

V. TYPES OF BARGAINING ASSOCIATIONS

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

Marketing Type

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

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

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

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

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

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

Bargaining or Sales Agent

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

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

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

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

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

Exclusive Representative in Collective Bargaining

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

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

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

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

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

Market Service Association

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exclusive Agency Bargaining

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

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

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

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

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

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

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

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

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