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Service Report 47

# Agricultural Bargaining: In a Competitive World

## Highlights:

39th National and Pacific Coast

Bargaining Cooperative Conference

December 1-3, 1994

San Diego, CA

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## Preface

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# USDA Reorganization Implements Dramatic Changes

Lon Hatamiya, Administrator  
Agricultural Marketing Service  
U.S. Department of Agriculture

As you know, Washington is going through many changes at this time. You've heard about the changes on Capital Hill, but I want to talk to you about the wide ranging and long-lasting changes this Administration is effecting in the U.S. Department of Agriculture (USDA). Implementation of USDA reorganization, on tap for 2 years, is now almost completed. We will do more with less people and for less money. Some agencies have merged, either improving or at least not diminishing services to producers.

USDA's former Agricultural Cooperative Service (ACS), for instance, was merged with the Rural Development Administration. (Subsequently, RDA's Cooperative Services became part of the new Rural Business and Cooperative Development Service-RBCDS.) The new Farm Service Agency merged most of the Agricultural Stabilization and Conservation Service (ASCS) with the farm credit programs of Farmer's Home Administration and the Field Crop Insurance Corporation program to provide one-stop shopping. We hope to not only save farmers trips, but also save administrative overhead by collocating various agencies. That means a lot to both of us.

As a business person going to the Federal Government, I wanted to make sure we saved as much as we could. We expect the same benefits from merging the former Soil Conservation Service and the ASCS conservation cost-share program into the new Natural Resources Conservation Service.

As I recently mentioned to the Almond Board of California, the reorganization will not affect Agricultural Marketing Service (AMS) programs significantly. Adding an Assistant Secretary for Marketing and Regulatory Programs to the original plan testifies to an appreciation of our uniqueness.

AMS is funded primarily by user-fee programs. If our costs skyrocket, our customers, including many of you, would simply drop the service we provide. The only significant change from reorganization will be in the eight product inspection areas which are being moved to the new Food Safety and Inspection Service.

Some administrative changes at AMS will cut duplications and cost and in the end the economies will benefit you by keeping down the cost of our services. Secretary Mike Espy left a smaller, more efficient USDA because of his leadership and reorganization. He also led an effort to make school lunches healthier. AMS purchases many of the commodities that you deal with. Since September (1994), we also have nearly tripled our purchases of fresh fruits and vegetables. As you know, both the needy recipients of these products and well as the distressed producers benefit from these purchases.

Some schools have been concerned about the handling problems and the perishability of fresh produce. To address those issues, we set up a task force with USDA's Food and Consumer Services. We also started working with the Department of Defense (DoD) Personnel Support Center on a pilot program with eight schools systems to purchase fresh produce through DoD's economies of scale and its own sophisticated electronic distribution system. This allowed spilt loads and 3-day delivery. Preliminary reports on the program were promising.

We've had a second-quarter report card on the Northern American Free Trade Agreement (NAFTA) as well, led by a 50-percent surge of fresh and processed fruits and vegetables. It is a true success story. The General Agreement on Tariffs and Trade (GATT) should give everybody in agriculture

new export possibilities. GATT will reduce tariffs, and since tariffs fund our Section 32 purchasing program, GATT may also affect that program as tariffs are reduced.

However, we're studying some very possible solutions to some potential problems. U.S. Trade Representative Mickey **Kantor** has made the point that as agriculture expands internationally, its influence on trade policies will also expand. Not only does AMS encourage exports, it administers marketing orders. This administration supports marketing orders. I, myself, have farmed under them. As you know, Secretary Espy discontinued the California-Arizona citrus marketing order last summer (1994), and for a good reason. Too many members of that order were cheating. This Administration supports orders where members abide by their own rules.

When the 9th Circuit Court's decision was announced, critics of marketing orders saw it as a victory for their position. In fact, the decision was otherwise. It spelled out the legality of the Federal orders. It did not fault the task of the almond order to promote almonds, it only quibbled with the order's tools — how that program promoted its product.

However, in its decision, the Court glossed over the issue of generic ads, the orders' principal promotional vehicle, missing the distinction between promoting a product to expand a market and promoting a brand to expand market share. The almond order continues to function under a new promotion program.

Our research and promotion programs also continue. Some have increasing linkages to export initiatives, like the Foreign Agricultural Service (FAS) market promotion programs. Perhaps we shall see legislation for them emerge in the 1995 Farm Bill. **To date**, I have heard about proposals from the conola, kiwi fruit, and hardwood, industries and even from the thoroughbred horse industry.

I also oversee the Perishable Agricultural Commodities Act (PACA). For 65 years, PACA has protected produce growers and shippers, but now it is taking heat from certain quarters. Readers of the *Pucker* and the *Produce News* know this too well.

I can't begin to estimate the dollar value of how much misery and chaos PACA has prevented in its 65 years of existence. The retail produce business is roughly \$80 billion. Just imagine the consequences of half of that amount embroiled in recovery. The only beneficiaries of that situation might be lawyers, and even they might not be paid.

As agriculture becomes more international, AMS has expanded its supports for exports, adding market news reports from countries to which we export, or whose exports compete with ours. We are working to harmonize international grading standards that will speed international contracting. We are even working on international standardizing of pallets and packages, and lowering foreign barriers to our products.

I've mentioned NAFTA and the GATT, but this Administration will progress further on exports thanks to Trade Representative **Kantor's** relentless efforts. I suppose you have celebrated the shipping of our apples and beef to Japan, a triumph of our trade policy. We are even shipping apples to China. We also should celebrate the President's recent achievement at the Asian Pacific Economic Conference (APEC) in Jakarta where he has seen the beginning of a mighty Pacific free-trade zone in which we shall be a major participant. Barring unforeseen circumstances, the AMS regulatory programs this bargaining group uses will continue as will the other programs like those supporting exports. I look forward not only to administering them for a long time, but also to being your cooperator and resource.

Questions From Audience:

**Q** *Regarding potential changes to the Agricultural Cooperative Service (ACS), will you support maintaining the functions of ACS within USDA?*

**A** Absolutely. My family has been a member of five cooperatives my entire life, so we're major supporters of them. I lend the support that I can in terms of the hard work and good work ACS does. It certainly has been a partnership working with many of the programs that I administer as well. I think the plan and reorganization emphasizes the support that

his administration has for what ACS has been involved in for many years.

Q *Will you please comment on how the Personal Responsibility Act will relate to the school lunch program. Will there be changes in school lunch purchases by USDA?*

A There really hasn't been any legislation mandating changes in that area. We're working on the basis that we will continue to buy commodities for the program. Keep in mind that the Federal Government only purchases about 20 percent of the school lunch program needs and for the feeding programs. Eighty percent is purchased at the local school district level, although there are Federal funds available for use at the discretion of those local school districts. We certainly hope to assist the school districts in those commodities that are readily available. I think if you take a look at the congressional changes on the Hill, many of the new members feel a mandate to cut budgets. Unfortunately, agriculture has always been one of the first places considered for cuts. I'm not so sure that we're going to benefit as an industry by some of those changes. Many of the members defeated were very supportive of the programs in which we are currently involved. So, there may be some rough times ahead. We are also faced with unknown provisions for the 1995 Farm Bill, so anything can happen.

Q *Given the recent election results, it appears as if agriculture's role in Washington is diminishing. Fewer and fewer people in Washington are knowledgeable about agriculture. What can be done to keep or promote agricultural awareness?*

A Agricultural's influence in terms of its political clout has diminished greatly over the last half of the decade. I think it's important that we emphasize the trade aspect. Given the passage of NAFTA and GATT, we can be influential because of our percentage of the trade balance that's being exported from this country. I

think Trade Representative **Kantor** has mentioned that agriculture will have a place at the table because of its importance in terms of American trade abroad. I think that's where our influence will come from.

Again, I would not venture to guess what changes will be occurring in the new Congress. I'm going to work closely with those new members and try to educate them as to the benefits of the programs we administer, as will **RBCDS—Cooperative Services**. I think we will be looking to providing information in terms of facts and benefits that our programs really provide to the general consuming public in this country.

You, who are involved with agricultural issues, need to continue to educate not only the people you work with, but also your neighbors, those who don't know much about agriculture. You need to stress how important agriculture is to the economy, not only to this country, but the world. That's where I think our influence will continue.

Q *A portion of the Oregon- Washington Reform Act deals with entitlement programs. What portions or programs might be dropped or radically changed?*

A Again, keep in mind that that is a proposal. Many things can change in the process. I think there is a long way to go before it changes. I think that proposal was a mandate by voters to cut costs. I'm not so sure that cutting costs in some of the feeding programs is the best place for us to look at. I hope that many of the new members are educated about that. We can just hope that some reasonable decisions are made once they come to Congress and look at what values the programs have provided in the past.

Q *Will the NAFTA and GATT focus on agricultural programs provide for more exports at a higher rate or just more volume?*

A Trained as an economist and also being a farmer, I look at things in the long term. It will ultimately provide higher disposable income in many of the countries that we trade with. They will be willing to pay more for the products we're producing and in the long term, I think we will as an industry benefit with higher profits and higher returns to the grower. That's going to take some time. I think we're starting to see that with **NAFTA**. It's only been a year since that was passed, but I think as we see more results coming back from that, the returns will be good.

Q *Many growers see a value in marketing order and volume supply controls. What is USDA's position?*

A As I mentioned before, this Administration strongly supports the existing marketing orders. We support marketing orders that are supported by the industries that created the orders. The volume control provisions in the citrus marketing order was not being enforced within the industry (so it was terminated).

We will look at other marketing orders or creation of other marketing orders that may have some volume controls if it makes sense for providing an efficient, cost-effective supply of product. We are supportive of marketing orders and its going to be taken on a **case-by-case** basis. I can't say across the board that volume controls will be affected, but we have to take a look at each case and the case that the industry makes to implement a marketing order. I'm currently looking at a number of proposals for marketing orders and have been contacted by many other industries that are interested in implementing marketing orders. There is interest despite some attacks being made in via litigation or legislation in this State alone in terms of State marketing orders. We may have to make some adjustments for new markets because the Marketing Order Agreement Act was passed in the late 1930s and amended in the 1940s. It's only a domes-

tic market anymore, but also an international marketplace. We may have to make some adjustments in how those are instituted and created. We need to be flexible to deal with that marketplace.

Q *Do you oversee the enforcement of the Agricultural Fair Practices Act? Will you support changes to the Act?*

A I don't oversee the enforcement of the Agricultural Fair Practices Act.



# Problems Facing New Bargaining Associations

John Morrison  
National Contract Poultry Growers Association

When we met in Arkansas, we determined there were two ways to solve our problems. We needed to talk to the processors, but that required building membership. Once we had a large enough membership, we could invite them to negotiate with us. Because of our size, they would recognize there was no other alternative.

But we needed an alternative because of hurdles and barriers that exist due to fear and intimidation within the industry. That alternative seemed to call for changes in State and national legislative arenas. That further enhanced and supported our thoughts about having the multi-level approach to solving our problems.

To those who are not familiar with the poultry industry, our contract production is not what you might find in the vegetable, fruit, and nut production areas. We provide the **growout** facilities, labor, and utilities to grow these birds that are owned by major companies like Tysons, Con-Agra, Continental Grain, or **Cargill**. They own and provide the birds, feed, medicine, and technical advice to grow them. So, we have a little bit different situation than you do in contracting for the produce or the products represented by most of the associations here.

In the regions where we have organized separate cooperatives, this can add to the strength of agricultural coalitions. This is going to be an important part of our contribution in furthering the status and the well-being of agricultural producers across the Nation.

On the legislative side, we had been trying to sell our concepts about agricultural bargaining. We are currently pursuing two national campaigns. Talking in the vernacular of the political arena in Washington, we often referred to our agenda this

past year as our “crime bill” and our “health reform bill.”

Our “crime bill” proposed to Congress recommends that the Packers and Stockyards Act be amended to provide stronger enforcement on the poultry side. By addressing unfair and deceptive practices, we hope to improve things for our producers.

The second item on our legislative agenda was the agricultural bargaining considerations that had been mentioned at length by others here today. We have looked at the Agricultural Fair Practices Act as a way to strengthen our abilities as producers and raised some questions about the application of this act to our particular situation.

As Don Frederick of USDA’s Rural Business and Cooperative Development Service pointed out, one of the main problems of the Act is the disclaimer provision. We do not own our product, so we question whether we may run into other barriers by trying to use the Act as our bargaining tool.

If you look at the definition of “producer” in the Act, what about the person who doesn’t produce a product? All we provide are services. Would that type of service be covered under the Act? So, in looking at an alternative and recognizing some of the shortcomings of the Act, we began looking at a model that we could use as producers of services rather than producers of products.

We looked at the prior work initiated by the Michigan and Ohio Farm Bureau people that culminated in the introduction of HR 3535 by (former) Rep. Leon Panetta. We found some interesting factors that broadened the horizons and possibly fit our scenarios somewhat better. In the Panetta version of the Agricultural Bargaining Act, producers means a “person engaged in the production of agri-

cultural products such as a farmer or planter.” The last part of it—a “grower or farmer furnishing labor, production management, or facilities for the growers” fits precisely the contract provisions (whether it be poultry, swine, or vegetables) in which the processor is providing the seed and fertilizer, and the producer is providing the labor and land part of the contract. Is this something we must consider in trying to develop good faith bargaining?

Another feature of the Panetta version worthy of consideration is in Section 6. It features an accreditation of associations— a recognition of those producers who have joined for bargaining purposes.

As I read the Agricultural Fair Practices Act, I saw more hurdles and burdens upon the producer in trying to establish the right to bargain with a U.S. handler. It established a procedure in which a group is recognized by the U.S. Secretary of Agriculture to bargain for its members. This is an important aspect of the Act. Frederick pointed out some shortcomings of the Act, such as the mediation or arbitration provision if a problem develops in the negotiating process and the ability to assess damages or penalties. This Act includes these provisions. They offer a good model for use in the bargaining arena.

I believe that with the grassroots strength, we as agricultural producers can build and go to Washington with our bargaining hat on, rather than look for a handout. We can generate grassroots strength if we are willing to work and build support, not just among farmers and agricultural producers, but with our neighbors and friends and get them involved in correcting the problems that exist within agriculture.

As I see the corporate concentration taking place within the food industry and the rapid movements to vertical integration, I believe we are all at risk. I’m not talking about just poultry or pork producers. Rather, I’m talking about all of us.

As food producers at risk relative to our livelihood, I think it’s very important that we work together in addressing ‘issues raised here today. The work you have done as bargaining associations and the platform you have set provides us with a real

basis to move forward and to change the environment in which we produce agricultural products.

In conclusion, I would very much appreciate your consideration as bargaining associations to look at HR 3535 as the beginning bargaining position for us to promote in Washington this coming year. Please accept the many thanks of the thousands of poultry producers in our association for your support as we move down this road. We very much believe that this is the tool that will help us move forward.

# The Methyl Bromide Issue

Gary Obernauf  
Research Consultant

Methyl bromide, generally believed to be a carcinogen or mitigant, is projected to cause nearly a million deaths in the United States by the year 2015. It is very potent and damaging because it depletes the ozone layer. I believe activity groups are no longer concerned about pesticides like this. They have come to believe (erroneously) that foods come from the grocery store and that the need for methyl bromide is just another lie by corporate farmers who produce food to get Federal subsidies.

I believe bargaining associations and field prices are not associated with each other. After all, the associations are social clubs and the prices are determined by the weather.

Don't believe all you hear about methyl bromide. There are a lot of half truths and outright lies about the issue. Pay attention to what's being said, really evaluate it, and ask questions.

Science or research is not exact on such issues as methyl bromide. There is no absolute or zero risk and never will be. That is why statistics were invented. What is the probability that the hypothesis of the experiment is true or false? Given this understanding, you can use science to make logical and objective decisions.

The problem is that scientific information is often used or quoted by politicians and others who have little or no understanding of the information being used. **But, even** worse than politicians using information incorrectly are pseudo scientists and individuals who use scientific data incorrectly to support their point of view. All too often, most of the available scientific data **does** not support the individual's opinion.

Yes, some of us in agriculture have been guilty of misusing scientific data. The excuse that "the other side does it," is not a legitimate reason for us

to do so. We all need to be careful in quoting scientific information. Our usefulness to agriculture will be greatly reduced and our efforts counterproductive if we lose our **credability**.

Methyl bromide was introduced in 1982 as relatively simple, straightforward issue. It has evolved into a complex issue. The issue started in 1982 with the cancellation of ethylene dibromide (**Edb**). Some proposed that methyl bromide, because it was closely related to Edb, also should be cancelled. Both are strong methylate agents. It was felt that both would react the same.

Some from our group, as well as some of you, approached the Environmental Protection Agency (EPA) and said, 'Wait, this is guilt by association. You have no data to support what you are saying.' EPA said, okay. If you do the work that's needed to prove that it is not a carcinogen, we will not cancel. I've been very active and involved in the issue since 1982.

Several issue today relate to methyl bromide. The first is what we now call reregistration. Additional toxicology data is being compiled on methyl bromide and should be completed soon. The data looks good today.

We know it kills living tissue and can kill people. But, methyl bromide is not carcinogenic. It will cause some problems, but again, any toxin of this nature will, in effect, kill you before it damages the tissue. We are not complete with the residue data, but will be finished soon.

The next question to be resolved is the average data intake (**ADI**) of methyl bromide. There may be some restrictions based upon the residue data, but at this time, the toxin information (residue data) looks very good, contrary to what EPA predicted in 1982. In addition to the residue

information, the most recent and probably most difficult issue is ozone depletion. Methyl bromide has been identified as an ozone-depleting substance and therefore is regulated.

Proposition 65 is another issue that we are facing with methyl bromide. We crossed the first hurdle with that issue in California. It may come back again. The last issue we are concerned about is work exposure, safety, and community exposure to methyl bromide.

Methyl bromide has also spread into the arena that is now or may be regulated on national, State, and local levels. Locally, the agricultural commissions are going to be more important in the future regarding this and other pesticide issues. It's very apparent that the local air quality control districts are going to be influenced by what is happening to pesticides like methyl bromide.

Most of the international activity is happening under the United Nations Environmental Program (UNEP) that was started in 1985 at the Vienna convention. Out of that came what's commonly referred to as the 1987 Montreal Protocol.

The protocol put together regulations to control the ozone-depleting substances. That agreement was built around materials like CFC 11 (chlorofluorocarbons) that have an ozone depletion potential of 1. Everything is relative to CFC 11. That was in 1987. In 1990, UNEP adopted the so-called London Amendments, which actually were regulations to control ozone-depleting substances.

There are about 80 or 90 chlorofluorocarbon (CFC) materials. Regulations for the halons and refrigeration-type materials were adopted in 1990. Methyl bromide was also mentioned in the 1990 London amendments as a possible ozone depleter.

In the 1992 Copenhagen meetings, methyl bromide was actually listed as an ozone-depleting substance, not regulated at that time. The importance of listing methyl bromide is that it automatically triggered the Clean Air Act in the United States, which meant that they had to list methyl bromide. Two important things happened in the 1994 meetings in Nairobi. We prevented an early phaseout of methyl bromide in 1997 and they agreed to exempt quarantine and preshipment treatments.

EPA also is a major player in the international arena. More than 25 percent of UNEP's funds come from the U.S. Our problem is that we strongly disagree with what the EPA is doing domestically and within UNEP in the international arena.

Convincing other nations that EPA does not speak for the American farmer is a hard to do. But, other nations are receptive to that. Developing nations, of all people, are the most receptive to the problems we have with EPA. We have a long way to go in dealing with the international community, but we've made a lot of progress.

The next important meeting of the parties related to the Montreal Protocol will be the Vienna meeting this November. At that time, they will decide on regulating methyl bromide. Most people feel they will, but the regulations will be different from what happens in the U.S. The best guess is that there will be a 25-percent reduction in the production of methyl bromide based on 1991 levels. That's a long cry from total elimination of material as planned in the U.S. There will also be quarantine exemptions and preshipment variances or exemptions.

One of the current activities is trying to define preshipment. Does that mean shipment just prior to going out the door or does it mean post-harvest treatments? Complicating this further is that 85 percent of the methyl bromide sold is used for soil treatment. The other 15 percent is for commodity treatment.

It is different than other things happening with CFC and ozone-depleting substances. Methyl bromide naturally occurs in about 70 percent of what's going into the stratosphere. It comes from natural, not man-made sources.

On the international level, steps will be taken to mitigate problems with methyl bromide. In the U.S., it doesn't matter because everything is related to production of methyl bromide. The reasoning is that if you eliminate production, then obviously you control the use of it. In fact, if you can reduce the amount of methyl bromide going into the atmosphere or the stratosphere, you can mitigate the problem. Obviously, our environmental friends were able to get that legislation approved.

The UNEP has several committees you may be hearing about. The first is the Technology and Economic Assessment Committee. It reports directly to the members of the parties at their annual meeting. Actually it is two different committees. The Technology Committee involves about 190 different scientists from around the world.

The Economic Assessment Committee consists of "experts" from around the world. The problem with these objective committees is that EPA has a tremendous influence on who sits on them and, more importantly, who chairs them. That's where we have run into our greatest problems.

The committees are relatively equal in representing different sides of the issues. But, the people leading the committees have biased views about what's going on. That's become a difficult issue for us.

The Methyl Bromide Technical Options Committee, on which I have served for 2 years, reports to the economic assessment panel. Its report will discuss our activities. This committee asks, "What are the viable alternatives to methyl bromide?" There obviously is no "silver bullet" answer for its replacement and few viable alternatives if you consider economics, which to us is an important factor.

There are things that possibly will work if you don't mind paying many times what we paid for methyl bromide. There has to be some reality to what is occurring. No single chemical or technology will replace methyl bromide. It is entirely possible that many commodities will have no viable alternative.

It's also important to realize that in the international community there is what's called the "open-ended working group." Members of each committee meet before the parties convene for their annual meeting. They will meet twice in 1995 to develop the agenda for the Vienna meeting. The group will develop a definition of preshipment, an important concern for those dealing with the commodities.

Discussion of preshipment in the international community will influence what's happening with EPA. EPA is well aware of that with shipment of commodities, especially export shipments in inter-

national trade. The agency doesn't want to avoid dealing with that issue. If, in fact, the United States does something different than the international community, it puts EPA in a real bind. We hope to make the definition of "preshipment" extremely liberal. EPA, on the other hand, doesn't even want it defined and doesn't want to deal with quarantine residues.

Walnuts and raisins are good examples of potential problems if you are in a quarantine situation or need to treat your commodity before shipment to prevent insects. You can technically ship walnuts from Turkey to the Midwest or East coast, but you cannot ship from California to the Midwest or East coast. That is a real possibility, if things go forward as planned. EPA is aware of this problem. Therefore, these developments will have a significant impact on EPA's decisions.

Along with this activity, we had an annual international research conference on methyl bromide alternatives and emissions reductions. Not having a viable alternative to methyl bromide puts us in an extremely vulnerable position. We have been actively looking for a replacement since 1982. The raisin, prune, and walnut boards, along with a number of other commodity groups, have been doing this for a number of years.

We are not overly optimistic about finding a viable alternative at this time. But we need to continue seeking one. In fact, we need to step up our efforts. At our first annual meeting, more than 90 research papers were presented. Eight countries were involved. The next meeting will be in November (1995). It will give you very good updates on what research is underway concerning alternative ways to mitigate the problem by capturing, recirculating, deep soil injecting, and other ways to reduce emissions to the atmosphere.

## **National Concerns**

Several things are important here. The first consideration is the EPA and the Clean Air Act. Right now, the potential ozone-depletion trigger for anything to be listed as a control substance is 0.2 Under UNEP, methyl bromide was listed as ozone-depletion potential for 0.7, which was auto-

atically triggered and included under the Clean Air Act.

Contrary to what EPA wanted to do, it took them 18 months to finally publish it in the Federal Register in January 1994. There is a 7-year grace period before it has to be phased out on Jan. 1, 2001. But under the Clean Air Act, there are no exemptions to any ozone-depleting substance. It will have to be done at that time unless legislation is changed, which doesn't seem likely.

By our interaction with EPA and pushing USDA, some important things came out in the Federal Register about this issue.

For the first time, they said there would be no early phaseout of methyl bromide, although there have been phaseout dates with the other materials. In addition, EPA, for the first time, said it would support exemptions to the Clean Air Act, if, in fact, there are no viable alternatives for some uses.

They don't tell you they can support that, but their hands are tied because legislation does not allow it at this time. So, to get exemptions for certain uses such as quarantine, even the Clean Air Act will have to be changed. This will be extremely difficult.

Taxes have been and will be another important issue with methyl bromide. Under the Clean Air Act, material that is an ozone-depleting substance can be taxed. For methyl bromide, which costs between \$1 and \$1.50 a pound, the first-year tax will be \$3.52. It will accelerate to almost \$8. That's a pretty steep tax. We have successfully fought the issue four times, but it will be coming up again.

Congress is looking for ways to generate money. Although sales of methyl bromide are not large, it amounts to several million dollars in this country alone. The Clean Air Act will have to be amended to allow critical uses. But, we need to conduct research for alternatives to methyl bromide. Rather than cry on the shoulders of the Congress, we must demonstrate that we have in good faith looked at viable alternatives and, in fact, been unable to find them. We have to support what we are saying. We think we will have a good case put together before the year 2000 to apply for critical exemptions.

Again, reregistration is looming. EPA regulates if a material is registered. Also, recently, because of what has happened in California, EPA has made some label changes on methyl bromide. At this point, it only covers structural. It relates to the toxicology work required in California. The State told EPA what was transpiring. It relates to the deaths that happened 2 years ago in the San Francisco Bay area after a house was fumigated. Contrary to instructions, people went back into the structure, even though they were told not to. They were killed and EPA issued new label restrictions on methyl bromide.

Within California, methyl bromide is also under attack in many areas. I think we are going to see this same approach taken on a number of other pesticides. I think it's important to look at methyl bromide as a case study of what may occur.

## **Proposition 65**

Because of the data under the Pretris Bill (Birth Defects Prevention Act), the Clean Water Act in California required additional toxicology work on methyl bromide. The lab that did the work essentially found no cause-and-effect relationship. People within the Department of Pesticide Regulations (DPR) examined the study and disagreed with those who did the work. DPR said, to the contrary, there was cause and effect. Also, because EPA made a label change on methyl bromide, it was a trigger for listing under Proposition 65 in California. The problem was that the label change was only to structure. It didn't affect agricultural commodities.

The problem with Proposition 65 is that there are no mandatory regulations about withdrawing the material. With methyl bromide, it means that within a 9-mile radius you would be required to notify everybody that you are going to use a material that potentially could cause cancer. That not only creates a real scare problem, but also adds a tremendous cost problem for using such a material. In fact, the purpose of the legislation is to eliminate the material, not deal with the issue.

Because of this same study, work exposure became a real important issue. The DPR forced the

industry for the first time in its life to conduct research in an effort to keep methyl bromide. We had to spend several hundred thousand dollars doing studies on work and community exposure to methyl bromide. Normally, the manufacturers of the material would have had to do this research. We are also hearing about some other **pesticide**-related runoff and work exposure in orchards.

As users of materials, we increasingly are being forced to become involved in the issue of the toxicology exposure and what's going on with these pesticides. None of us like that, but it's life. We're more comfortable with the manufacturers of these pesticides handling those issues. But, reality says we must be increasingly a player in these issues if we're going to keep our tools. We must also be prepared if we lose some of these tools.

Permit restrictions is one way DPR wants to deal with methyl bromide issues. They weren't willing to wait for EPA to change the label. In fact, EPA still hasn't changed the label on commodity regulations. I don't think they are going to make significant changes.

Rather than wait on EPA, California is addressing the issue by putting permit restrictions on how you use methyl bromide. The State started with new permit restrictions on structure that related to the label changes at EPA. Next, they published new soil regulations which mean you can treat up to 20 acres per day. You must issue warnings and clear the area 100 yards around the field being treated. Regulations concern certain conditions regarding the tractor driver, the worker covering the tarp, etc.

Permit restrictions for commodity treatments began in January, 1995. These detailed management restrictions will cost us money. This is also coming down the road with other pesticides.

Methyl bromide is an important local issue for a number of reasons. First is the county agricultural commissioner's office in California, which is probably similar in other States. The commissioner's office enforces the permit restrictions and label changes.

This is our only ray of hope. Most agricultural commissioners are aware of what's occurring at the State capital in Sacramento and are bending over

backwards to work with us on this issue. But, we need to prevent these statutes from coming on the books in the first place rather than trying to work around them as we often have done at the commission office. The commissioner is still an important player in today's activity and will be tomorrow.

Another important arena in California is the local air quality control districts. It's almost impossible in some districts to add new methyl bromide fumigation chambers. Even existing chambers are becoming difficult to keep open. They require considerably higher exhaust fans; they regulate the pounds that can be used within a certain time frame; and they are going to become more restrictive down the road.

It's ironic that methyl bromide is listed as an ozone-causing substance as far as the air quality control district is concerned. We're losing methyl bromide because it's an ozone-depleting substance as far as EPA is concerned. We're losing it for the opposite ends of the same issue.

It's important to recognize the players in this activity. First is the global coalition of methyl bromide manufacturers from around the world. That includes the U.S., Israel, Japan, China, and Russia.

A company called Great Lakes is the major (85 percent) U.S. manufacturer. It has a separate methyl bromide working group. A number of other manufacturers, like Dow and Dupont, quit producing it about 10 years ago at the very beginning of this conflict. It was not a big enough volume item to even become involved in the issue. It was cheaper for them to walk away from it.

Manufacturers say 85 percent of today's methyl bromide use is for soil treatment. Most of the toxicology work required will be for commodity treatments. We couldn't financially justify doing that work, so a national group called Methyl Bromide Task Force was formed to jointly fund toxicology research. At this point, we are glad that we did because the toxicology work looks very favorable.

The last group is the Crop Protection Coalition. I was instrumental in its development and served as its first vice-president. Dave Riggs is coalition president and Dan Botts of the Florida Fruit and Vegetable Association is secretary-trea-

surer. We have strong representation from the States of Washington and Texas and a number of different commodity groups.

Coalition members, such as grower organizations, use methyl bromide. All too often, users are lost in discussions about what's happening with the pesticide issues. The manufacturers usually dominate discussion. We feel we have a viable alternative. If so, it becomes another issue.

The coalition also has been active in a number of arenas. As users of methyl bromide, we have been actively working with EPA. Its first announcement in the Federal Register said EPA would be eliminating the product by the year 2000; that there would be a possible phaseout of the material; and that there would be no support for exemptions. Because of the views we expressed, we made some significant inroads into EPA's thinking.

We prepared a 30-page document that demonstrated how we felt about methyl bromide. The necessary research to develop a viable alternative will cost about \$60 million. We took this document to Congress and we got \$1 million. We were lucky to get that. We also convinced Congress to instruct USDA to redirect \$5 million of its money towards this issue. That effort is in progress.

In addition, Congress put wording into appropriations that require EPA to form an advisory committee. As users, we are becoming directly involved in what research is and is not being done about methyl bromide alternatives. We feel the research on this issue is critical.



# Update on National Bargaining Law<sup>1</sup>

Rural Business and Cooperative Development Service  
U.S. Department of Agriculture

## I. BACKGROUND

A. Sherman Act (1890) - Basic antitrust law. Makes it illegal to enter into contracts and combinations that restrain trade (§1) and to monopolize or attempt to monopolize interstate commerce (§2).

B. Clayton Act (1914) - Provides forming a nonprofit agricultural producers association, without capital stock, doesn't violate antitrust law (§6).

C. Capper-Volstead Act (1922) - Authorizes agricultural producers to market their products on a cooperative basis (§1). Secretary of Agriculture prevents undue price enhancement (§2).

D. Cooperative Marketing Act of 1926 - Authorizes Secretary of Agriculture to support cooperatives. Sanctions sharing of market information among producers through producer associations (§5).

E. Fishermen's Collective Marketing Act (1934) - Extends the protection of the

Capper-Volstead Act to fishermen and aquaculturists.

F. Fundamental changes in farm marketing have been occurring since WW II.

1. Replacement of traditional open markets by contract production and vertical integration.

2. Processor and retailer concentration.

G. Efforts of producers to organize met with retaliation by processors, notably against Ohio tomato growers, California raisin growers, and Arkansas poultry growers.

H. In 1959, at the urging of the Ohio Farm Bureau, the American Farm Bureau Federation (AFBF) initiated a farm bargaining program, the American Agricultural Marketing Association. AFBF met processor resistance and become interested in using its political power to enact legislation to protect bargaining associations.

I. AFBF drafted and had introduced in Congress in May, 1964, legislation to protect bargaining associations from discrimination. As enacted in April, 1968, the Agricultural Fair Practices Act applied anti-discrimination provisions to producer associations as well as processors, protected certain processor practices, and contained a diluted enforcement provision.

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<sup>1</sup> Donald A. Frederick, Program Leader, Legal & Policy, RDA\Cooperative Services, U.S. Department of Agriculture. Presented at the 1994 Pacific Coast and National Bargaining Conference, December 2, 1994, San Diego, California. This material does not represent the official position of the U.S. Department of Agriculture or any other government agency. It is presented only to inform and stimulate discussion among conference participants.

II. AGRICULTURAL FAIR PRACTICES ACT OF 1967

(7 U.S.C. §§ 2301-2305)

Section 2-Congressional findings and declaration of policy. Individual agricultural producers must be free to join together voluntarily into cooperative marketing associations. Interference with this right is contrary to public interest and adversely affects commerce.

Section 3—Definitions. “Handler” means buyer, processor, producer association, or agent for any of the above.

Section 4-Prohibited practices. It shall be unlawful for a handler knowingly to engage or permit any employee or agent to engage in the following practices:

- (a) To coerce any producer to join or refrain from joining a producer association, and To refuse to deal with a producer because of membership in a producer association.
- (b) To discriminate against a producer with respect to price, quantity, quality, or other terms of purchase because of membership in an association.
- (c) To coerce a producer to enter into or terminate a membership agreement or marketing contract with a producer association or a contract with a handler.
- (d) To pay or loan money, or otherwise bribe a producer to cease belonging to a producer association.
- (e) To make false reports about the finances, management, or activities of a producer association or a handler.
- (f) To conspire with others to do any of the above prohibited practices.

Section 5-Disclaimer of intention to prohibit normal dealing. Nothing in the act shall:

- Prevent handlers and producers from selecting their customers and suppliers for any reason other than a producer’s membership in or contract with a producer association.
- Require a handler to deal with an association of producers.

Section 6 — Enforcement provisions.

- (a) A victim of a prohibited practice may seek a restraining order.
- (b) The Secretary of Agriculture may ask the Attorney General to seek a restraining order to stop prohibited practices.
- (c) A victim of a prohibited practice can sue for monetary damages. The court may allow the prevailing party reasonable attorney’s fees.
- (d) Suits shall be brought in U.S. district court.

III. WEAKNESSES IN THE AFPA

As enacted, the AFPA falls far short of the strong public policy statement in support of farm bargaining envisioned by its original supporters. Its principal weaknesses include:

A. **The Disclaimer Provision.** The language permitting processors to refuse to do business with a producer for any reason other than membership in a producer association leaves association leaders and members vulnerable to discrimination, disguised as legitimate reasons to refuse to deal.

The phrase stating processors aren’t required to deal with producer associations gives processors justification to total

ly disregard a producer association, or to go through the motions of negotiating and then, at some critical period when producers are under the greatest pressure, walk away from the table and offer growers take-it-or-leave-it contracts.

- B. No Inducements to Bargain. There is no requirement that handlers bargain in good faith with producer associations. Nor is there any mechanism to resolve disputes during negotiation. Thus, even if honest bargaining occurs, there is no assurance that a contract is likely in time for orderly marketing of the farmers' product.
- C. Insufficient Penalties. The only penalty that can be assessed in a suit by the government is an order against further illegal conduct. As a result, there is little motivation for government prosecutors to accept AFPA cases or for handlers to fear meaningful sanctions if the government does bring a lawsuit. The most a private litigator can realize is damages and attorney's fees. If a violator pays only damages when discovered and successfully sued, there is little incentive to follow the law.
- D. Free Loaders. Non-members almost always receive prices and other terms of trade at least as favorable as those of association members. Yet, they pay no fees to support negotiation. This serves as a disincentive for producers to join the association, reducing the association's power at the bargaining table.

#### IV. PANETTA BILL (HR 3535, introduced April 9, 1979)

Agricultural bargaining interests quickly recognized the shortcomings of the AFPA. Throughout the 1970's the AFBF, spurred by state farm bureaus from states where bargaining was well established — Michigan, Ohio, California — pushed for stronger legislation.

States without an interest in bargaining, particularly in the South, not only failed to reinforce the efforts of these states but resented AFBF expending energy on a topic in which they saw no benefit to themselves.

This effort peaked with the introduction, in 1979, of HR 3535. Drafted as a **comprehensive** replacement for the AFPA, it received the broadest support of any bargaining bill within the agricultural community. But the continuing fragmentation throughout agriculture led to its demise, as it had its predecessors.

#### V. STATE LAWS

A number of states have enacted pro-bargaining legislation. While no two state laws are identical, common provisions do appear among the jurisdictions.

- A. A statement of unfair or prohibited practices, based on the prohibited practices section of AFPA. (California, Maine, Michigan, Minnesota, New Jersey, Oregon and Washington)
- B. Require good faith bargaining (California, Maine, Michigan, Minnesota, Ohio, Washington)
- C. Dispute resolution through mediation (California, Michigan, Minnesota) or binding arbitration (Maine)
- D. Fees check-off (California, Idaho, New Jersey)
- E. Advisory committee, to study effectiveness of state law (California, Washington)

#### VI. SUPREME COURT AND PRE-EMPTION

In 1984, the U.S. Supreme Court invoked the Supremacy Clause of the Constitution to find two provisions of Michigan's bargaining law invalid because they were pre-empted by provisions of AFPA (*Michigan Cannery & Freezers*

*Assn. v. Agricultural Marketing and Bargaining Board*, 467 U.S. 461).

The Michigan law did not require a producer to join an association. However, a nonmember could be compelled to honor an association's contract with a processor and to pay fees to an association. The court found this had the same effect as coercing the nonmember (1) to join an association, a violation of § 4(a) of AFPA, and (2) to enter into a marketing agreement with an association, a violation of § 4(c) of AFPA.

Under *Michigan Cannery & Freezers*, state laws that provide producer protections beyond those in AFPA may be vulnerable to legal attack.

## VII. FEDERAL LEGISLATION, FRONT-BURNER REFORMS

Experienced bargaining association leaders and advisers are studying a menu of amendments to AFPA to select one or more that might be desirable and enactable. The first four of these ideas seem to have the most support.

A. Repeal of the Disclaimer provision, or at least the last part of it. The U.S. Supreme Court has ruled that AFPA pre-empts conflicting state laws passed subsequent to its enactment. Thus, the last portion of the Disclaimer clause, stating processors need not deal with producer associations, hangs like a cloud over existing state laws that provide for good faith bargaining and third-party assistance (mediation, conciliation, arbitration) in resolving negotiation impasses.

Repeal of the entire Disclaimer would also delete the connotation that processors are free to refuse to do business with association members or leaders if they can come up with any other possibly defensible rea-

son to discriminate other than association participation.

- B. Require good faith bargaining. Designating failure to bargain in good faith a prohibited practice under AFPA § 4, coupled with repeal of the last portion of the Disclaimer, would give bargaining associations leverage to compel negotiations. Such a change would likely spur bargaining as a means of counterbalancing processor economic power.
- C. Dispute resolution mechanism. Disinterested third-party participation in the bargaining process has proven useful in getting a negotiated contract. Mediation and conciliation encourage settlement without disrupting the marketplace by forcing parties to accept contract terms against their will.

Adoption of good faith bargaining and a dispute resolution mechanism at the Federal level would put producers and processors in the same relative position across the country. If a private mediation service is used, such as the American Arbitration Association, with the parties sharing the costs (California), these changes should have little budget impact.

- D. USDA civil enforcement authority. Giving the Secretary of Agriculture the power to assess civil penalties for violation of AFPA would likely improve compliance. It would place responsibility for reviewing potential violations in the hands of those persons most familiar with the intent of the law and who possess the expertise to evaluate whether punitive action is appropriate.

## VIII. BACK-BURNER REFORMS

Other reform measures have been suggested, but have not received as widespread support as those above.

- A. Processor collection of fees. Compelling handlers to honor producer requests to deduct association fees from checks to producers would strengthen association financial bases and free management from the timeconsuming chore of collecting dues from members.
- B. Advisory committee. California has a committee with equal association and processor representation to study the effectiveness of its state bargaining law. Such a committee at the national level might keep bargaining in the mainstream of public policy debate and stimulate discussion and research on better negotiation techniques to reach agreements more efficiently and with less acrimony
- C. Mandatory fees. To eliminate the free-ride, compel all producers who benefit from a bargaining association to help finance its activities.
- D. Agency shop. To eliminate competition between association members and non-members, compel all producers to abide by the association contract, even if they choose not to join the association. Assuming rational and effective bargaining by the association, this option would likely have the greatest positive impact on producer income.

## Panel Discussion-Bargaining Conference

### Services Draw Growers to Bargaining Cooperatives

Service programs ranging from special financing to influencing legislation on State and national agricultural issues extend beyond important price discovery negotiations with commodity processors that binds fruit and vegetable growers to the nation's agricultural bargaining cooperatives.

At last winter's combined National and Pacific Coast Bargaining Cooperative Conference at San Diego, CA, three experienced panelists from West coast cooperatives reviewed their service programs that are at the base of attracting and retaining members.

Panelists were Ron Schuler, California Canning Peach Association; Vaughn Koligian, Raisin Bargaining Association; and Dick LaFramboise, Central Washington Farm Crops Association. Their discussion follows:

Ron Schuler: The question of whether there is a role beyond bargaining for these cooperatives brings to mind a visit I had some years ago with one of my canning customers in the Midwest. I was sitting in his office when he received a phone call. I could tell he was talking to an individual who bargained for some tomato farmers. When he hung up the phone, he said, "I never hear from that individual except when he wants to set the price. And, once the price is set, I never hear from him again."

Membership is important and you build it providing service. We spend a lot of time contacting growers. I'm going to give two examples. I visit a large grower of peaches every year. This particular grower had only a token amount invested in the peach association. That year, his processor, one of the largest, did not contract for a portion of his orchard. Needless to say, the next time I visited him, he was willing to put his entire tonnage into

the association. He's now on our board of directors and one of the key players on the pricing committee. I think the processor learned a very valuable lesson.

Another grower I visit annually had at one time opposed and fought us. We had a hail storm on a Tuesday afternoon and Wednesday morning I called and told him, "We have some opportunities to help you out with the fruit that was damaged in the hail storm last night." He said his processor would give him a hail tolerance. "Don't worry, I really don't need your help," he commented. I told him not to hesitate calling us if he did need help. Our juice program helped some other growers. Another day went by and I didn't hear from him. But, I knew he could not expect that canner to give him the relief he was looking for. Finally, on Friday morning, he called and asked for help.

Now that grower's son is on our board and sales committee. We've gained something because we had an outlet to take some of that distressed fruit. We built what we call "alternative markets." We got into the juice business in 1977 to expand our role. The crop was hit by a big hail storm that year. From that point on we've been able to deal in that kind of fruit. We continue working to find ways to get fruit into those "alternative" uses.

In 1994, things were so bad in the business that we bought No. 1 fruit, subsidized it, and placed it into the juice side of the business. Through continual contact, we developed membership. We have provided these alternative uses in good and bad times. When supplies were short, we took every sort-out and cull that the grower wanted to deliver to us, providing it didn't have any brown rot, worms, or grounders. We took all of the

off-grade fruit and with it built membership by providing this extra income and service.

## Added Business in Mexico

Then we really became involved. Rich Hudgins, California Canning Peach Association, who chaired the session on association reports, worked hard to put together our operation with Mexican canners. For many years, we were shipping all the way to Mexico City for processing. Now, we have a processor who has a cannery in Tecate, just across the border and we are expanding our operation there. **CoBank** and Rich Hudgins have helped us assemble a staff that has made this work.

We actually got some Californians to work in that plant. We also have our own staff people at the border. We've had our share of problems and will probably have more in 1995, but we have expanded the sales there again.

We also work with the processors where we can to find ways to help in the financing end back to growers. Processors want to defer payment, especially when they're competing in an industry such as ours where you have a large cooperative versus a large proprietary company. So, it wants to defer payment because the large cooperative definitely defers payment. We've developed an "early payment" program. We provide the grower **upfront** money and charge a prime interest rate for our service. It has allowed us to earn a good return on our money, better than what we could receive with our revolving fund and certificates of deposit. We charge at the prime rate which is unavailable to most growers. It helps them to more quickly repay their loans.

We looked into how else we could expand our financing program to serve others, such as a cotton company in California. We haven't progressed any further, but it's another area where we can serve our members. It helps them and in turn helps the association.

No doubt, many of us are involved politically. Those who are not may have to be. Everything is having an impact. You've heard about the small role we have as far as a political clout and num-

bers. So, we have to do it another way. Our political action committee may make small contributions, but they open doors so we can get in and tell our story.

That's the extended service you must offer. I look at it and say that canner or processor is my customer. Just like the canner's customer is the chain store or the distributor. We have to take care of those customers and try to improve that relationship all along.

All we ask is a fair return, a reasonable price. We can't negotiate the highest price that our growers would like to have. It just doesn't happen. So we also work with the processors most of the year to see where we can expand this market.

Vaughn Koligian: I don't know how much bargaining there is today. Certainly, many of you do it. But, I see us more as a cog in the marketing wheel. Many of us are plagued by overproduction, carrying that surplus, and global competition. The bargaining or the tightness of the trading is influenced by so many of these factors. A lot more things influence what we do than our own ability to negotiate a best price.

For instance, we had two marketing orders. Our a State order for marketing and promoting our products was called the California Raisin Advisory Board (**CALRAB**), known best for the dancing raisins promotion. Our association will be very involved in reestablishing this new order. It had been terminated by one group of processors who were in conflict with the branded packer.

So, I think one role beyond bargaining is taking a leadership role in the reestablishment of the generic promotional campaign for our raisins. This role beyond bargaining has been successful for us and the entire industry.

It will be funded by us and nonassociated growers. Ralph Bungee used to call them nags who get a free ride. So, we are going to be actively involved in reestablishing the new order. We also hold 34 percent of the seats on the Federal board.

I see this role as very critical. There's always a group of packers, one supporting their proprietary interest and the other supporting their brand and proprietary interests. I think the grower group

brings them together and goes forward. And it also helps to be the largest group when you have two divided factions.

It reminds me of the story about the three partners who owned the company. Two of the partners each owned 49 percent and the third owned 2 percent. The partner who owns 2 percent runs the company. The growers are pushing the plan forward.

This grower order is designed to work for both growers and processors. Our role beyond bargaining is to make sure that the order continues to support the efforts of our industry. I think we do a good job of it. Membership is important. As you know, we have slightly more than 2,000 members. You get seats on that board by membership. So we are always seeking more members to gain more control on that board. Actually, you get it by tonnage, but members and tonnage are related. We have 15 seats on the 47-member board. Being active in that takes a lot of my time.

We continue to remain the conciliator between processors, whether they be domestic and export branded or nonbranded. Sometimes they need the grower group to make the motion because the other two favor one side or the other of an issue. So, we are continually being called upon to be that neutral driving force that keeps talks in the center of the road so they can go forward.

## **Long-Range Planning**

One of your roles beyond bargaining is to be the catalyst that develops the long-range plans in the industry-whether you are a sole proprietor, sole proprietor working as a processor, or major corporation which can be a family owned operation or a publicly traded company. Not many industries, including ours, have internal long-range plans.

Many of the decisions we make are like buying an airplane ticket and not knowing where we are going. The difference is that long-range planning takes commitment and a desire to compromise. By contrast, short-range planning takes minimal commitment and really no compromise. You go on from whatever the decision was that day. I

think again, the grower group needs that role beyond bargaining. You need to develop, maintain, and stay with the long-range plan.

If you ask any processor in the industry what he sees as the solution to oversupply **problem**, he would reply, "Sell more raisins!" But how and what do you have in mind? You terminated our marketing order. You always have that conflict right now. One of the roles is to develop an industry long-range plan that covers the next 5 to 10 years.

## **Political Action Committees**

We have Federal and State Political Action Committees (PACs) and we spend about what we collect every year except for the reserve we want to keep. I think its important to be politically active at both State and Federal levels. We happen to be a little more active at the Federal level because our Federal orders kept us a little more involved. I think we've got support for the State order.

Any of us, whether large or small, need that medium to get your voice heard and somebody to carry that message. Believe me, when you call on that representative, his office staff has already looked at their files to see if you contributed money to the campaign. He may even have seen you at a fundraising event. A couple of dollars here and there have opened some doors that might have been closed if 6 months earlier we hadn't spent \$250 or \$1,000 on some fundraisers for particular candidates.

We also support people elected in other parts of the nation. A California vote generally supports California interests. But, when you have someone from New Jersey supporting something taking place that affects California, that's got a different type of credibility. He has no proprietary interest. He will do it because he believes it's right. So, that carries a lot of weight. We support candidates in other parts of the Nation as well, who have supported us.

## **Market Promotion Program**

Another big area is funding for the Market Promotion Program (MPP), a very controversial



issue nationwide. Frankly, it's nice to draw congressional support from many of the Eastern States. We continue to fund the PAC because I think we have that obligation to support the industry from a legislative standpoint.

Ron Schuler gave a slant about attracting growers who might have problems we can help solve. I think our program is similar. We are frequently called upon to negotiate disputes between growers and processors. These disputes often involve attorneys. We do not provide legal advice, so we are very cautious in our approach.

But generally, we can bring both parties together, although not everyone will like our solution. Differences generally result from misinterpretations or **miscommunications** and the parties are in total division. We have continual contact with our processors. I talk with some packers 4 out of 5 days a week. I talk with our processors more than our board. I think, as Schuler said, you've got to see them. They are your clients. I'm working for the members, but those people sign the contracts. I think we need a good relationship with them.

We include the processors on our newsletter mailing list. I think what's fair to share with the growers is also fair to share with processors. Many of them frequently call us back and ask for a clarification or more details about subjects they should know and should be explaining to us. So, there is a good response. That's part of bringing them into the fold and keeping them informed.

One of our roles beyond bargaining is to keep up with the financial condition of our processors. About 3 years ago, we were involved in a lawsuit that costs a fortune. We questioned a processor's ability to have an operating line to pay growers. We were in court 7 times over 2 years and prevailed each time. I truly believe that if those 280 growers had delivered to that processor, it was questionable if they would have been paid. Even the growers have superior lien positions in the advent the processor goes broke. The delay in payment and the complexity of that repayment would have caused really debilitating effects on growers.

We subscribe to Dun and Bradstreet, one of the services I use to at least get payment records from processors or their financial statements. New

processor members (we've had two) must provide financial statements or at least prove that they were financially able to pay the growers and have an operating line. In addition, we annually check the financial condition of our processors. In one case, I think it saved millions of dollars.

There is considerable support for the association by processors. We value that. Ninety to 95 percent of our funding comes from them. We assess our growers 1 percent for a revolving fund that's collected in November-December and repaid every July 15. Even though we sit on a pretty good cash reserve, the only thing we really operate on is the interest we earn. Processors pay a \$4 fee for each ton delivered to them and that funds the association.

We've tried other things in the past. One unsuccessful program was financing growers' purchase of raisin bins. We borrowed up to \$800,000 to finance the program, but eventually scuttled it. We also had a very successful workers compensation program for 2 years that provided a dividend of 44 percent through Pan American Underwriters. A health insurance plan and a property liability program are also available. Those are some of the things we do beyond bargaining.

Dick La Framboise: Our organization has to look at it from a significantly smaller scale than many others. I feel there is a role beyond bargaining. But, I think it is one that you have to look at for the protection of your growers and anything that might affect their pricing structure. We start with grading. There are certain processors who we feel price by grading. Anytime a processor or plant manager walks out to the grading shed and says, "Be a little tougher because the back end isn't coming out right," knows it's something that shouldn't be done, and at that point and time, I feel we have to step in.

Unlike many industries, the processor furnishes the initial seed and tells the grower exactly what days it will be planted. Later, he advises the grower when the crop will be harvested. The grower is in effect kind of a contractor. Although he is responsible and owes for the seed, in effect he doesn't pay for the harvest because it's figured in the price. So,

anything that happens that affects any one of those things is really something beyond bargaining, although a part of bargaining. You have to get involved with it.

## Water Issues

We have water issues in parts of our area that have suffered from drought for the past 3 years. The 82-mile-long Yakima River Basin serves an area 30 miles wide. The water rights to the growers in those areas are divided between those who were there before the Bureau of Reclamation came to the scene and developed some water, and those who got water under that Federal system. The latter group has what we call “junior water rights.”

They have developed ground on which they planted not only corn but also fruit crops like pears and apples. When those people get only 34 percent of their normal used water, it creates a problem.

These water issues have nothing to do with bargaining, but certainly affect pricing. When these issues surface, we have to get involved, be knowledgeable, and participate in what goes on so that when you do sit at the bargaining table, the subject is relevant.

I think public relations is a given part of political action. You have to be aware of what’s going on. Eventually it will affect the pricing of whatever you are doing. Our contract or articles of incorporation limit us to pricing, but again, there are many related things in which you get involved.

## Questions and Answers:

*Q How do you fund your Political Action Committee (PAC) and what would be the size of the contribution you would make?*

**A** Under our PAC, a typical grower delivers 100 tons of raisins and gets \$700. We withhold \$1 per ton, or \$7 in this case, and repay it in July. Every year or so we send a blanket letter asking them to allow us to deduct contributions to the PAC fund from their revolving fund. They can contribute in a lump sum amount or on a dollar-per-ton basis. Typically, it’s \$1 or

\$2 per ton. On the disbursement, we literally show proceeds due grower, less PAC fund contribution, the way they made it and then we pay the balance to them. We try and reward those who have done a good job.

*Q Tell us about your followup program.*

**A** Only about 46 to 50 percent of the growers participate. Each grower is asked to contribute a minimum of \$25, with a maximum of \$250, by checkoff. You sign the card, submit it, and can have it stopped at any time. We deduct it from what we revolve back. It’s been very tough to go above that 50 percent level, even though you make the appeal many times.

I’ve served on the National Council of Farmer Cooperatives (NCFC) PAC for many years. We finally reached 94 percent of the board participation. So, it’s something that you have to work on. It’s important to all of our 20 groups because we are getting beat up by somebody else and each of us has a different point of view on PACs.

Our small organizations have neither that kind of money nor a PAC. So, our board has elected to work on a very low-key area. We encourage our members to contribute individually. We are also members of our State Ag Council in California and NCFC. From our viewpoint, belonging to those organizations keeps them apprised of our problems and enables us to stretch our limited dollars.

*Q One of the issues that keeps coming out of marketing orders and challenges is bloc-voting throughout the country. Vaughn (Koligian) will you support that order as an association? Will you consider bloc-voting and if so, how?*

**A** (Vaughn Koligian) We will bloc-vote that issue. The law allows a grower to vote contrary to bloc-vote. We have carried that issue to almost every district meeting. Growers have supported directors casting their bloc-

vote as they thought best for the industry, In our case, about a third of the members and then the board will vote and the president or I will vote on behalf of the association.

The interesting thing about the order, passage requires 65 percent of the growers representing at least 51 percent of the tonnage or 51 percent of the growers representing at least 65 percent of the tonnage. **So** when you have a body of 40 percent that can bloc-vote, you can kill any effort by anyone trying to establish an order unless you get your two cents worth in there. One order is totally unacceptable to our group so we will bloc-vote against it and in turn bloc-vote yes on a compromise. Our membership has been supportive of that.

## ATTENDEES

### **Agricultural Bargaining Council (Maine)**

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### **California Pear Growers**

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Cooperative Services (1) helps farmers and other rural residents develop cooperatives to obtain supplies and services at lower cost and to get better prices for products they sell; (2) advises rural residents on developing existing resources through cooperative action to enhance rural living; (3) helps cooperatives improve services and operating efficiency; (4) informs members, directors, employees, and the public on how cooperatives work and benefit their members and their communities; and (5) encourages international cooperative programs. Cooperative Services publishes research and educational materials and the monthly Farmer *Cooperatives* magazine. The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720-2791 .

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