adverse market conditions reflecting the down-trend in the economy and the build-up of large inventories of processed products. Also 1975 was free from spring frosts and large crops of fruit materialized throughout the nation. 1976 promises to be a turn-around from the conditions of 1975 with the only unknown factor at this time being crop sizes.

Negotiated price levels have both increased and decreased from the year previous which indicates that P.A. 344's fair and open procedures allow supply and demand factors to be reflected. Negotiations have generally resulted in the true market values for raw product being established, which has been to the benefit of farmers and processors and consumers. P.A. 344 has provided a fair and orderly means of determining prices and terms of trade.

As an indication that P.A. 344 provisions for good faith bargaining, mediation, and arbitration do work, there has been no picket lines, truck diversions, or other disruptions of the movement of fruit and vegetables to the processing plants involving commodities represented by the accredited associations. Prior to the accreditation of several of these same associations, picketing and related activities had occurred. If P.A. 344 and its orderly procedures expires, farmers and their associations will again be faced with situations under which they have no other alternative than to disrupt the flow of produce to the

buyers in an effort to make their impact felt. Neither farmers nor processors like picket lines and the threat of violence. The real loss is often the destruction of food as perishable fruits and vegetables need to be processed at the optimum time. The biological process will not wait for the parties involved to agree upon the terms of transfer from one party to the other. P.A. 344 provides the orderly process to resolve impasses without the loss of valuable food products.

Finding price and terms of trade is a mutual problem for both farmers and processors that occurs annually. Many processors support the concept of orderly pricing procedures. Many farmers have expressed their desire for orderly procedures through voluntarily joining bargaining associations and supporting P.A. 344. There are some processors and some growers who feel that they have personal advantage to gain by not being a part of an orderly system of price determination. Opposition to P.A. 344 by these minority groups has been expressed through the litigation and purposeful failure to comply fully with procedures required by the act.

P.A. 344 embodies the concept of majority rule. The majority of the producers of the bargaining unit must first voluntarily become members of the bargaining association before it can become accredited. If an accredited association become irresponsible, members can withdraw their support from the association by canceling their memberships and the association will then lose its accreditation by falling below the minimum representation level. P.A. 344 is self-help legislation for those processors who can gain the support of their fellow producers. Processor rights are recognized as they are free to talk with farmers in regards to their representation through associations as long as such discussions are not in violation of the unfair practices section of P.A. 344.

The need for farm bargaining rights legislation is as great today, if not greater, as it was in 1972. The disparity of bargaining power between the many small family farms which produce fruits and vegetables for processing and the few large national food processing firms which dominate the food industry continues to widen. These farmers need a legal base on which to organize associations for the purpose of counter-acting, through group action, the economic power of the food industry giants. P.A. 344 provides this legal base.

P.A. 344 is landmark farm bargaining rights legislation. Other states are copying many provisions of the act. Minnesota and Maine have acts closely patterned after P.A. 344. California has also enacted farm bargaining legislation. Pennsylvania, New York, Ohio, and other states have bills either introduced in their state legislatures or in the developmental states prior to introduction. State legislation will undoubtedly set the precedent for national farm bargaining legislation.

The production of many of the fruits and vegetables grown in Michigan is a part of a national industry, with only a few of our horticultural crops comprising the majority of the production in this country. Where other states produce the same commodity as in Michigan, Michigan must

compete with them in the market place. The value of P.A. 344 is as great regardless of the scope of the commodity grown and the competition from other areas. Prices and terms of trade being paid in competing areas limits the extent to which prices and terms of trade can be negotiated in Michigan, but this does not negate the worth of the act.

During the time that P.A. 344 has been in existence, several major fruit and vegetable processors have acquired or initiated operations in Michigan. Jenos, Inc. a major pie filling canner with seven plants in four states, purchased the Sodus plant of United Foods and spent over \$1 million to double its capacity. Curtis-Burns, Inc., a large New York based firm with plants in six states, purchased Michigan Fruit Canners, one of the largest processors in this state. Seabrook Foods, Inc., one of the world's largest farm fresh vegetable freezing operations, purchased Lake Odessa Canning Company. Stokely-Van Camp has started purchasing Michigan asparagus for its plant in Illinois. Several small processors have started in business and several have gone out of business. The trend of large firms acquiring operations in Michigan, which has been going on for the past 15 years, has continued since the enactment of P.A. 344.

P.A. 344 has had a positive effect on the relationships between farmers' associations and processors. Several associations which are not accredited report that the possibility of their becoming accredited has had an impact on their dealings with buyers. The fact that they could apply and become accredited has had a positive effect. P.A. 344 has value to non-accredited associations and the farmers they represent.

The expiration of P.A. 344 would be a severe loss to Michigan agriculture. Farmers, associations, and processors have now learned, through the experiences of only two crop years, how to operate under the provisions of the act. Associations, processors, and the State of Michigan have invested substantial funds in the litigation to determine if this landmark legislation is within the scope of the Constitution of the State of Michigan. The Supreme Court may choose to not decide the constitutional issues if P.A. 344 is not continued, and all of the previous efforts of the Michigan Legislature, the courts, farmers and their organizations, and others would be lost.

Public Affairs Division
Michigan Farm Bureau

4/12/76

APPENDIX G

BILATERAL MONOPOLY: THEORY AND LIMITATIONS FOR USE IN ANALYSIS OF COLLECTIVE BARGAINING ASSOCIATIONS

APPENDIX G

Bilateral Monopoly: Theory and Limitations for Use in Analysis of Collective Bargaining Associations

This appendix describes a well-known bilateral monopoly model. As indicated, the model is built upon a very restrictive set of assumptions about the constraints facing the parties and about their motivations. For example, it assumes that the association maximizes total profit through an ability to control supply. As we have seen in Chapter II, the association typically does aim to increase growers' incomes, but cannot do so by restricting supply since it does not control supply. It therefore pursues other objectives. Thus, the model is a poor generalization of the interaction between bargaining associations and handlers.

It is instructive, however, to conjecture about the effect of such a structure upon prices and output. If the model is taken at face value, it suggests that the bargaining process may lead to higher levels of output at higher prices for growers.

When a market has one buyer and one seller, the price and quantity arrived at cannot be predicted using neoclassical assumptions. This can be seen with the frequently used analysis developed below.

The demand curve facing the seller is the MVP curve of the buyer. It has a marginal revenue curve for the seller. The marginal cost of production for the seller is the supply curve or average factor cost to the buyer. It has a marginal factor cost curve which is relevant to the buyer.

If the seller could get the buyer to behave as if in a perfect buyer's market and pay the reservation price for a specified quantity of the factor, that seller would produce where the MR equals his marginal cost of production (Q_1) and price accordingly (P_1). This level of output would be less than a "social optimum" because it would fail the Pareto optimal test defined by $P = MC$.

If the buyer could get the seller to behave as if in a perfect seller's market and sell at the marginal cost of production, that buyer would purchase a quantity determined by the intersection of his MVP and the MFC. This level of exchange would also fail the Pareto test since the price paid (P_2) would be less than the MVP at the new quantity (Q_2).

Since each party realizes that it is the only party on its side of the market, it need not behave as it would under competitive conditions. The seller knows that the buyer can pay as much as P_3 for Q_2 and that no one else is around to make a better offer. The buyer knows that the seller can drop as low as P_1 for Q_1 and that there is no one around to offer him more.

We therefore find ourselves with the familiar, indeterminate bilateral monopoly situation.

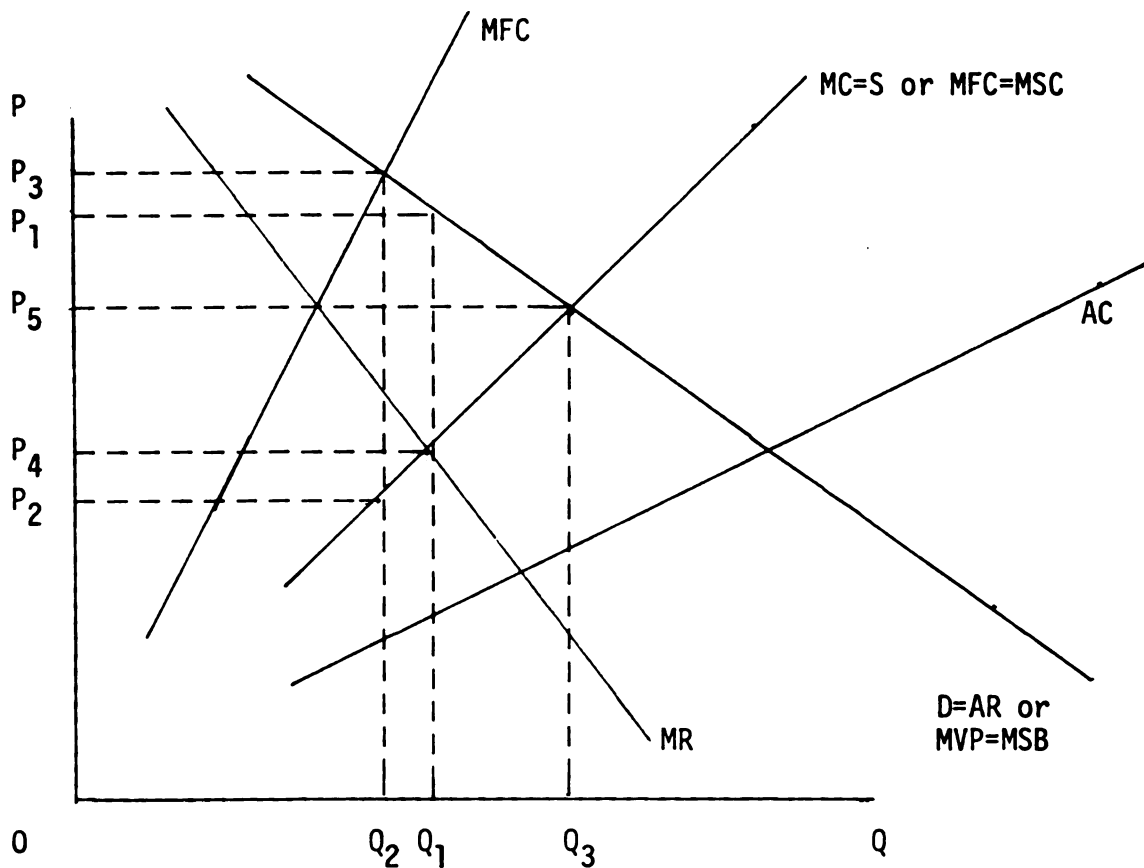


Figure I

If the argument is raised in the case of monopoly or monopsony that a Pareto optimal allocation of resources is not achieved, it can as easily be raised here. The necessary and sufficient condition for the achievement of a Pareto optimum is that price equal the marginal cost of production (P_5, Q_3). At any price other than P_5 , quantity will be less than Q_3 and less than the "social optimum" where $MSB = MSC$. At P_1Q_1 there is a suboptimal level of Q because $MSB_Q = P_1 > MSC_Q = P_4$. At P_2Q_2 , $MSB_Q = P_3 > MSC_Q = P_2$. Only at P_5Q_3 $MSB = MSC$.

An important question relates to the welfare implications of bargaining between parties. Any bargaining activity which leads to intermediate prices will change MR and MFC for the parties and lead them to higher levels of output. Comparison of welfare states in such cases has all the attendant problems of any attempts to compare distributions of benefits. Further, only a special case of bargaining results leads to the Pareto optimal state where $P = MC = MSB = MSC$.

Just the same, this kind of analysis provides a means of making policy decisions where certain kinds of bargaining associations attempt to maximize a) association profits or b) member profits.

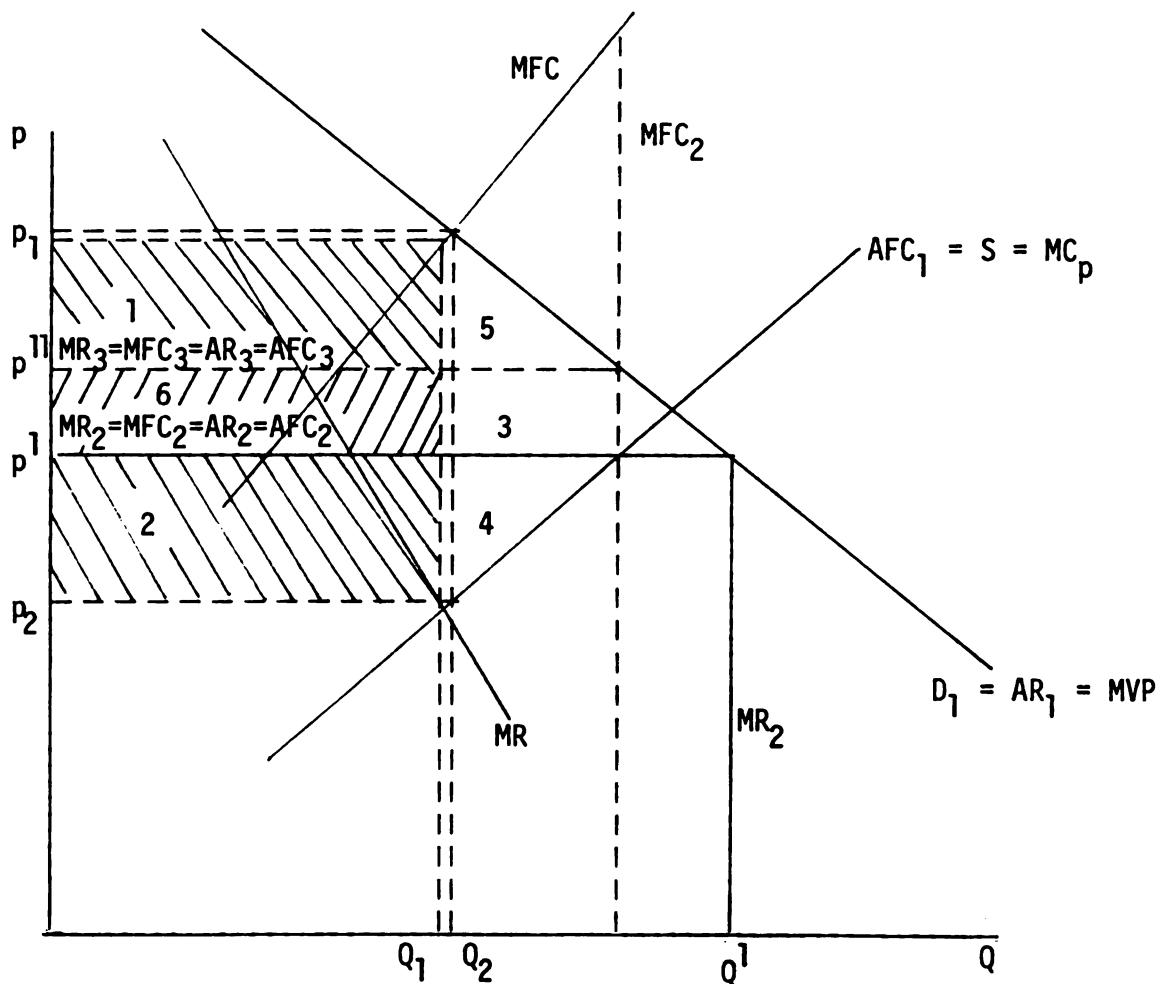


Figure 2

Figure 2 begins with an assumption of monopsony. At that point, the single processing firm is buying from an atomized group of farmers. It purchases at level Q_2 where $MFC_1 = MVP$ and pays P_2 , thereby extracting a surplus represented by areas 1, 2, and 6. Q_2 , as we have stated, is a "less than optimal" level of output.

If we assume that the farmers organize into one firm--a bargaining association which maximizes total profits of growers whose marginal cost curves can be summed horizontally--and if we can assume how much is sold, we can use the bilateral monopoly model to represent its relationship with a single processing firm. The indeterminate situation results.

The distributive effects of any price arrived at through bargaining may be seen by examining Figure 2 where p^1 , the bargained price, becomes $MFC_2 = AFC_2$ all the way to AFC_1 , at which point there is a discontinuity and the old MVC_1 and AFC_1 apply. p^1 is also $MR_2 = AR_2$ all the way to $D = AR = MVP$. When parties follow the standard decision rules, they both elect an exchange of Q^1 . The distributive effects are as follows: 1) processing firm loses 2 but gains 3 and 5, 2) producers gain 2 and 4.

There is a net welfare gain of 3, 4, and 5, but the loss of 2 by the processor cannot be evaluated against the gains because of the interpersonal validity of welfare measurement problem. That does not mean that the body politic cannot evaluate and act.

If p^{11} were the bargained price (just to illustrate a case where the grower association predominates), the distribution effects would be as follows: (compared to monopsony) 1) processors lose 2 and 6 but gain 5, 2) producers gain 2, 3, 4 and 6.

An increase in output resulting from a negotiated price approaching p_5 in Figure 1, must be reflected in the output market and in consumer surpluses owing to increased supply.

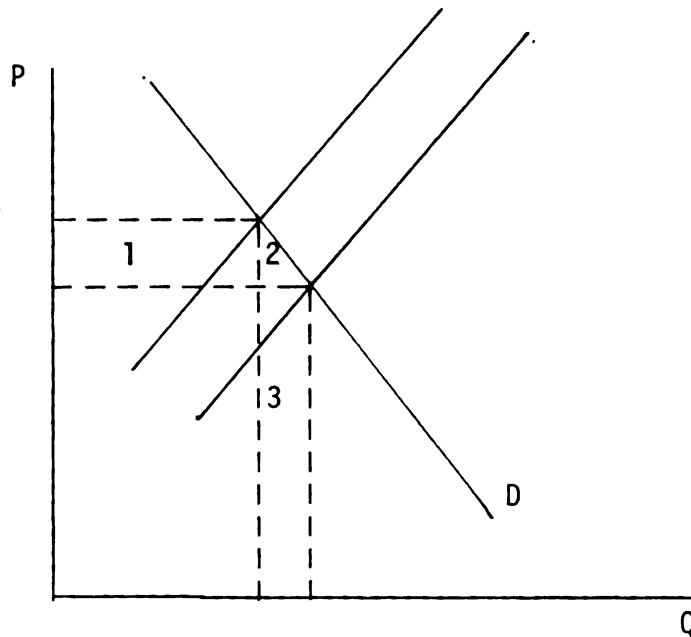


Figure 3

The processor is a monopsonist on his input side, but is a perfect or monopolistic competitor on his output side. The increased quantities purchased are reflected in the supply of processed fruits and vegetables as seen in Figure 3. The shift in supply leads to consumer gains of 1 and 2.

In the producer-processor market, bargaining is a zero-sum game under the restrictive assumptions of this model. The analysis does suggest a gain for consumers, however.

This analysis is clearly incomplete. It is also inherently inadequate to deal with the bargaining association which is not like a monopoly. There are differences in the incentives facing those

who control bargaining associations. Some of these are very much unlike the kind of association described above. What the analysis does suggest is that consumers (under the appropriate assumptions) may actually benefit from a monopolistic bargaining association.

APPENDIX H

AMDAHL LETTER ON PROCESSING COOPERATIVES AND COLLECTIVE BARGAINING

APPENDIX H

Amdahl Letter on Processing Cooperatives and Collective Bargaining

St. Paul Bank for Cooperatives
Jackson at Fifth Street, St. Paul, Minnesota 55101
Telephone: Area Code 612-725-7761

February 4, 1976

Mr. Thomas J. Moore, Administrator
Agricultural Marketing and Bargaining Board
Suite No. 1
1020 Long Boulevard
Lansing, Michigan 48910

Dear Mr. Moore:

It has been brought to my attention that there are some questions about this Bank's views concerning the Michigan Marketing and Bargaining Act (P.A. 344) and how we view the financing of fruit and vegetable cooperatives. I should start by indicating that the St. Paul Bank for Cooperatives does not oppose P.A. 344. If the act enables growers to bargain for a fair market price, then we believe that is a worthy purpose and support it.

I understand the question has been raised concerning whether or not cooperatives should be subject to the bargaining provisions of P.A. 344 and if the Bank would be able to provide financing in such an event. The answer is that the Bank would remain interested and able to finance these cooperatives. However, it should be pointed out that there would be some important differences in how they might be financed.

As I am sure you are aware, the existing pooling concept commonly used by cooperatives allows growers to carry a portion of the risk for any adverse market price adjustments during each marketing season. This has made it possible for these organizations to obtain commodity or inventory financing from lenders with a minimum level of equity and permanent working capital invested in the business. Because of the high level of seasonal financing required by fruit and vegetable businesses, this use of temporary capital provided by the members through their pools versus permanent investment capital from the membership has proven advantageous.

If cooperatives were required to establish a firm price at the time commodities are received, then member growers would obviously be required to substantially increase their permanent investments in their cooperatives in place of the temporary capital presently provided from

Mr. Thomas J. Moore, Administrator
Page Two
February 4, 1976

the pools. I should add that we are not convinced this would necessarily serve the best interests of growers.

To summarize, we do not oppose P.A. 344, but do suggest that the exclusion of true farmer cooperatives from the act's bargaining provisions is justified. Our logic simply being that it does not seem reasonable to require farmer cooperatives and their farmer members, in effect, to bargain with themselves. As an additional benefit, continuing the pooling concept makes it possible for farmer members to finance their inventories with minimum permanent investments in their cooperatives. Perhaps an appropriate question for the Marketing and Bargaining Board would be to address what truly constitutes a cooperative in terms of this law. Answering this question might resolve the larger issue of cooperative exclusion.

Sincerely,

Burgee O. Amdahl
President

APPENDIX I

JACOBSEN SUMMARY OF WEIR CASE

APPENDIX I

Jacobsen Summary of Weir Case

Modern Milk Marketer

June, 1975

No. 18

Dairy Coop Members and Buyer Discrimination

On November 21, 1974, Judge Lambros of the Federal District Court at Cleveland signed a 23 page opinion relative to the Butz vs. Lawson Milk Company case. Since this case has been the most visible and possibly the only legal application of the Agricultural Fair Practices Act of 1967 to date, it is worthwhile to review some of the particulars of the case and of the decision.

The Agricultural Fair Practices Act of 1967 was passed into law in order to prevent discrimination on the part of a buyer (handler) against producers on the basis of a producer being a member or joining a cooperative. The Act is designed to "establish standards of fair practices required of handlers in their dealings in agricultural products."

The Act occasionally has been described as a situation of "what the right hand giveth, the left hand taketh away." Section 4 of the Act (7 U.S.C. S2303) essentially states that it is unlawful for any handler "to coerce any producer in the exercise of his right to join and belong to . . . an association of producers, or to refuse to deal with any producer because of the exercise of his rights to join and belong to such an association . . ." At the same time, Section 5 (S2304), which is often referred to as the Disclaimer Section, turns the coin over by stating, "Nothing in this Act shall prevent handlers . . . from selecting their . . . suppliers for any reason other than a producer's membership in . . . an association of producers, nor require a handler to deal with an association of producers." With these kinds of offsetting provisions, it's impossible to anticipate what kind of decision would be forthcoming in a legal test of the Act.

Background: John H. Weir is a Grade A dairy farmer in Ohio, milking some 55 to 60 cows in Carroll County, about 45 miles southeast of Akron. In 1958, Mr. Weir, who was not then a member of a cooperative, signed a 'Lawson Marketing Agreement' with that handler. It is unusual for proprietary handlers, at least in this part of the country, to have written marketing agreements with individual producers. The most pertinent parts of that Agreement stated in effect that (1) the producer is now under contract to any association to sell his milk, and (2) should the producer subsequently enter into an agreement with an association for the sale of his milk while still under contract to Lawson's,

then Lawson's may give notice to the producer that the Agreement will be cancelled, and Lawson's would not be liable for refusing to accept or purchase the producer's milk.

Mr. Weir shipped milk to Lawson's for nearly 11 years on this basis. Then, in June, 1969, Weir signed a membership agreement with Dairymen's Cooperative Sales Association of Pittsburgh. (Since merged into Milk, Inc.)

Pertinent provisions of the DCSA membership agreement stipulated that (1) the Producer appoints the Association his sole and exclusive agent to sell his milk, and (2) this agreement would supersede and terminate all other agreements previously made by the Producer so long as no conflict occurs with existing contracts.

At this point, the potential for conflict becomes apparent. On June 27, 1969, Weir wrote Lawson's and informed them of his DCSA marketing contract, authorized Lawson's to make a dues deduction for DCSA, and indicated that it was not his "intention to terminate my contract with you but to continue to sell and ship my milk to you."

Lawson's responded with a letter on July 3, 1969, in which they indicated to Weir that (1) his signing a membership contract with DCSA violated his Lawson contract, (2) Lawson's had no other DCSA shippers and therefore it "would not be administratively feasible or desirable" to deal with DCSA for the milk supply of only one producer, and (3) ". . . we will not receive your milk after August 1, 1969."

At about the same time (July 2), DCSA wrote Lawson's stating that it was the coop's "desire that Mr. Weir's milk production continue to be sold to Lawson's," and DCSA requested that a coop deduction of 11.5 cents per cwt. be withheld from Mr. Weir's payment and be forwarded to the coop.

As a matter of record, the Lawson Milk Company did not receive Weir's milk after July 31, 1969.

In October, 1969, there was an exchange of correspondence between DCSA and Lawson's, which DCSA initiated by requesting that Mr. Weir's August dues be remitted to DCSA. Lawson's responded by noting that Weir had not sold milk to the Lawson Milk Company since July 31, 1969.

Then on June 2, 1970, almost a year after the notification of contract change, Mr. Weir wrote to the Secretary of Agriculture, outlining the situation as he saw it. Further, he requested that the secretary take action against Lawson's for violation of the Agricultural Fair Practices Act because "Lawson has refused to deal with me because of my membership in DCSA." More than a year after that request, on July 29, 1971, the Secretary of Agriculture filed suit against Lawson's and charged violations of the Act.

Issues and Defense: The Court defined the issues before it as follows: (1) whether Lawson's violated the Agricultural Fair Practices

Act by terminating its Marketing Agreement with Weir when it received notice of Weir's DCSA membership; and (2) whether the paragraph in Lawson's Marketing Agreement which provides for a termination of its agreement with a producer if that producer enters into an agreement with a coop for the sale of his milk is a per se violation of the Act.

In looking to the issues and facts, the Court immediately got caught up in the conflicting provisions of the Act. As a result, several pages of the decision are actually an analysis of the legislative history of the Act, especially in relation to the defensive arguments posed by The Lawson Milk Company. Key elements of the Lawson defense are noted as follows:

1. The contract Weir signed with DCSA was itself a violation of the Act because the DCSA Marketing Agreement coerced Weir to terminate his agreement with Lawson.

2. Lawson's terminated its Marketing Agreement with Weir, not because Weir became a member of DCSA, but because Weir surrendered control over the sale of his milk to DCSA and thereby made DCSA his exclusive agent. As a result, Lawson's would have had to deal with DCSA, and the Disclaimer Section expressly states that a handler is not required to deal with an association of producers.

3. The Agricultural Fair Practices Act of 1967 is vague, ambiguous, and discriminatory so as to constitute a denial of due process and equal protection of the laws of the United States.

Conclusions: The conclusions of the Court are best set forth by abstracting directly from Judge Lambros' decision. ". . . the Court concludes that although the original purpose of Congress in enacting the Act may have been considerably weakened by the inclusion of the Disclaimer section, the Act is not so vague and ambiguous . . . as to constitute a denial of due process and equal protection . . .

"The Act does provide protection for handlers such as Lawson's, and the Court concludes that Lawson's could have refused to deal with DCSA when it received notice from Weir that he had entered into a Marketing Agreement with DCSA. If the particular DCSA Marketing Agreement signed by Weir prohibited Weir's continued direct dealing with Lawson's, Lawson's could probably have legally terminated its Marketing Agreement with Weir. However, these are not the facts before the Court.

". . . Lawson's allegedly terminated Weir's contract on the ground that it would henceforth be required to deal with DCSA. The Court finds that Lawson's actions were premature in this regard. Lawson's could have informed Weir at that time that it would not deal with DCSA, and that should Weir's contract with DCSA require that Lawson's do so, that it would terminate its Marketing Agreement with Weir . . . However, without affording Weir an opportunity to rebut Lawson's presumptions [about Weir's DCSA contract], or the opportunity to exercise his protected right to choose to deal directly with Lawson's, Lawson's terminated the Marketing Agreement and refused to deal with Weir

thereafter. . .

". . . the Prohibited Practices section [of the 1967 Act] makes it clear that a handler cannot refuse to deal with an individual producer because of his membership therein. Therefore, it was incumbent upon Lawson's to allow Weir the opportunity to continue to deal directly with Lawson's regardless of his membership in DCSA . . .

". . . Lawson's termination of its Marketing Agreement with Weir must be viewed as a refusal to deal with him because of his membership in DCSA. Although Lawson's might later have been placed in a situation in which DCSA might have attempted to required Lawson's to deal directly with it, and Lawson's could then have lawfully refused to deal with DCSA and Weir, the termination of Weir in this instance was too premature . . .

"Similarly, the FOURTH paragraph of Lawson's contract must be found to be unlawful and in violation of 7 U.S.C. S2303." [The FOURTH paragraph is described in the first paragraph of the Background section of this newsletter.]

"The Court, therefore, concludes that Lawson's termination of its Marketing Agreement with Weir was in violation of 7 U.S.C. S2303(a) and that the FOURTH paragraph of Lawson's Marketing Agreement is unlawful and in violation from refusing to deal with John Weir because of his membership in DCSA. In addition, Lawson's is permanently enjoined from including the FOURTH paragraph contained in its Marketing Agreement with Weir in any of its marketing agreements. This opinion shall not be interpreted, however, in any way to require that Lawson's 'deal' with DCSA"

Note: Six months have passed since the Court's decision was announced, and the decision has not been appealed. The government won the case, and Lawson's lost the case. But in reading the narrow application of the opinion, the observation has been made that the government (Butz) won the battle, but Lawson's won the war.

The opinion specifically notes that while a handler cannot cancel a producer because that producer joins a cooperative, the handler need not deal at all with the cooperative and need only deal directly with the individual producer. Under these circumstances, a cooperative is unable to control that member's marketings of milk, and is therefore unable to pursue its price bargaining objectives so far as that individual producer is concerned. In this context, it is fair to hypothesize that the opinion awarded handlers a degree of independence that explicitly they did not previously have; and it is also fair to hypothesize that cooperatives lost some control that they previously had assumed. If this continues to be the guiding direction of the Agricultural Fair Practices Act of 1967, we will likely see significant efforts by producer groups to change the law and modify the Disclaimer section.

Prepared and Distributed by:
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Extension Economist, Dairy Marketing

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