

Conference

on

CLOUT

(Cooperation and Linking Offer Unbeatable Transactions)

Proceedings

A national conference on farmer
bargaining and sales promotion

March 16-17, 2001
Scheman Building
Iowa State University
Ames, Iowa

Sponsored by
Successful Farming® magazine,
National Farmers Organization,
W.K. Kellogg Foundation,
USDA Rural Development,
Iowa State University, and the
Iowa Institute for Cooperatives

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I. INTRODUCTION

The national Conference on CLOUT, March 16 and 17, 2001, in Ames, Iowa, may have been the best representation ever of farmer efforts to bargain for higher prices for their products. It included members of bargaining organizations for most major commodities and many high-value fruits, vegetables and special end use crops. The Conference included California bargaining co-ops that have been operating successfully for decades. And it included some of the newest bargaining organizations formed in recent years.

So that more farmers and ranchers can learn about how bargaining co-ops and organizations really work, this booklet has been produced by our magazine, with financial support from the U.S. Department of Agriculture and Iowa State University.

These proceedings are an edited transcript of nearly all of the speeches and breakout presentations made at the conference. The transcripts were made from tape recordings.

We hope that you find this information useful.

Dan Looker
Business Editor
Successful Farming® Magazine

Friday, March 16, 2001

II. REMARKS AND COMMENTS FROM SPONSORS

Dan Looker, Business Editor
Successful Farming® magazine

We'd like to have a few words from our sponsors. We're privileged to be working with many fine groups, and we wanted to give each one a few minutes to explain why they share our interest in bargaining. First, I'd like to have Paul Olson from the National Farmers Organization come up. This is actually NFO's idea, and I think we're very pleased to be working with Paul. Paul is the president of the National Farmers Organization.

Paul Olson
National Farmers Organization

First of all, thank each and every one of you that are here today. All of you that help sponsor the meeting and put it together including Gene Paul my predecessor in NFO. I know he put a lot of effort into this, a lot of work and a lot of time. So, thank you very much Gene and everyone else that was involved in putting this together. Let me give you a little background on myself. I am a livestock, dairy and grain producer from West Central Wisconsin. I consider myself first and foremost a farmer and secondly, the president of the NFO which I would consider two full-time jobs. Thanks to my wife who keeps the farm going very well at home with some hired help.

Our farm has not changed much in size over the last 25 to 30 years. I guess the latest change is that we are in the process of getting certified organic which will include the dairy. I feel that's a direction that we want to go at home. I have a little problem. I'm not against progress but some of the progress I see and what's happening across the country today and across the world, I don't know if I would really consider it progress.

This is a real exciting time for us in the NFO. Collective bargaining is kind of been our password from the day this organization was formed back in the 1950s. I feel we have been successful bargaining collectively for our

members in various commodities primarily livestock, dairy and grain. We have learned a lot over the years. Yes, we have made some mistakes. We realized that some things work better than others do. We continue to fine tune our programs and continue to learn from others. I think that's probably why we're here today more than anything else – to learn from other collective bargaining groups. I think all of us need to keep an open mind.

It's been stressed here today the situation that production agriculture in rural America is in. We're not here to talk about the problems. We know what the problems are. What we have to address is a solution and go on from there. I thoroughly believe that collective bargaining can be one of the tools, one of the solutions that we must take a hard serious look at, to turn this picture around that we're dealing with every day.

I want you to know that we recognize the importance of this CLOUT Conference. But as in our organization as with the rest of you, and it was very obvious at our Board meeting this week, that we have some serious issues confronting us out here in the country and the direction production agriculture is going. It is not only affecting us on the farm. Yes, it's affecting our churches, our hospitals, our schools, and our small towns. And yes, it will affect our economy in this nation. I am not so sure we aren't already there.

In my opinion, production agriculture is, has been and always will be the backbone of America and don't ever forget it. We are the producers of raw materials. In this case, food, the number one thing that this country, this world needs more than anything else. I think the farmers and ranchers in this country deserve a lot more respect and a better price than what they are receiving today. I think this can be received through collective bargaining. Thank you.

Larry Kallem
Iowa Institute for Cooperatives

The Iowa Institute for Cooperatives is what is known generically as a state council for cooperatives. We have in our membership everything from consumer food co-ops and organic farmers co-ops to the traditional farmer grain elevator companies, rural electric, telephone, credit unions all of those kinds of things. What we are essentially is an association that helps farmers maintain the co-ops they've got and build new ones when they want to. We provide them with the ability to look at various projects to decide how good they are, to help them organize and to stay with them all through the distance

from beginning up to some successful higher plane than where they started. We do have people on staff who provides those kinds of services. The beginning, and this is something I think you might want to know if you're thinking about putting together an association of some kind, doesn't have to be a cooperative.

Naturally, we like the structure co-ops offer. So long as it's primarily farmer-owned, we provide organizational services and access to various kinds of lawyers and accountants who are familiar with these kinds of things. In the beginning phases, we have grant funds available to pay those costs so farmers don't have to get out their billfold at that point. They can check things out and see if it makes sense before putting money up. Those funds come to us from the Iowa Soybean Promotion Board and some co-op insurance companies, primarily Farmland Insurance. Farmland Insurance is a part of Nationwide. Bargaining co-ops: Now many of you aren't aware that bargaining co-ops have been in business for a long time in other parts of the country. They're fairly new here. In fact, you'll see people on the program today who have been in this business, who have been at this, for generations. We're here to learn what they have picked up from experience over the years.

Eric talked about not believing that farmers won't work together. Of course, if I couldn't believe that they wouldn't either, I wouldn't be successful doing what I do. I do have to observe this. It's often the case that farmers don't like to work together unless they've got no other choice. In other words, when times get bad, they start pulling together. They need to look at that a little differently. If what we mean to do is to maintain or at least slow the erosion of rural communities, we need to look at these things when times are good as well.

Jerry Miller
Associate Dean of Agriculture
Iowa State University

We are definitely pleased to be one of the sponsors of this conference. We were also pleased that it is here on the Iowa State campus, and we can help with some of the logistics as well as the program. As Dan indicated, I'm representing the Iowa State University Extension and the College of Agriculture, and my responsibilities in the college are actually for extension programs. I work for two bosses, and it's a pleasure to do that.

Let me just take a second and share with you a few comments about the college of agriculture and our extension program. We are a large college - one of eight here at Iowa State University. We have 17 departments in our college ranging all the way, believe it or not, from A to Z. Animal ecology, Ag Econ, Agronomy, Animal Science on the A side and Zoology on the Z end of that and all those others in between. In addition to the 17 departments, we have 15 centers and these are interdisciplinary activities that cut across departments and actually cut across in some case colleges.

As your program for your conference was developed, it has a very broad scope and breadth in terms of programs and activities that you will have an opportunity to hear about. Having said that, I would like to just take a minute perhaps to give you some things to think about as you're involved in these activities and you look at the different kinds of the scope of programs that people are providing leadership for or are involved in and would challenge you to think about as you go back home, how you can work with your land grant institution in terms of getting assistance to meet your organizational goals. I say that because as you will cross this nation all of you know in each of your states there is a land grant university. Each of our land grants has a common mission and that is of research, of learning and of extension. I'll take and build on those missions in that as you look for assistance in developing your programs, what those missions relate to are that each of your land grant college of agriculture has a research base. That research base is in food, it's in agriculture and it's in life sciences.

Second, their faculty and staff in each of those colleges can help to develop and implement educational programs and that can be both in the classroom as well as out in the countryside across your state. If you think about it, as we go across this nation, there are about 3,000 counties and every land grant university has a front door in that county and there's staff there. In this day and age, there is some kind of electronic connection in addition to the traditional telephone/mail that will get you right back to the campus of your land grant university. The land grant in your state is basically in your backyard and it is accessible.

Having said that, Dan, you asked the challenge I think you said in the beginning of what is our common interest in terms of being a sponsor of the program. I'll respond in this way. There are several groups here in Iowa and some of them are on your program today that have access to that research base, that ability of the land grant to develop and implement programs. They have accessed that opportunity and they've worked with Iowa State University faculty and staff as they have developed programs that either looked at a unique niche or looked at some type of value added in

what they're producing and adding that value and quality to their product. I would just say that that opportunity of doing that is not unique to Iowa but as I indicated earlier is unique to you in your state.

Again, I want to welcome you to Iowa State University and to Iowa.

Loren Kruse
Editor-in-Chief
***Successful Farming*® magazine**

Perhaps the most fulfilling part of being a farm magazine editor is not just tossing out information or ideas or knowledge but seeing those ideas be put to action by producers across America and knowing that we had some part in producers adding value to their lives, families and farms and ranches. We are not really in the information business at *Successful Farming*® as you may think. We like to think of ourselves as actually being in the encouragement business. Farmers, producers, and ranchers need a lot of encouragement, and we believe that's something we can best give by providing ideas, solutions and alternatives that you folks can take right to the field, barn, office, shop, home, family and heart and put to use.

To that end, *Successful Farming*® is the only magazine I know of in addition to our mission statement that actually has a passion statement. We do have a lot of passionate editors on staff like Dan who really want to do everything they can. Simply, our passion is to encourage, and to comfort, but more importantly to urge producers to positive action. To go forth and do something that can truly add value to your lives and farms. Our staff is also encouraged to think up big ideas, to think up ideas that are far bigger than we are at *Successful Farming*® and then find partners who can work with us to pull off something that can really add considerable value for producers that they can take something from, be encouraged by but actually more important than that go out and do.

Dan has certainly taken that charge here with this CLOUT conference and pulling together the partners we have, I believe, to provide a great deal of value here over the next couple of days. What I really look forward to is seeing the genuine application of the ideas that you will pick up here. The stimulus that you will get from others who are thinking positive and have

solutions and alternative ways to things that you can take home and put to work not only on our own farmer ranch but more importantly with your neighbors and far-extended neighbors so that together farmers can enjoy a much greater share of the wealth that's created from our food production system in the United States. Right now it is less than 20% and it's pretty obvious why the big global agribusinesses want to own that food product all the way from the seed to the consumers dinner plate. Farmers deserve a bigger share of that, and I think we'll get ideas here today and tomorrow that will help grow that for producers.

WELCOME

Friday, March 16, 2001

Eric Tabor

Chief of Staff - Iowa Attorney General's Office

Biography

Eric Tabor is a 1980 graduate of the University of Iowa School of Law, having completed his third year at Harvard Law School. He served three years as an Assistant Counsel in the Office of Legislative Counsel, U.S. House of Representatives. He returned to farm with his family near Maquoketa, Iowa, and became active in politics as a congressional candidate in the 2nd District of Iowa and as the chair of the Iowa Democratic Party (1993-1994). In 1995, Eric came to the Iowa Attorney General's Office as an Assistant Attorney General in the Farm Division. Attorney General Tom Miller named him Chief of Staff in 1998. He has a thirteen-year-old son, Noah.

Speech

Welcome to Ames, Iowa, and this conference. Let me just say to *Successful Farming*® and to the other sponsors, congratulations. This is just an outstanding conference, and I hope you enjoy it. It's right on the cutting edge of what we need to be talking about in agriculture in Iowa and

across the country. I hope you learn a lot and take it back to your communities and put it to good use.

I grew up on a family farm in eastern Iowa in a little town called Baldwin. My family has been there since the 1860's feeding cattle. Just a little about the Tabor family and how it relates to what's going on in agriculture. We have fed cattle on our family farm forever, and it's really sad to see how things have changed in that community. What we had were vibrant rural communities. We had communities where the supplies were bought locally and where the profits of agriculture stayed local. We had communities where we had local banks with a lot of trust back and forth. In bad times, you dealt with your bankers and when there were good times, you're banker prospered but you worked together. We had almost perfect economic competition. Economists like to talk about perfect information and perfect competition and efficiency and we had that. My dad used to say that he could pick up the phone with a load of cattle to sell and the next morning there would be seven or eight cattle buyers ready to bid on the cattle. Towards the end of his farming career, he'd pick up the phone and call one cattle buyer and try to get him out to the farm, and he might come three or four days later. So things have changed dramatically on the Tabor farm.

I understand what's going on. Of course, it is no secret that those trends are going on across the country. Why are those trends happening? Well, it's economics. It's a trend towards economic efficiency. There's no doubt that consumer preferences are driving what's going on in agriculture. The large corporations are looking at what consumers and retailer consumers, the Sam's Clubs and the Kroegers, what they want and they're working backwards. They're getting that product produced by the farmers. That's good. We need to produce what the consumer wants. They're also bringing new technology into the production of agriculture (i.e. biotechnology, new genetics in animals, new production techniques, new machinery). All kinds of things to make us more efficient. We need to compete globally and I think that's what large corporations are looking at. That's all good. However, what's bad is whether we are going to be able, as producers and people in rural communities, to share in those benefits and to share equitably in those profits. That's what we need to be looking at and how we can move ahead as people who are concerned about this issue and do what would be most helpful. Let me give you three things that we can do.

The first is so called "niche" markets. To produce food, meats, whatever and sell them directly to consumers. Getting back to the Tabor

family, what we did a few years ago is tear down all of our feedlots. We put up a winery. The Tabor home winery is now operating south of Dubuque in Jackson County and is actually quite successful. My brother, Paul Tabor is a wine maker. He is producing very good wines and growing grapes that survive Iowa winters. He is actually leading a trend to get grape growing done around the state and just talked to the Iowa legislature last week about getting some financial aid to help provide technical assistance to grape growers.

My cousins, who farm our farm now, Dave and Brian Tabor, are engaged in production agriculture but are also direct marketing their meats – Tabor Home Meats. They go to farmers’ markets and elsewhere to try to directly sell their meats. So that’s a good thing. I know a number of you are interested in doing that and that’s very much a part of agriculture and how we can be successful. But I dare say that’s going to be a rather small part. I think in the end the people that are looking at that say that’s only going to be about 20% of what we produce in the way of food. We have to look at the bulk of production agriculture and how we can get our fair share. One of the largest trends that’s going on is production contracting. As Drake University agricultural law professor Neil Hamilton once said, “If you’re a large corporation, why should you own the farm if you can own the farmer?” What we’re seeing across the country and it’s no secret to anyone; it’s just a boom in production contracting. It happened in poultry a number of decades ago. Now it’s moving to pork. It’s been in beef in various ways, and you’re seeing it in grain. You’re seeing it in commodities like tobacco.

What we have tried to do in the Attorney General’s office in Iowa, because of the interest of my boss, Tom Miller, in this issue is to make sure that some of the abuses that have been documented in the poultry industry don’t happen in Iowa when it comes to hogs, cattle and grain. There’s no question that there’s a need to get ahead on this issue. Because what you have anymore is a disparity in bargaining power between the farmers and the companies. People ask, “Why doesn’t the Attorney General’s office do more when it comes to anti-trust?” They say that Tom Miller is supposed to be enforcing the anti-trust laws so why doesn’t he do something about the Cargill-Continental merger? The U.S. Justice Department took a look at it. They required a few divestitures but it went forward and then a number of people came to our office and said, “Why don’t you do something. Here are the two largest grain-handling companies in the world getting together. Isn’t that an anti-trust concern? What about Tyson acquiring IBP? Isn’t that a concern that one company is going to be number one in chicken and number two in hogs and number one in beef when it comes to production.”

Well, the fact of the matter is we need to wake up to the fact that the anti-trust laws are not going to be effective in slowing down this trend. The anti-trust laws are written very, very broadly. However, when you look at how they have been interpreted by the federal courts, they have narrowed them very, very sharply. What you need to do in an anti-trust case is show how the consumer is injured not so much how the producer is injured. How does it affect the consumer? When it came to the Cargill-Continental merger, we looked at what the U.S. Justice Department did. Frankly, we didn't think we could do a whole lot more under the laws as they are interpreted. We are looking at the Tyson merger but I dare say the U.S. Justice Department has already taken a pass on it. We haven't made our final determination but here again, with the anti-trust laws, it's very, very hard to win those cases. So what do you do? Do you throw up your arms and say we can't do anything about consolidation and concentration?

Our office has taken a little different approach. In getting back to production contracting, we think it's very, very important to get responsible legislation dealing with production contracting. We put together model state legislation over the last year. We had 16 state attorney generals that joined with us generally supporting legislation to deal with production contracting. We're working through the legislation now in the Iowa legislature. A version of it passed the Iowa Senate Agriculture Committee yesterday. It's a good bill. It needs some changes. Let me quickly tell you about some of the provisions that the bill contains. The first thing we did in 1999 in Iowa was pass a producer contractor lien. The lien basically says that if I'm growing hogs, I should have a first priority lien for payments due under my production contracts. In other words, if a contractor goes belly up, I as a farmer get paid before the contractor's banker. That's now Iowa law and we think that's very successful. We're trying to get other states to do that as well.

A second thing we did in Iowa in 1999 was to pass prohibitions on confidentiality provisions in production contracts, marketing contracts for the purchase of livestock. In Iowa, it's illegal to have a confidentiality clause in a production contract. If there's one in there, it's void and unenforceable. Getting back to the openness in agriculture we had when the Tabors were farming, agriculture was noted for years as being a transparent industry. You had auction barns. You had terminal markets. You had futures markets. You could go to the grain elevators and prices were all posted. But when it comes to production contracting, how in the world do you know what the value of your production contract is worth? What we did because of the new law in Iowa in 1999, is establish a web site. It's

iowaattorneygeneral.org. If you go there, we have about 70 different types of production and marketing contracts. We take off the name of the producer. We leave the name of the contractor and the price. Frankly, it's one of the few places in the country you can get any idea what some of these production contracts are worth. We think that's mighty important.

Interestingly enough in Iowa legislature, we're fighting a very important fight on whether confidentiality will still be prohibited in Iowa. I can get into some of the details. There are some folks who just don't like what we're doing. Is it revealing trade secrets? No. I think when you really get to the nub of what people are upset about it's that we're attaching the name of a contractor and a price. We're going to see where that goes in the future. We're willing to make a few compromises on it but we think that it's critical to have some openness in production contracting. Another thing we're trying to do is make sure that contracts are a little harder to terminate. Production contractors would have to give 30 days notice to someone in a production contract and an additional 30 days to correct the problems – to cure the breaches.

The bill also provides a three day “cooling off” period – a reconsideration period for production contracting. This is similar to what goes on in consumer protection. We have door to door sales. Someone comes to your door and sells you a magazine; you have three days in Iowa to cancel that. Well, we're saying when it comes to production contract that's a pretty good idea. Someone comes with a contract, and it looks good. You take it to your banker and to your lawyer and they say, “My God, what have you signed?” Well, this gives you three days to get out of it as long as livestock hasn't been delivered and the other side isn't detrimentally affected.

The real guts of the bill deals with what we call “unfair trade practices.” This is getting to what's gone on in the poultry industry and trying to prevent some of those abuses. What the bill does is establish what we call “growers/producers rights.” One right is to join an association. It might be the Iowa Pork Contract Growers Association. That's a right you have. Another right is to contract with whom you want. Another right is to be a “whistle blower” and be able to come to the attorney general's office and say, “This contract is no good and you ought to take a look at it.” The right to file that contract lien I talked about. The bill goes on to say that if you unfairly deal with a contractor when they exercise those rights, then you can be subject to a civil penalty. For example, if I go ahead and file my production contract lien, when my grower or my contractor didn't want me to do that and I get bad pigs after that and you can prove that somehow

you're being coerced or discriminated against for exercising your right that would be illegal under Iowa law.

There are other unfair trade practices as well. One would be not disclosing how you're compensated under your contract. It would be an unfair practice to require new investments under the contract without sharing in the costs. This happens in poultry all the time. You have an existing contract and then out of the blue the contractor says, "You need to retrofit your building and spend tens of thousands of dollars doing it but you're not going to get any more under your contract." This law would say that this would be an unfair practice to do that. The contractor would need to share fairly in those capital investments.

There are some other provisions as well. It requires mediation and non-binding arbitration. It would prohibit arbitration unless both parties agreed on the arbitrator. I think those are the main provisions. We're hopeful this will pass in some form in Iowa. It's being seriously considered in Illinois and Kansas. Nebraska has some legislation floating around. If not this year, we're going to continue to work on it. We think it's real important to level the playing field. The disparity in bargaining power and information that we try to equalize things a little bit better so farmers can get their fair share.

We're litigating Smithfield in their acquisition of Murphy Family Farms. Litigation is slow. They did that deal last February and we're still in court with them. There's no decision yet. In the public documents from that case, what came out is that Smithfield foods (and this is based on hog prices a while back - it would be even more stark now) was making \$80 million based on the Murphy Family Farms contracts. The growers were making \$8 million. That's a 10 to 1 disparity between the contractor from Virginia and about 250 to 300 Iowa growers. The question is can we make contracting more fair to give more rights to growers so you can equalize that balance? There's nothing wrong with making a lot of money. Smithfield can make all the money they want and provide products for retail but let's make sure that Iowa farmers have an ability to negotiate fair contracts.

The third thing is collective bargaining for farmers. This is something we cannot do a whole lot about in the state of Iowa. We can do some but this is really a national issue. I'm very pleased that Representative Marcy Kaptur is going to be here this evening. I know other folks have worked on this issue nationally. It's just critical that we make sure federal law is changed. States are preempted to a certain degree in dealing with this issue. The federal government should enact legislation that would allow farmers to get together, a way for them to form bargaining units, and require

contractors to negotiate fairly with them. It's critical that we get this legislation through.

What irks me is that people say it will never work because farmers are too independent, and they won't get together. Well, farmers are independent. I farmed but you know what, there is a history of farmers working together when they needed to work together to make sure that their way of life was preserved. We threshed together. We built barns together. We shared equipment together. We shelled corn together. When someone got hurt, we went over to the farm and helped next door. So the idea that farmers are not going to get together and do what needs to be done to preserve our way of life is wrong. We need to change the attitude that it will never work because we are too independent.

This is a time when we have a choice in states like Iowa. Are we going to go down the road that poultry has gone down and has been well documented for communities? If you want to see something really scary, look at Dr. Bill Heffernen's study of parishes in Louisiana, where over the years because of the poultry industry, not only has there been a decline in the income of the farmers but look what it's done to the rest of those communities. We need to do all we can in Iowa to look forward and take advantage of global markets and technology and all the wonderful things that are coming down but that the farmers who are doing the work out there have the fair share and that the rural communities thrive and prosper and can have schools and take care of our elderly.

It is very much my pleasure to be here today. Thank you for what you're doing. I think it's an excellent, excellent conference.

Friday, March 16, 2001
Congresswoman Marcy Kaptur

A New Declaration of Economic Independence for Rural America

Thank you for the invitation to speak here at the CLOUT conference in Iowa, the heart of American agriculture. Particularly glad to be here in historic Ames at the Iowa State University, a land-grant college, where practical and egalitarian teaching remains the ideal.

Thanks to Dan Looker at *Successful Farming*® magazine for allowing me to share some of my thoughts on contracting, bargaining and, more broadly, the condition of American agriculture and the family farm and ranch in the world today.

Frankly, I'm glad to be in Iowa, home to Berkely Bedell, Leonard Boswell, Tom Harkin, Neal Smith, Tom Latham - I remember visiting Spirit Lake with Bedell, and it's lush green land. It reminded me of the beautiful linen fields I saw in Russia, and of the smell of young, fresh fields of corn of my district. I'm often mistaken as being from Iowa rather than Ohio as each state has 3 vowels! America's 276 million people don't appreciate their utter dependence on the 700,000 American farmers and ranchers who keep them alive. Iowa leads America not only in pork production (it has for the past 100 years), not only in corn production, and not only in egg production (a recent achievement), but also in the number of off-year visits by out-of-state politicians.

I'm not here today as a candidate for President of the United States, but as the top member of my party on the House Appropriations subcommittee on agriculture, as a citizen vitally concerned about our country as America's system of agriculture becomes bigger, more concentrated, and more oppressive on small and medium sized family farms and ranches.

America needs a new Declaration of Economic Independence, rooted here in the countryside, but spreading its wings across our nation and the world. And that declaration should insist that America's farmers are not expendable. They are not residual; they are not a contingency; they are a central pillar of our national security and our freedom.

The United States of America began with the words "when in the course of human events it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the Powers of the Earth, the separate and equal station to which the Laws of nature and the laws of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation." Today America's farmers and ranchers need a separate and equal station, politically they need to declare the causes that should impel them to action.

For me, the very essence of our democratic republic flows from the free holding of land and its bounty. As Emerson once said, "Any relation to the land, the habit of tilling it, mining it, even hunting on it, generates the feeling of patriotism." When our farmers and ranchers are weakened, the values that have kept America free and strong are weakened.

Food security, now taken for granted by most Americans, is not a birthright. It is a condition for which each generation of Americans must fight. So must we. Today's farmers are the remaining freeholders of our

rural endowment. As one former rancher said to me, “we are the endangered species.”

We are witnessing an alarming hollowing out of America’s countryside, and a wanton destruction of the precious arable lands that have sustained us and on which our future generations will depend. Consumers in America still have the lowest food prices in the world because of the food system we have inherited. But that system is at a breaking point and its epicenter is here in Iowa, What kind of rural America and food system are we bequeathing to the next generation?

The years since Congress passed the Freedom to Farm Act have been most troubling. We’ve gone from a farm bill that promised to end price supports for many commodities by 2002 to one that has driven prices down while actually being among the most costly in our nation's history. We’ve had several emergency programs to supplement farm incomes in recent years - billions of dollars each year that have held the farm credit system together and helped some farmers survive. But other producers got nothing just because they grew the wrong kind of crop. Some got money and planted nothing.

Let’s be clear about the causes that impel me to ask you to join in this new declaration: Rural America is on life support. The current farm depression, now in its fourth year, is the deepest since 1915. Last year’s prices were a 27-year low for soybeans, a 25-year low for cotton, a 14-year low for wheat and corn. Farm debt will surpass \$180 billion for the first time in 16 years. The average age of our farmers is 57. In my home State of Ohio, farmers are “farming the government” - some getting 78% of their income from government subsidies. Overall, \$27 billion has been spent in the past 3 years in emergency assistance.

Yet, our new President didn't mention this crisis in rural America in his message to Congress three weeks ago. His party on Capitol Hill has barely paid attention to it on key committees. Of the handful of people who’ve testified this year, all have called for an increase in USDA’s budget - the President’s budget “blueprint” reflects at least an 8.6% decrease!

The President said in his State of the Union that agriculture will be considered in a "contingency fund" - when he was campaigning in Iowa last year he called agriculture an “oasis.” A “contingency” is ultimately defined in the American Heritage Dictionary as “A: an event that may occur but that is not likely or intended; B: a possibility that must be prepared against; C: something incidental to something else.”

It appears that using this definition, our farmers and ranchers are incidental to a huge tax break for the top 1% in this country in the Presidents

budget. President Bush came to Iowa earlier this month and promised Midwesterners that he could increase support to agriculture despite his tax cut. I'm here today to say his budget proves this is a false claim.

The 2002 budget put forward by The White House cuts \$1.7 billion below the level just to keep even, according to the non-partisan Congressional Budget Office. He's cutting support for county offices, on the front lines, cutting crop insurance, and the "National Emergency Reserve Fund" his "contingency" is funded less than two-thirds of the average amount of emergency aid agriculture has received over the past three years. One top of this, the "contingency fund" is also the account he'll use for natural disasters and other non-agricultural emergencies! Claims on these funds already exceed the money really available in it!

The truth is America is no longer feeding itself Already we depend on 9 million guest workers every year to tend our fields, work in our factories, and perform some of the hardest and most backbreaking work in our society. Vertical integration is driving down commodity prices. And farmers are losing equity. And the rate of ag imports has exploded 7-fold in the 1990's due to non-reciprocal trade agreements. The trends on imports and exports are going in the wrong direction.

If America is not wise, our diminishing ability to make our food system work will make our nation as vulnerable and as dependent on foreign nations for food, as our addiction to imported oil to fuel our economy. We have gone to war for oil, rather than solve our energy needs here at home.

Many of our farmers are being transformed from independent freeholders to growers who work in bondage to integrators. And that's why America's farmers and ranchers must unite with a declaration of economic independence.

I have introduced two bills that begin to restore farmer's separate and equal station in agriculture today. Most farmers aren't negotiating with their buyers. The farmer is faced with a "take it or leave it" situation. Some contracts contain confidentiality clauses that prohibit farmers from revealing their terms. Thank you to the state of Iowa, especially Attorney General Tom Miller, for leading the way by adopting legislation to prevent these restrictive practices.

GAIN CONTRACT RIGHTS

My first bill, HR 230, the Family Farmer Cooperative Marketing Amendments Act of 2001 gives farmers and ranchers real market power in contracting. This bill would:

- Require the Secretary of Agriculture to establish a system to accredit voluntary cooperative associations of agricultural producers;
- Provide for good faith bargaining between processors or handlers and cooperative associations of agricultural producers;
- Allow for mediation by USDA to resolve impasses in bargaining; and
- Provide investigative and enforcement authority for the Secretary of Agriculture.

This bill has earned the support of many groups, including National Farmers Organization, National Farmers Union, the National Cooperative Business Association, Michigan Farm Bureau, and a host of other commodity groups.

My second bill, HR 231, would amend the Packers and Stockyards Act, 1921, to provide the Secretary of Agriculture with administrative authority to close the legal loophole and allow poultry growers to have the same legal protections from the P&SA that the lamb, pork, and cattle industries enjoy. This bill was the result of my personally visiting poultry operations in the Delmarva Peninsula, and seeing the plight of hard-working poultry growers. We simply must find a legal way to get them a fair deal.

Support for each of these bills is growing, and I hope to get the House Agriculture Committee to consider them as part of the reauthorization of the Farm Bill. I hope you will encourage your own Congressmen to cosponsor these bills. The more members who place their names on the bill, the more likely it is the Committee will give us a fair hearing.

RECAPTURING MARKETS

As important as these bills are, they are steps along the road to farmers regaining an economic foothold in the global marketplace. In this new marketplace both producers and consumers are held hostage by those controlling processing, marketing and sales. As the daughter of a family grocer, I can tell you farmers and ranchers must find new ways to market. Fresh local products must be on the shelves of grocery stores and food outlets, and the USDA must take leadership to provide alternative outlets for those products where you are barred from the shelves.

Direct marketing through farmers' markets is an urban anchor that must be expanded to help producers get a better share of the consumer dollar.

Niche markets too can blossom to become vast new markets. For example, the sale of organic foods has grown by 20% per year for the last decade. Some people still think that baby carrots are just that, when they really are a processed product that took a low value item like small carrots and turned them into a high value item by putting pre-peeled and pre-cut carrots in a bag for consumers looking for convenience. Salads in a bag have been one of the hottest selling items in grocery stores.

To gain a foothold, farmers need to take advantage of big domestic markets that have often been ignored - for example, the multi-billion dollar market for school breakfasts and lunches. Think of schools like any other restaurant chain - they are open almost every day, serve thousands of meals each month, and need a wholesome, dependable supply. Farmers can provide quality fresh product if they begin to look into this huge market.

We must move more commodities internationally to provide income for our producers, while providing valuable food assistance for hungry people around the world. Programs like Food for Peace and Section 416 offer proven ways to move huge volumes of commodities in surplus, as can expanding our school lunch programs to needy children.

FIGHT CONCENTRATION

In restoring a free market in agriculture in our country, we must fund a new section within the U.S. Justice Department's Anti-Trust Division that has as its sole responsibility the agriculture sector.

The food pyramid that should move food from thousands of farmers' fields to the table has been transformed into a noose around the neck of a farmer who tries to move production to market. The processing companies and retail chains have taken command of the food chain. Today, the top four firms in the beef industry control 81% of the market, the top four in pork control 62%, and the top four broilers control 53% - a majority. Is this a free market?

Moreover, the retail stores by charging exorbitant slotting fees bar smaller and medium sized producers from the shelves.

Two years ago, when pork in my community dropped to 9 cents a pound for farmers, and break even was 43 cents, the retail stores were selling it for \$2.50 to \$6.00 per pound. There simply was no price elasticity. There was no free market. We must craft a new Declaration of Economic Independence that restores a free market for our farmers and ranchers!

This unfair situation is not America's plight alone. It is a problem of large, powerful multinational firms that manipulate the global market and

leave shattered lives in their wake. I refuse to let them destroy the basis of family farmers on which our Republic rests. Yours is a noble enterprise.

Just this past weekend, the *New York Times* reported about the severe farm crisis in Britain.

Even before hoof-and-mouth disease struck, British farmers were being punished by a strong pound that favored cheap imports and, according to the *New York Times*, “Markets in Britain tend to be controlled by a small number of huge suppliers, in turn in thrall to supermarket chains, with a result that farmers are locked into low prices.” Does that sound familiar? I recommend a book by John Cavanagh, *Global Dreams*.

WIN FAIR TRADE

This brings us to the international trade arena, NAFTA and the WTO. If the trade agreements of the world were working, U.S. exports would be rising faster than imports. Our new Declaration of Economic Independence must give our farmers and ranchers a place at the trade bargaining table. Every time there’s a new trade round, we’re told it will be good for agriculture. Yet our trade deficits are the worst in U.S. history. My vegetable and pork producers believed it would be better before NAFTA. But the processors who used to buy their production moved away for the cheap land, labor and lower environmental standards in Mexico. Now there’s talk of extending NAFTA throughout the Americas. Let us learn from our past experiences.

If we are going to insist on production and inspection standards for our own farmers, then we have to insist on the same standards for every imported product.

Why should our producers lose sales to competition that exploits labor and fails to meet our health and safety standards?

PRESERVE ARABLE LANDS

Our generation of Americans must address the diminishment of arable lands by urban and suburban sprawl. What other generation in history has destroyed as much precious prime land as ours? Will we be judged as the most profligate in history? America needs a new homesteading program that bongs young families to the country and ties mortgage and titles to holding land for the long term in production and conservation.

NEW PRODUCTS

And finally, to meet the crippling low prices in field crops, America must invest heavily in new farm products, with the biggest opportunity being domestic production of a dependable and renewable source of energy - that is farmer-owned!

Last year, when gas prices began to rise, I tried to get my colleagues to think about a simple solution. It was so simple they couldn't understand it.

I offered amendments to change our Strategic Petroleum Reserve into a Strategic Fuels Reserve by swapping oil for biodiesel and ethanol. We currently do not have the Reserve completely filled. Just by filling 2% of the SPRO with ethanol would double the production of ethanol and biodiesel. My goal is to have farmers own that renewable reserve. It's time for America to tell the world that we will not be held captive to any one fuel supply.

SUMMARY

So what are the elements of a new Declaration of Economic Independence?

- A new farm bill that gives equal footing to America's farmers and ranchers in our global marketplace, starting with contracting rights.
- We need a budget from the Executive Branch that addresses the farm crisis and positions American agriculture for the future. Farming in America is more than a contingency.
- We need to meet America's energy crisis with a major national commitment to biofuels.
- We must invest in new ways for farmers and ranchers to move their products to the market, domestically and internationally.
- We need to restore a "free market" in agriculture and enforce anti-trust laws.
- We must give farmers and ranchers a seat at the bargaining table in global trade negotiations, starting with the reform of NAFTA and the FTAA.
- And we must launch a new homesteading program that ties a lower interest farm mortgage and title to continued production and to holding and preserving our arable lands for the future.

In closing, I am reminded of two of Iowa's favorite son's - Roswell Garst and Henry Wallace.

Roswell Garst, the famous citizen diplomat and hybrid seed corn proponent always recognized that profitability was the great engine behind the technological advances that he kept proposing. Garst was so much more than a hawk of hybrid corn. He was passionate about Iowa and about Coon Rapids and about his farm. He understood that his farm was linked to the world, long before people talked about the global economy. And he understood the link between economic democracy and political democracy. When Nikita Khrushchev set foot on his farm, the tremors set forth ultimately made the Berlin Wall crumble.

"I expect," he wrote to a friend, "that you would come nearer seeing real democracy in Iowa than in any other place in the world-and that is particularly true of the small towns in Iowa."

Unlike California, he said, where big farmers "own the whole countryside and have literally thousands of serfs working for them. The whole tenancy becomes Fascist in the extreme with a good deal of undesirable relations. Certainly nothing like the beautiful democracy of the Midwest where all are about on the same level."

The other Iowa favorite son whose name I would invoke is, of course, Henry Wallace, who graduated first in his class in agriculture from Iowa State College, went on to become Secretary of Agriculture (and architect of the New Deal agricultural programs), vice president of the United States under Franklin Delano Roosevelt, presidential candidate in 1948 on the Progressive Party ticket, and of course the founding father of Pioneer Hi-Bred Seed Com Company.

Both Wallace and Garst were great patriots. They understood that the economic welfare of freeholders was the foundation of democracy.

As recounted in U.S. Senator John Culver's 1999 biography of Henry Wallace, titled *American Dreamer*, the New Deal vision of Henry Wallace has been called the largest effort to achieve economic cooperation through democratic processes that the world has ever seen.

Certainly it constituted a sea change in the relationship between farmers and their government. It must be counted as one of the boldest social experiments ever undertaken in the United States. Its basic framework endured for half a century, during which American farmers became the richest and most productive in the world.

At their heart, Garst's and Wallace's visions were essentially Jeffersonian. Thomas Jefferson himself prided himself on his commitment to the newest advances in agriculture, smuggling a strain of rice from Italy,

inventing a prize-winning plow, experimenting with the latest ideas on crop rotation. . .

Iowa's pioneers, like many of our Founding Fathers, made the small family farm paramount in policy considerations, because they understood that the freeholder was fundamental to the American democratic experience. As Benjamin Schwarz wrote in the Atlantic Magazine (March 1997), Jefferson opposed "the growing power of a centralized government dominated by big capital," because he feared it would become "the creature of an emerging national economic elite."

We know that Jefferson's principles are timeless. Garst and Wallace gave them new dimension, and so must we.

That is why, with American agriculture on life support, with farmers endangered by unchecked globalization, and with new challenges such as StarLink to hoof-and-mouth to mad cow, it is time for the farmers and ranchers of America to demand a new declaration of economic independence from their President and Congress.

INDIVIDUAL PANELS

AND SPEECHES OF

PARTICIPANTS ON PANELS

Friday, March 16, 2001

Livestock Panel I

Participants: Paul Hitch, Consolidated Beef Producers – Amarillo, Texas; Roger Coon, Iowa Premium Pork – Des Moines, Iowa; Brad Rach, National Farmers Organization Dairy Program

Biography

Paul Hitch is director and president of several custom feedlots in Oklahoma and Kansas. He's also chairman of the board of Hitch Enterprises and Hitch AgriBusiness in Guymon, Oklahoma. He and his wife, Lynda, live in Guymon, where Paul was raised. They have two sons. He has a B.S. in animal science from Oklahoma State University in Stillwater, Oklahoma and an M.S. in business administration from Stanford University. He is past chairman of the Oklahoma Beef Industry Council, the Texas Cattle Feeders Association (where he is still chairman of Beef PAC), and past live cattle marketing committee chairman for the National Cattlemen's Beef Association. He's served as both the Cattle Feeders' Committee chairman and northwest district vice president for the Oklahoma Cattlemen's Association.

Speech

I'm Paul Hitch. I am chairman and CEO of Hitch Enterprises. We are in the cattle feeding business in Oklahoma. We're also pork producers and have a cow/calf stocker operation. We're farmers raising principally corn and wheat.

I'd like to give you a brief history of the market. About 15 minutes after cash was invented, the cash market took place, which has been the operative system of trading for 10,000 years. Who knows how long. . . a long, long time. The cash market, obviously, has been the operative system for determining the value of all kinds of goods including the value of livestock; well, agriculture production - more than livestock. The market for

cattle has been changing dramatically in the past 15 to 20 years. I've been actively involved since I graduated from college in 1967. I've seen it change a lot, and it's upsetting a lot of people. We've gotten to the point where the buyers don't like it and the sellers don't like it. The buyers don't even like the system that we have now. Twenty-five or thirty years ago as a cattle seller we'd trade cattle on Monday; we'd trade cattle on Tuesday; and we'd trade cattle on Wednesday. Sometimes we'd have a little clean up trade on Thursday in the cash market.

Over the course of 25 years or so, that has evolved down to where there's a thirty-minute to one-hour trade window at some time generally Thursday or Friday. We'll begin the week asking 80¢. The buyers will come out and bid 75¢, if they bid. Sometimes they don't show up. You'll go through the same exercise on Tuesday. We'll go through the same exercise on Wednesday. Sometimes the price begins creeping up a little bit but sometimes either one side or the other will blink. Either somebody will turn loose a bunch of cattle and start a flood of trade at say in that case 77¢ or we'll hang tough and some packer will turn loose at 79¢. Then the race is on. You've got a phone in each hand calling everybody you know who wants to buy cattle and try and consummate as many trades as you can until the window closes and within a 30 or 45 minute time period the packers have put together next week's kill. This is an insane way to do business. It's just absolutely insanity.

I will mention two things that lead us to this point. Half of the people got paid too much and half of the people didn't get paid enough if you presume that the price on which they traded on the average was right. All of the cattle sell at the same price. Cell phones led us here. If you're going to go back 100 years, when somebody came to your place and wanted to buy cattle, you had to consummate a trade while he was there because when he left there was no way to talk to him. So either you did business while he was there or you didn't do business at all. Over the course of time, we had phones and that sped things up a bit but you still kind of needed to trade while he was there because you didn't know when you could call him again. You didn't know whether he'd call you back again so it led to a bunch of trades over a fairly long period of time. Now all the cattle buyers have cell phones. You can talk to them instantly which means there is no particular enthusiasm for trading while he's there because you can call him back in five minutes or five hours and he knows the same thing. He can call you back anytime he wants to.

The second thing that happened was market reports. We being TCFA, we being NCBA said, "Well, it's unfair to the sellers because the fat cattle

buyers have all this information because they go to all the feed yards but the individual feed yards don't know what's going on down the road. We need to report to a central authority so that that central authority can report to the members and tell them what trades have taken place." Now that worked in ways that you found out about trade before it happened or as it was happening in other parts of the area and that was good. Problem was the buyer couldn't pay up for a good set of cattle at your feed yard because before he got to the next yard down the road, everybody knew about it. Everybody said IBP or whoever is paying 70¢ and so immediately everybody's price went "boop", and they popped right up to 70¢. If you're giving it to him, give it to me. So the packers said, "If we have to pay the same price for all the cattle, we're not going to pay any more for the better one. We're going to pay average for everything." It's a screwball system. The sellers got disgusted enough and Consolidated Beef Producers was formed.

This idea, at least within the Texas cattle feeders' area, has been around since 1985 or 1986 when it was first promoted. It didn't draw much interest and went dormant for several years. In about 1992, the idea came back up again. Again, it sort of failed because there wasn't enough interest to carry it on. Although, it failed at a higher level. There was more interest but not enough. Again, in 1997 it was promoted. Again, it didn't go anywhere. But it failed at a higher level. More people were interested. . . just not enough.

Finally, I'm immediate past chairman of Texas Cattle Feeders, in January of 2000, my Board, the Board of Texas Cattle Feeders, said, "Paul, nobody has ever joined an association because there never was one to join. Nobody ever sent any money in because there wasn't anybody to send it to. You form one." So with that directive from my Board, I got together a number of interested people under the auspices of Texas Cattle Feeders Association, and we've created Consolidated Beef Producers (CBP). We argued about how much to charge, whom do you let in and so forth.

We incorporated it in April, and I had my first membership-recruiting meeting in May of 2000. We closed the books in October 1, 2000, and we have 2,100,000 plus cattle enrolled in Consolidated Beef Producers. We set about hiring a CEO and after interviewing several people hired Gary Kaplan. He has put together a thin staff of five people. This past week was our first week to sell cattle. The money numbers are as follows: we charge \$3,000 for membership fees to join Consolidated Beef Producers. You had to pay a \$1 a head and buy marketing rights. It costs you a \$1, a head and you had to buy a minimum of 5,000 head. You, basically, commit them to

Consolidated Beef Producers. However many head you've bought, you turn in the number and let Consolidated Beef Producers negotiate the sale of those cattle. We will negotiate with anybody. We are not allied to or tied to any particular package. CBP is headquartered in Amarillo, Texas. We have members in New Mexico, Texas, Oklahoma, Kansas and Colorado. We could sell 40,000 a week if you had 52 average weeks.

This past week was the first week to actually be selling cattle. We have about 16,500 head committed to our show sheet. We sold about 64% of those. Of those, about 60% of those were sold in the cash market. About 40% were sold on some sort of formula basis where the base price was negotiated. Most of the cash sales took place at \$80 with a few later on at \$79. The average for all cash sales was \$79 or \$78 for all the cash sales. A little less than \$125 base price on the formula sales. I consider that a successful beginning.

I certainly hope that we can increase, and believe we will increase the number of cattle offered for sale through Consolidated Beef Producers. I'd like to see us go more to negotiated formula sales and fewer sales on the cash market. That would be my personal preference where you sell them on a formula but negotiate a base price. I think that's the way the industry is going, and I think the consolidated beef needs to go there. Now clearly, we represent the seller. What we're going to try to do, if we think we can get more money in the cash market, we'll certainly sell the cattle that way.

I'm no longer chairman of TCFA. I am chairman of Consolidated Beef Producers. I tried every way in the world to dodge it but I didn't move fast enough. We're off and running. We closed the rolls on October 1, and the Board passed a resolution so we won't open it up for a year. We're committed to not selling any more marketing rights until at least October 1 of 2001. It doesn't mean we'll start selling more at that time but we may. I can't imagine this being a successful deal and not trying to make it bigger. We've got about 130 members. One hundred and twenty of them are feed yards. It's predominantly feed yards that bought memberships. We did not restrict sales to feed yards. So if an individual who fed cattle in feed yards wanted to buy his own membership, we certainly didn't preclude him from doing that.

There are a handful of individuals who purchased memberships in their own names. We don't want to restrict it to just feed yards but we do want to restrict it. The 5,000 head was argued about a lot. We want to restrict it to people who are really making their living feeding cattle. We want people who are committed to cattle feeding. We don't want to allow the guy that feeds 150 head a year to do it because they could control the

organization. People who weren't making their living at it would control it. Our intent was that the membership be made up of professional cattle feeders – either big time personal owners or people who own feed yards. I would say the bulk of the membership is in Texas because that's where it started and most of the cattle are. Probably Oklahoma is second, New Mexico is third, Kansas is fourth and Colorado is fifth in terms of numbers of head.

It was born under TCFA's guidance. It is not a subsidiary of Texas Cattle Feeders' Association. It is its own entity. Not all members of TCFA join Consolidated Beef and certainly we have members of Consolidated Beef Producers that don't belong to Texas Cattle Feeders Association.

Biography

Roger Coon is a farrow to finish hog producer and grain farmer from Lohrville, Iowa. He is president of Iowa Premium Pork Company, a closed cooperative with 1,400 members. He was a director of the Iowa Pork Producers Association for six years and was on the IPPA task force that organized the new co-op, which was formed in 2000. Roger has also served as president and treasurer of the Calhoun County Pork Producers. He is active in his local church, Holy Trinity Lutheran Church of Farnhamville, Iowa, where he has been an elder and president of the congregation. He is also an active member of Farm Bureau.

Speech

I am a farmer from northwest central Iowa. I raise corn, soybeans and hogs. I am president of the Iowa Premier Pork Company, which is a new company that started a year ago.

I'm going to give you a little bit of history of how we got started and where we would like to head. We started from the Iowa Pork Producers Association not much different than the way Paul started theirs. Back in 1998, the hog prices most of you if you are raising hogs know what they did. So Iowa Pork Producers Association put together a task force to figure out what could be done or is there anything that can be done. We've come up with the conclusion that there's nothing we can do for the immediate situation we were in so we were looking at long term – what can we do.

We did some research and studying. We hired a firm out of SJH to do some studying for us to find out what the consumers are wanting and what are they willing to pay. We also did a survey of producers to find out what their operations are like and would they be willing to join together and do

something as a group. We also talked to some packers and processors and found out what they're wanting. The Iowa Department of Economic Development gave us grant money to do these surveys. It's the retailers that are getting the profits right now. The retailer share is going up while the packer share is staying pretty even against the producer. When I'm considering packer, I'm considering just the kill and cut. A lot of packers are getting into the processing to get closer to the retail dollar. For the most part, the packers share stays pretty close to what the producer is getting.

The task force then turned into a company in January 2000. We selected board members. We rent space in the Iowa Pork Producers Association building. We've only got one staff person employed right now but we do have access to the staff of Iowa Pork Producers. We did collect membership. We opened membership from the end of January through the end of March. Through that period we held meetings across the state of Iowa. We are an Iowa-based corporation. We have 1400 members. We represent over 6.7 million head of hogs.

What we've done since we have become a company is conduct our membership drive and gather data from our members. Each member had to fill out a form to tell us how many hogs they produced, how they produced them and how they were marketing their animals at the time. Instead of hiring a lot of staff, we decided to contract with advisors. We have hired John Lambert as our meat consultant out of Des Moines.

We broke it down into two phases. Phase one being the market pooling – the clout part of our organization, you might say, of how can we collectively sell the live animals to date. With that, we went to an organization that has been in business for quite a few years and that is the Producers Livestock Marketing out of Omaha. They also brought risk management tools with them that we thought were very beneficial for producers. We put on seven meetings across the state last summer introducing the Producers Livestock Marketing Association to our members. Out of our 1400 members, we had 700 of them come to the seven meetings. The producers out here are very interested in what's going on with their organization. We felt very comfortable with continuing on. We put together a strategic plan. We organized focus teams of different producers – about 20 producers. We try to put out newsletters and communications and that's probably one of our downfalls right now. By only having one staff person on board, he's busy doing enough other things that he isn't timely in getting the newsletters to our members and communication partners. It's something we're trying to work on.

Phase two of the Iowa Premium Pork Company program was that when we first started, we didn't want to just market live animals. What we would like to be able to do is work in conjunction with a processor, packer or retailer and try to go further down the line to get our producers closer to the retail dollar or consumer dollar. In order to do that, and the way we would like to do it, is to partner up with either a packer or retailer along the way. We do have a letter of intent with John Morrell in order to do that. We haven't been doing a lot with the letter of intent. We're in negotiations on just the live animal part of it. Once we get that established we'll go on in to try and do some bargaining with the processing. There again, our phase one, marketing our animals, we do market to all packers. We've even taken some clear down to Oklahoma and down to Seaboard. We go wherever the market is best for our producers. We are trying to move more and more towards John Morrell but right now we have nothing signed to move everything that way. Even if we did, they don't have the capacity to handle that many head right now.

I guess the mission statement of the Iowa Premium Pork Company is to identify, quantify, and exploit the opportunities enabling shareholders to improve profitably. That's our sole reason for being in existence. The Iowa Premium Pork Company vision and objective would be to coordinate a producer owned live animal production system that is in harmony with selected partners capable of adding value to our pork. That's what we're trying to put together. We're trying to put together a live animal production system. Partnering, we think, would enhance the return on assets already deployed. When you look at what it takes for assets, to take the live animal and get it through a packer processor ready for a retailer, the packer/processor has about 20% of the assets to do that, the producer himself has about 80%. Right now we don't feel, as producers, that we're getting 80% of the profit out of this thing. We're trying to lead towards putting together a partnership where we can split the profits equally according to our assets. We do feel that jointly combining the assets of both entities is far less capital intensive than any one entity could do alone.

When you look at a company such as Iowa Premium Pork Company, when you take all of our producers together, we've got \$1.3 billion worth of assets. That's what helps us when we get to the packers and processors and start talking to them. We don't go to them and say, "We've got X many head." We go to them and say, "We've got \$1.3 billion worth of assets." Money talks to them and you know darn well that the packers and processors would find it difficult to duplicate our diversity. Because of the regulatory environmental issues packers wouldn't be able to put together a system like

this in the state of Iowa. If they try to put out 4 to 6 million head of hogs, the public wouldn't allow it. So we feel we have good clout when we go to talk to packers and try to partner with them. We think it's a mutual thing to align our assets to unlock the hidden asset values that exist in both the processor and independent producer sectors of the pork industry.

We are allowing small individual producers into the organization. There are a lot of large producers in the organization also. We did not put a size limit on our members. All producers have equal rights in the organization. One thing that Producers Livestock Marketing is helping tremendously on is obtaining a full load of hogs. There are a lot of producers out there that can't fill a semi when they go to the packer. Producers align the loads so that two or three producers together fill that semi.

Some of the benefits we feel by partnering, with a processor or packer or even clear on up to the retailer, is that we'd like to reduce the cyclical nature of the business. As pork producers, our markets go up and down daily, seasonally. You get to the fall season we aren't making much money. You get to the summer and the prices are usually high. By doing some type of partnership arrangement, somehow we would like to be able to price the hogs differently - say off the meat. Iowa State's been helping us to put together a system where the pricing will not be done as we know it today, which is off the Iowa-Minnesota pricing system. We're hoping to get away from that. With all the formulas that are being produced right now, how do you actually come up with a base price anymore? So, we'd like to get away from that part of it. The packer realizes that his profits go up and down tremendously. There are times when he's making a lot of money, and there are times when he's losing a lot of money. Somehow if we can partner together to where it's a good deal for both of us, to where we can both even that out, it will help us out as producers and probably make our bankers feel a little bit easier, too.

We're also hoping that we can assure a known quantity and quality of hogs so that we can get them scheduled and put in there like we want adjusting time efficiencies at the processing facilities. Another thing that we found in our studies is traceability. The housewife out here wants traceability. They want to know where that meat comes from. Once you have a system put together, some of that traceability will be able to help and maybe even create a new brand, standardizing the live animal production process to coordinate with fresh and processed meat marketing initiatives that add value. The value is there. We've just got to go get it.

Economic synergies exist in the combined purchasing of inputs for live animals. Maybe as producers we can get together and buy some of our inputs as a group rather than everybody going out and trying to buy their own, trying to reduce our costs. We still have to be a low cost producer. This system is not going to allow for sloppy producers. We're still going to have to be a low cost producer. Where else can you operate a low cost animal production environment? In the U.S. right now, it is where corn is raised.

We are an Iowa-based corporation. We probably will be extending out further than that. In summary, the main thing is that we want to acquire ownership in alliance through direct investment and commitment of our infrastructure assets. We're really trying to create our own destiny.

Biography

Brad Rach is a 1972 graduate of Bertha-Hewitt High School in Bertha, Minnesota. He attended Fergus Falls Community College, graduating from Northwest Technical College with a sales and advertising degree. Employed for a short time with a construction company in St. Paul, MN, Brad came back to the farm and owned and operated a 200-acre, 70-cow dairy farm in the Bertha area. He went to work for NFO in 1988, starting as a dairy field representative in east central Minnesota, where he was promoted to area dairy director for northwest Minnesota in 1988. Brad received the regional dairy position in 1998 for the upper Midwest region. He has been a member of NFO since owning his farm. He has been recognized for positive growth in the areas he managed and is a strong advocate of the collective bargaining approach for farmers and farming.

Speech

I am an upper Midwest regional director for the NFO dairy program. I have been on the staff of NFO for 13 years and prior to that I was a dairy producer myself. I have been a member and participated with the NFO collective bargaining program.

Collective bargaining. It's a wonderful thing when you think about farmers and people working together. In this day and age when dairy producers are constantly reminded that efficiency and expansions are the only path to financial prosperity, there is a well-kept secret available. It's a tool that can improve the bottom line and allow independent family dairymen the ability to compete with the large mega dairies that are forming out there today. That tool is called collective bargaining. Collective

bargaining gives the independent family producer strength in the marketplace.

Today, I'd like to concentrate on NFO's collective bargaining program for dairy producers and how it works. I'm going to show, number one, how a producer can get involved; number two, what a bargainer does once the production has been pledged; number three, how a producer gets paid; and number four, most importantly the benefits he can expect to achieve. Also, I'd like to share with you some recent success stories that I've been involved with that show how collective bargaining does have an impact.

How does a producer get involved? First, with the National Farmers' Organization, you must become a member of the organization. To become a member of NFO, it costs you \$75 a year. That membership agreement establishes and maintains a national commodity department. We have within the NFO, besides the dairy department, a livestock and a grain department and those national departments work together to form committees at the local level, the regional level, and the national level. In order to be a member of the National Farmers' Organization, you have to be a farmer.

The second part of getting involved with our dairy program is committing your production to a marketing agreement. It's a commitment both ways. It's a commitment of your production into the program. It's a commitment on the NFO to you the producer. This commitment has a couple of very important things in it. It draws out a length of time of the commitment that will be honored by both you the producer and the NFO. There is a section in there that shows you what the cost of doing business is. It's a very important part of our dairy program because this agreement is backed by production and that production or volume gives us leverage in the marketplace that we need to bargain with.

What do the bargainers do when the product is pledged? Negotiators begin with an agreement on price. That's where it starts. We negotiate and bargain with the production to get a price or what we refer to as a service charge. That also then leads to other steps in the bargaining process. Everything is based upon that producer's weights and tests - what that producer produces and what is in that milk in the components is used.

An independent lab is the benchmark. It is not the lab of that processing plant where that milk goes through. He gets an accurate, fair test from an independent laboratory and that is fair for both the processor, the buyer of the milk, and the seller.

Another thing that our negotiators do is that we try and do business with as many buyers as we can to spread the risk out over a larger number of people that we do business with. I just looked last year in the upper Midwest region where I work, which is basically all of Minnesota, northern Iowa and the Dakotas. Last year, we did business with 14 or 15 different processors. That is something that many organizations don't offer is that ability to spread that risk out.

Other things that our negotiators are doing are the development of MAIC's or Marketing Agencies in Common. The benefit of being a part of a marketing agency in common is that you begin to share costs or services. One of those arrangements that we have entered into is with Dairy Farmers' of America, better known as DFA, a large cooperative in the dairy business. We work with them and negotiate together. We're not going into the marketplace undercutting each other to get someone's business. We also work with Organic Valley. That's a niche market for many people. It's an organic cooperative, and we supply them with field service. We work with them very closely. Their members are also members of the NFO.

Friday, March 16, 2001

Grains – Panel I

Participants: Brian Schaumburg, Ag Guild – Bloomington-Normal, Illinois; Bill Northey, Innovative Growers – Spirit Lake, Iowa; Pat Coyle, High Profit Agriculture – Bertrand, Nebraska

Biography

Brian Schaumburg of Chenoa, Illinois, is co-founder of Ag Guild of Illinois and is its current secretary. He has a Bachelor of Science Degree from Illinois State University and has been a self-employed farmer since 1978. Following college, he joined the family farming operation with his father, Art Schaumburg. Since Art's death in 1990, Brian has run the

business alone. He operates 1,500 acres in northeastern McLean County for seven different landowners and currently owns 80 acres. He has planted narrow row beans since 1976 when the family's first 15-inch skip row planter was built. He currently drills soybeans in seven-inch rows. He has planted corn in 20-inch rows since 1997. He has had GPS/yield monitor capability since 1995 and has used grid soil testing since 1985, with global referenced grids since 1995. He has worked with major seed and chemical companies and the cooperative Extension service on researching agricultural plots. Topics have ranged from population studies, herbicide, insecticide, planter speed, and inoculate trials. He was a Farm Futures magazine Top 100 farms finalist in 1991, 1994, 1995, 1996, 1997, 1998, 1999 and 2000. He is a trustee and past elder of St. Paul Lutheran in Chenoa. He has been married to Beth Laakman-Schaumburg for 20 years. They have two children, Meredith, 17 and Joel, 13.

Speech

I'm with the Ag Guild in Illinois. We started our group, which is a limited liability corporation, about three years ago. Our cooperative extension director, Don Myer, got us together as an educational learning group. We had about five or six of us that would meet on a semi-regular basis. We'd take a trip every once in a while, which were learning trips. We traveled to Purdue and to U of I, and we'd discuss what was happening lately in the industry.

But we decided that talk was cheap and sitting around discussing these things was not something we were used to doing. So we decided that maybe there was some angle we could pursue in the value-added field and maybe even further than that. Our cooperative extension, our McLean County Farm Bureau, IAA and the Illinois Soybean Association helped us lay the groundwork. We hired a few consultants to see what would be the best way to get together with farmers to pursue value added, and we settled on an LLC that limited us to 34 members our first year. You can double that every year after that but our focus was going to be on building relationships with people in the industry. We didn't know what those things were yet. We'd all had extensive opportunities. For instance, several of us had grown seed corn and beans. High oil corn was a market that was working it's way to an ever-lower premium in our area. Wax seed corn, white corn. . . everybody had tried something.

We decided that these things had all been done. What's a way that we could use other than bricks and mortar? We were talking to some of our consultants and said, "You know, you guys have a whole lot of intellectual

capital.” I’m just a farm boy from McLean County and that took me by surprise because I’m not that smart to figure out what that meant. We did know our land. We did know what our resources were, and we knew that old bundle of sticks analogy, that a single stick is very weak but if you put a bundle of them together, you’re very strong in that regard as they were talking about collective bargaining.

We decided that if one of us knew somebody, a few of us might know somebody else, and we could network. Something farmers’ didn’t do very well in the past but we decided it was worth a try. Let’s get together, let’s figure out the best structure to put together to make us presentable to the people out there that we needed to talk to. That worked into a relationship with a company called Protein Technologies. They had a need for high isoflavone beans in their processing of foods. There was another company that we worked with that uses it in supplements – in high isoflavones. High isoflavones in soybeans have been proven to reduce cancer risk, help with some heart disease and help with symptoms in menopausal women. It seemed like a good place to start. There was some research and an education process we had to do. We knew some of the things that they needed that we could educate them on. They had a product that needed to be put together, and it had to be non-GMO. It had to be high in isoflavones. We had to identify those things.

We worked together to formulate a contract, and it ended up being about 35 to 45 cents but our focus has not been on contracting. Our focus has been on the process. We identified, when we got together, several words that are key to our success in the process. One of those was developing trust within our farm group first. We had to trust ourselves before we could go out to somebody else. That’s why we started with an LLC of 34 members because we didn’t want something so big and unwieldy as what a co-op could be. I want to trust the guy next to me to do the job that I myself feel needs to be done. We wanted to develop trust with our customers. We’re slowly but surely working into that.

After three years of working with the same company, I think we’re developing. We’re seeing signs that there’s a lot more transparency and give and take between the company and ourselves that we’re working with. We needed loyalty. We needed the farmers to be loyal to the Ag Guild – to the ideals that we’re espousing. We had to develop loyalty but you also had to have quality. That’s our key. We did this by invitation only. You had to know somebody that was in it within the first five or six guys, and we developed a list of the best farmers in our area. We wanted the cream of the crop because quality seemed to be what everybody was talking about. We

wanted enthusiasm in participation within our group. They had to be people that go out and do things. They had to believe in our system and our process.

It was about education. This is not something you set up and stop there. It's ongoing. We know that when the next hurdle comes up, we want to be at least jumping if not over it before the people that are looking for what we just got done doing are arriving to it. We want to be ahead of the game. We have to have patience. The things that we are pursuing now are not the things we were thinking about doing five years ago or actually four years ago. We kept thinking that nutri-ceuticals and all these things are a panacea. If people are going to grow things in their animals or their crops that are the cure for cancer, they're certainly not going to do it on our farms. They're going to do it under glass somewhere. That is a much more expensive process than what we can do. They want quality assurance that I don't think even we can give. But we wanted to have patience because we saw where we came from. There are a lot of good things from where we've come from but we want to be better, faster, and more efficient. But we also want to keep in sight our ideals that we deal with every day.

Our key points that we've dealt with are communication and confidentiality. We've tried to develop that trust with our processor that we deal with and we feel that that's very important. Their information that is proprietary, that is important to their product, remains with them and within our Guild. Likewise, if we let that information out so that any Tom, Dick or Harry can get it and use it almost against us. We weren't involved in the bricks and mortar. As I said, we're developing intellectual capital. That's why we do a lot of research within our groups. They all have test plot information. They have GPS, GIS referencing capabilities.

The one unique thing about the Ag Guild is that we are not about getting premiums for our products. We do that but our real goal is that we want to find an intrinsic value in the crops we grow and that doesn't have to be corn, soybean or wheat in our area. It can be anything. But we want to find an intrinsic value in that crop, identify it, help our people that we want to work with – our customers – find that we can do the job better. If they need high isoflavones we can find it, develop that and even go to seed companies and say let's develop something that helps them make their product that much better and do it on a consistent basis. We're not just selling commodity beans and corn out there. We're selling the products that are within that category. That's what we've been after.

Biography

Bill Northey is a corn and soybean farmer near Spirit Lake, Iowa. He has farmed since 1982. He ridge tills and has used GPS since the mid-90s. Bill has been active in farm organizations, serving as president of the National Corn Growers Association in 1995-96. He recently served on the Commission for 21st Century Production Agriculture. He has served as an advisor for projects at the Keystone Center and for the Wallace Institute. Bill and his wife, Cindy, have three teenage daughters and are active in their church.

Speech

When you come away from home to be here, you have made a decision to try and find other ways to make things better. It takes effort to do that and it takes putting yourself out in front and allowing yourself to make mistakes. Mistakes are going to happen. If they don't happen, then we're not making any progress.

The group Innovative Growers was started just this last year. There were several of us who had been involved in some ag organizations and doing a lot of different policy things and we saw all these kinds of things that were talked about earlier, we felt like obviously ag policy is still important. A farm bill is still important. But we could get all the ag policy right which we'll never get all right but if we could get that magically right, figure out whatever that magic is, we still sense that there is some change in the structure of agriculture where we're not sure that we'd still be around in a few years. Some changes are happening that may not still allow us to be successful operating the same way we used to do it. That's one of the reasons we got together and said, "How do we be a part of this identity preservation? How do we be a part of this contracting?" Very likely there's some real benefits to identity preservation. There are some products that need to move through separately. Do we wait for that knock on our individual door, Bill Northey, Spirit Lake, Iowa, to hope that that magic contract comes or do we become part of an organization or create an organization where it's out looking for those opportunities? It may even have enough presence enough that people actually knock on its door because of its reputation.

We just got started this last year. We're trying to walk as well. We had meetings this last year. As of yesterday, we had 29 members. We'll have some contracts out this next year. People buy in with the right to be able to produce the crops. It is not an obligation. So that they will have contracts offered to them but not required to grow those contracts. We don't

know where everybody's individual financial situation is or individual agronomic situation and whether they have storage on their farm or all kinds of different ways to handle or requirements in those contracts. It is an opportunity to be able to look at contracts that we think as individuals we wouldn't be able to do. It is a LLC that was established this last year. We had the first series of membership meetings looking at a couple of different pockets in Iowa – north central Iowa, east central Iowa. Some folks outside of that are also a part of it. We're trying to keep it regional and fairly tight in being able to get around to fields, being able to draw folks together for meetings.

We do have some folks that are going to take part in ISO 9000 training. Some that have helped with that training in the past. If for nothing else, to be able to work our way toward that and know what that certification process is. There's a lot of interest in it out there.

The other thing that we are definitely at one of our first stages is to look at an information system, something to be able to keep track of what we got going out there so we know an inventory of what resources we have available about what kinds of crops, what kinds of storage, and maybe the experiences of growers in growing specialty crops. Many of our folks that signed up have been growing things before. We also then start to develop more experience with those crops as well. You hear that same theme, that desire for us to be able to know when that company comes to us and says this is new brand XYZ food grade bean and this is going to be wonderful and its dollar premium is going to make you rich. And you ask how much is a yield drag? They shrug their shoulders and say, "Oh, it's not much. Everybody who grew it last year is growing it again this year." We want to know what not much means. We want to know if really not much is really not much. Or whether it's a lot more than that and we have got to be able to develop that. As growers, we know that. That's what we bring to the table right now as farmers. We bring that growing knowledge. When to plant, when not to cultivate, when the corn's too tall, how to spread out our maturities – those kinds of things we bring now. We don't have the experience with different crops than what we have right now and there's no way we'll be able to get that experience one year at a time, one contract at a time. We have to do it together.

So that's very much a part of what our original effort is here. We've just got a handful of folks this year that will even participate in any contracts but we're looking to create some opportunities for our members to be able to reach out and find some of those contracts and be rewarded for bringing them to the organization as well. Be able to have them develop that

information system. It's going to require all of us in the group working together. It's not going to be a handful of managers. It's got to be the group working together if it's going to be successful.

That management information system we think is awful important to us and we have not come very far at all in outlining what that all needs to have but as we've said, we've talked about it enough. Now what we need to do is get some stuff out there and actually start recording some of that information and finding out what we don't need and what we do need and be able to develop it in the real world. We will have probably some efforts this summer on some folks that are interested in ISO training. We're going to have some sessions where some of the folks that are already doing some contracts now can share experiences with everybody else. We need to learn from each other in what different experiences are. And certainly as all of us have been part of other organizations, we know that that's one of the most important things. Those things that go on out in this hall here as well as happen in the sessions when we're all in the room and hearing the questions that somebody asks that I never even thought to ask that we all benefit from.

To be a member of Innovative Growers, you commit \$20 an acre, a minimum of 100 acres or a \$2,000 one time fee minimum. It's not a yearly charge to be a part of it but it's that one time fee. I think right now it's a very special group of folks that have done that. The other things that we are, as I mentioned, an LLC as far as right now you need to be a resident of Iowa to be a part of it. You have to be an active farmer. We think it's very important that the organization be a farmer-owned, farmer-managed, controlled organization. We think our members are going to be willing to share the information with the organization more freely when they know that it is for the good of them. That the information is being collected, when they see the benefits of that. We don't see that it's co-owned or co-operated with some other organization out there.

We have benefited from the help of Iowa State. We have several regional extension folks that have been part of putting it together. There's been help from on campus as well, and support to be able to get going. We don't have any large grants. We don't have corporate sponsors that put it together. There's been a lot of in kind support, some DED (Department of Economic Development) money here in Iowa and other than that a lot of volunteer time to put it together. We don't have any big success story to be able to tell you yet but I'll tell you that we have others we're looking towards and we're desiring to copy some of things and then be able to work together. We spent some time with some of the other groups as well talking about what kinds of things we can work together on. We think there's a lot

more chance for benefiting each other by working cooperatively than having any kind of competition. We think there's some information that can go back and forth. There may well be contracts that will want more geographic dispersion on to reduce the risk and we'll work with groups and share some efforts there. We think that certainly that if you're part of a group that is doing something like this we'd love to be able to talk about how we might be able to work together. And there might be times that we develop some information system type stuff together as well. I think there's a lot of things to learn and all we know is how to get this far. We have a vision of where we want to go and I'm sure that it will be different than that. But we've got a lot of good folks to help put it together.

Biography

Pat Coyle is the newest member to HPA, Inc. Pat was born on a ranch in central Nebraska and comes to HPA after working in corporate America in the agriculture and aviation industries. Pat has worked with HPA over the last five years during the development of the Yield/Price Contract and has returned to the group to head up implementation of the program throughout the Midwest. HPA, Inc. was incorporated in 1994. The original founders of HPA were Phil High (H), Rock Peterson (P), and Jason Anderson (A). The group has gone through some evolutions and today stands for High Profit Agriculture and the current members are Phil High, Ron Eliason, Henry Schaben, Jason Anderson and Pat Coyle. The goal of HPA is to leverage local knowledge and products of the producers in their local areas to create an aggregate supply of grain and livestock, which provides added value to end users. The created value from the end user can then be taken back to the local producer to create an economically stronger community. The created value can be accomplished by offering Identity Preserved commodities and livestock at a ratable supply to the end user.

Speech

The goal of HPA is to leverage local knowledge and products of the producers in their local areas to create an aggregate supply of grain and livestock which provides added value to end users. There's a lot of stuff I said there but it's the same thing that everyone is saying in these meetings. No matter where you're at there's some end user over here saying that if you will bring me a ratable supply of X bushels of corn or soybeans or whatever that is there's value to it in us.

Back to what Bill said earlier, I've been around the high oil corn game myself. They come out and say, "Go plant this high oil corn." You say, "What is the yield drag?" They say, "I don't know but this guy grew it and had a heck of year and you should jump on board. Once again, we have these premiums for you. Corporations, whoever they are, want to come out and say they have this great program for us but will they help you stand behind it and protect it in case it goes against you - no. The principal of I.P. programs is still correct. There is money at the end that we have to pull back through this way, but we have to do something to protect what we're doing on the producer side to make sure that we're whole even if some of the things that we're asked to go forward and do fall down.

The challenge we also face is the fact that we need to get them to stand in front and help us cover those exposures we have. The created value from the end user can then be taken back to the local producer to create an economically stronger community. It's the same thing everyone else is saying, we just feel very strongly about it. I left aviation selling corporate jets and everyone said you've lost your mind if you're going back into agriculture. I'm the kind who you can take the country out of the boy but not the boy out of the country. I've also been agriculture on the corporate side and the reality is there is a lot of money in agriculture. You know that, you see that because the big boys have a lot of money. The chore for us is to bring it back in here and there are tools that we can use to make that happen.

The final thing I put in here is that created value can be accomplished by offering identity-preserved commodities as livestock at a ratable supply to the end user. The challenge that we faced before when I was in agriculture was that I was on the corporate side telling you guys if you'll bring a ratable supply, we will bring you the money. The whole point was we talked about identity preserved, which usually sends up a red flag in your head that says, "Oh, God, what am I open to?" There's some type of yield drag, some type of wreck going to happen.

So right now the first thing you have to put together is the process. It's got to be a process of integrity all the way from the producer through those end users. If I'm the producer, I'm guaranteed that if I step in front and do one of these identity-preserve programs, which I am going to call today number two yellow corn, all the way through to an end user that I receive what I signed up for. If I keep my part, if I raise it like I'm supposed to and put the right fertilizers - all those type of good things - do the proper farming practices - then I know that on the back side there is someone that is going to step up and do exactly what they committed to. Whether that is premiums or anything else that they agreed to.

For my experience, I came from a large, privately held corporation in Wichita, Kansas five years ago. This corporation started to get in to agriculture. Their background is oil, gas, energy and things like that. If you had previous run-ins with them, you probably didn't like them. They were unbelievable traders - oil, energy - all kinds of wild things they are wonderful at. They tried to get into retail in gasoline. They were horrible. They tried to get into retail in agriculture. They were horrible. Their concept was right. Their execution was horrible because they came out and said, "There's value down here and we're going to own that chain all the way from A to Z and from that we'll take that value out and share back here." The fact was, at that point, they and no one else would stand up and make sure that if you guys get in front and do something they will help keep you whole if you do those programs.

I left about three years ago and went back to the jets. When they started to dissolve one of our members still was with them and had continued to try new things during the last five years. They're always interested in trying new things. Last year they came up with a pilot program that took a production agreement to 20,000 acres around Bertrand, Nebraska, which is southwest of Kearney. On 20,000 acres, it guaranteed you higher levels of yield and the way they did that was through a model they built called an algorithm. It took a 30 year study over two million acres - everything from drought, all the weather impacts, all the type of yield impacts, and everything else. Basically, when you go buy your regular crop insurance, they charge X amount of premium for X amount of coverage. The model gave them the ability to figure out what the additional risk was at higher levels. What that model did was it priced risk from 75% to 90% yield coverage for individual field by field. They also, if you put all your fields in together, took you to 105% yield guarantee. In Iowa, it would be non-irrigated and in Nebraska it was irrigated acres. Flat out, that's what it was. If you short 105% of your yield, you were guaranteed those bushels. The concept we had in our mind was, "Boy, that's a great program." Here's our production agreement. I just guaranteed you those bushels. You should feel comfortable to go put some type of position against that in the market - forward contracting, options - whatever you want to do. Then you have a true revenue. The company decided to get out of the industry and sold the model to us.

It's amazing when you talk about the groups you put together. I would imagine in your own groups you even start to segregate people when you get in there. The first thing was if you ran the economics on 105%, for the same amount of money even though you had to put all your bushels together, it

made a lot of sense. Only five guys did it. The second thing was for all those bushels that the producers had in hand they didn't go protect the price when last May was \$2.70. Most of them lost of that price gain and 90% of those bushels got sold this fall. It didn't really work out. So this year what we stepped up to do was a production agreement in which we have the same thing, but are pushing the price protection also. We own the algorithm or "model" that prices risk.

No matter what type of crop insurance you take the Hartford Rain and Hail, American Ag, whoever that is, there is a group behind them called reinsurance companies. Reinsurance companies are the actual people that take all the risk. The Hartford Rain and Hail, those people they don't actually own the risk. They collect your premiums and sell the risk off to someone behind them. The production agreement has been cleared through Iowa, Nebraska and Indiana state commissioners for insurance deeming it a non-insurance product. We just went past the insurance companies directly to the reinsurance companies and took them the algorithm. They said they agree what that risk is priced at. I can't read the models like they can but it's a high powered deal. They'll take that risk all day long because of the value it brings to them. The production agreement can guarantee you this year up to 90% coverage.

Like I said earlier, even with their inefficiencies, the company previously involved is a great risk taker. They stepped up to the 105% guarantee last year. This year we have to go back and educate those re-insurers to go to 90%. We think next year we'll have 100% total farm coverage. If I can cover 100% of your yield guarantee, then you don't have any risk if you raise it or don't raise it. Then, if you put some type of price against it, now you have true revenue coverage. That, to us, is just the vanilla to the sundae.

You ask how does that apply to this conference? You talk about collective bargaining. Once we own those acres, our little example last year of 20,000 acres, interested Garst Seed enough to be part of the program and help pay for the additional yield coverage. Don't kid yourself, they want to own acres. They're competing against Pioneer whose is huge back there. They gave the producer their volume discounts, the early pay discounts, everything else they normally gave and paid for that additional coverage. They can do that legally because it's not insurance. So here I had actually someone stepping in front, which has been our challenge the whole time, go leverage those acres to those input suppliers to help protect us if we want to try to do some different things. If it's number two now, that's fine. If it's

yellow corn down the road with a 25-cent premium, that's fine but I'm guaranteed my yield. So if there is a drag it doesn't matter. I'm protected.

The backside of that is when we did this it was only three million bushels. Three million bushels to the local co-op was worth seven cents. That's a lot of value. As this grows, we had 20,000 acres last year, this year we have capacity for 340,000 acres. We're working between Nebraska back through Indiana. This way you give yourself geographic spread. It's all about the economics but if we take that tool, wrap that back together with what these guys were saying, you don't wait for somebody to come knock at your door and bring you the miracle. You go knock on their door. I have 300,000 acres in my program here. We've talked to all the input suppliers and everyone else, we think there's \$50 to \$75 probably in what we call funny money on the front side. Just think about, and we've been through all the numbers, all the seed all the fertilizer, all the chemicals sold to producers., I'm not saying your local guys, the guys actually at that door probably make a killing, but some of the people behind them do. If we can aggregate those acres to go back in and shop and take anywhere from \$25 to \$50 out of your input costs and turn around and shop the back side and give you a basis premium or 10 or 15 cents better, that makes a lot of money. Then we're really doing what economically makes sense.

The hardest thing I see out in our part of the country is a lot of people are, well, you've got to commit yourselves to what you're doing. You're in conferences like this. There are a lot of your neighbors that don't see value in this and/or they say show me it when it works. Okay, fine. But they might be the same guys that are buying the nice revenue insurance thinking they're covered. That's all fine and dandy and for them I hope they get wiped out. I hope they get zeroed out because if you're not zeroed out you're not covered. You got to take your yield protection. You've got to take your price protection. Now I got revenue. Like I said, that's the vanilla. If you buy into that, there's a lot of neat stuff. We bring the reinsurance companies to the game and we also bring on the backside depending on how the local markets react, like I said, you've got to treat each group differently.

Markets want your business bad. Over the counter derivative trades are out there and we have access to those. Those get pretty powerful. You can make up any type of trade you want. Now it's different stuff and maybe you haven't heard of it, but I'm just saying there's tools out there that you can do a lot of pretty explosive stuff with. Reality is that it always takes the aggregate. You go knock on the door for someone yourself and say you know what, I got 2000 acres and I want to go raise this corn for you but I

want you to pay for this coverage for me and stuff like that, it doesn't happen. All we're doing is trying to put a production agreement together that leaves as much flexibility as possible. We're not a corporation. We have all the tools ourselves but it mostly becomes a huge origination tool. Understand why input suppliers would get excited about that. Input suppliers want to own your acres and they all compete and you can all beat them up pretty good for a dollar here and a dollar there. And they will do that all day long. If they have their name on a production agreement along side of yours that means that they have no risks of accounts receivable. Because if that clears through them if there are any losses, their note is taken care of. It gets pretty wild because from then on that can help them gain their market share, it helps them with their accounts receivable and my flag to them is if we're doing two good things for you as producers, you need to put some money back in it for us. And the reality is it works and 20,000 acres in little Bertrand, Nebraska, no one knows where that is, that worked.

For someone to step up and give you \$15 an acre just because you put his seed in your planter that's a pretty big deal. It all comes down to economics. I put meetings on all over the place and I'll be the first one to say one thing you can do yourself. Take 85% of your yield, which you can cover through federal crop insurance, and go put some type of price hedge against it, now you have true revenue coverage. Pretty powerful stuff. If that makes you right, you don't need me. If I can give you something better on the backside, that's fine. People look at me and say, "Why in the world would you say that? You stand up and talk to us and then say you don't need me." The reality is, our charge is that, the same way these guys are, if someone brings your value back to you then it makes sense to do some business with them. But the reality is there are tools out there that you can do yourself right now that you can get yourself in better positions.

My little preach would be that today you can do those two things yourself and get your revenues locked in at higher levels, which makes a lot of sense. Anything from that point you do with groups like these will be a bonus.

Friday, March 16, 2001
Vegetables and Produce - Panel I

Participants: Chuck Cox, California Tomato Growers Association – Stockton, California; Vernon DeLong, Agricultural Council of Maine – Presque Isle, Maine; Jim Ennis, Midwest Food Alliance – St. Paul, Minnesota

Biography

Chuck Cox is a fourth generation California family farmer. Their farm is located near the town of Westley, about 100 miles east of San Francisco. In addition to being a managing partner in the family business, he has independently leased and operated neighboring farm ground for 23 years. His total farm operations approximate 3000 acres. Presently, dry and fresh frozen lima beans, processing and market tomatoes, apricots, nectarines, almonds, walnuts, broccoli, cauliflower, alfalfa, and melons are some of the predominate crops grown in the area.

Chuck has been involved with several California organizations as a member and, at times, an officer. Some of his business affiliations have included California Tomato Growers Association, California Dry Bean Advisory Board, West Stanislaus Growers Association, California Farm Bureau Federation, California Bean Growers Association, and Tri-Valley Growers Cooperative.

Chuck has a Bachelor of Science in agricultural economics from California State University, Fresno. He and his wife, Sylvia, live in Turlock and have been married 23 years. They have two children.

Speech

I grew up on a family farm in central California. My brother and two cousins and I are the fourth generation to till that farm. I have a real fear though that we may be the last generation to carry on this tradition because of strong economic and regulatory influence working against family farms but let's hope not. In my opinion, the majority of the family farms are struggling to afford the technological improvements to meet changing consumer demands. Ever increasing government regulations add to producer's cost of production without adding productivity. In California, you throw in our annual water uncertainties along with this year's expected electrical and power shortages and you have a pretty grim picture. Also because of our proximity to the San Francisco Bay area and the Silicon Valley, we are also under pressure from urban sprawl. With people comes demand for many of the resources we have enjoyed such as land, water and political clout. California has to be number one in new regulations that impact the way in which we farm.

My directive today was to talk to you about the California Tomato Growers Association of which I am beginning my third year as board chairman. California Tomato Growers Association was formed in 1947 as a service association for growers processing tomatoes. At that time, our primary functions were to recruit field labor, set price rates for workers and hire attorneys to advise growers on the Bracero Farm Worker Program. Now this program was a special arrangement between the U.S. and the Mexican government to provide enough field hands to grow and harvest crops. As the processing industry is constantly changing, CTGA must continue to evolve to provide a business environment with an opportunity of profit for our grower members.

The best way to give you the essence of our association is to share with you our mission statement. The CTGA is an association of California Processing Tomato Growers that provides economic public policy and business leadership for the benefit of growers and the industry. The association represents grower interest through services to its members including bargaining, communications, and advocacy to insure the stability, viability and prosperity of the industry. We have taken a very active role in industry affairs for two very important reasons. One – the growers need to have their interests represented at all times. Two – it is our hope that through a working relationship with the processors on industry issues, our bargaining efforts for a fair grower price will be enhanced.

In the legislative area, we participate in the California Agricultural Council and the National Council of Farmer Cooperatives. Our state and

national lobbying efforts are designed to protect and strengthen agricultural interests in this country. This is a tough order as the farm population shrinks and our political clout diminishes. I think it is so important that individuals unite in industry groups. These groups need to participate in national organizations. We must find common ground within our organizations and present a united agricultural voice to Congress to have our greatest impact. It would be nice if our representatives in congress would unify as a force for us but if we, their constituents are divided they can't be of as much help. We might not get everything we want but you know who does. Compromise with one another does not mean capitulation.

We also serve the grower in advocating for fair and impartial third party grading standards. Processors are always challenging growers with grading variation and it takes our constant vigil. We were instrumental in creating the California Processing Tomato Advisory Board, a bi-partisan board of growers and processors working on grade standard improvements and the administration of the inspection stations. Each truckload of tomatoes, regardless of destination must be graded at an inspection station before it is processed. We also assist the cooperative effort of the California Tomato Research Institute. Another group made up of growers and processors which has introduced many of our industry's technological advances in recent years. This organization provides leadership in assessing industry research needs. It helps in funding research projects of our University of California Cooperative Extension as well as other private projects.

Food safety is another area of advocacy for the association. Every day we feel the growing pressure to produce tomatoes with a minimum use of chemical inputs. CTGA has been very supportive of a proactive approach in promoting integrated pest management in other activities. Through the processing tomato foundation which is another grower and processor organization that we helped form, we have taken a leading role in assuring consumers that processed tomatoes are wholesome, nutritious and safe.

In this way, we might be able to preserve chemical tools critical to our farmer's ability to produce low cost tomatoes. We helped form the Tomato Processing Tomato Council. This organization consists of growers and processors worldwide working together to share production information, to discuss common industry concerns and to promote the health and benefits of consuming processed tomato products.

Bargaining for fair grower price is an extremely important function of our association. Fair as in fair price is a relative term. Growers in different areas of the state may have different production factors influencing their

potential breakeven cost position. Some of these factors for consideration could be land. Is it rented? Is it owned? Is it a cash rent or share rent? Does the land have a mortgage or does the farmer own it free and clear? Where is the property in proximity to the processor? How productive is the land and how many tons per acre do you expect to produce?

Water is an important input in California. What is the water source? Is it wells, irrigation, districts, federal water, state water? Is your land water category one, two or three? How secure are your riparian rights? Do you have the ability to transfer water from one production area of the state to another? Are you going to need to purchase additional water on the open market? What will the market be for that water? What is the lift to pump the water to the surface? What effect will our energy shortage have on the supply and cost of water? Also, overhead we have to consider are you a large grower able to spread overhead costs over many acres or are you a smaller grower who can work with neighbors to achieve some efficiencies of scale?

Now on the cannery side, cannery location is a factor. Is it within the city limits of the town or city? If it is, what are the municipal sewage fees? How motivated is the city to keep you there as an employer? If you are outside of the city, what does it cost you to handle the particulate coming from the cannery. Since processors have been paying to get the fruit hauled to the plant, what is your relative cost of haul compared to your competitors? What products are being manufactured there? Can you value add to the products? Are you branded? What is your cost of power? How secure is your power source? Are you a grower owned processor or a cooperative processor? I think you can get the feel for the complexity of finding the fair price for the grower and the processor. It is obvious that the association can't hold the umbrella up for every grower who wishes to produce cannery tomatoes at a profit. Likewise, processors should not expect prices to be established so low that the least efficient processor makes money. The challenge obviously is to find the right price and that is usually a price where everyone is upset.

I was asked to relate to this group what CTGA has been able to accomplish and what have been some of our high points and some of our low points. I think the California Tomato Growers Association is recognized across this country and in the processing tomato regions of the world as an organization of character and ideals. I think we are generally viewed as a proactive, competent and hardworking organization. Our bargaining accomplishment has been our ability to secure an industry price and have our master agreement accepted every year. At times, we have had

to use a mediation type process called conciliation. This is a California statute that CTGA along with other California agricultural bargaining associations fought long and hard to win legislative approval. Our attorney, Steve Peck, who will speak tomorrow morning is quite knowledgeable on this subject as he and his firm spearheaded the effort to put this process in place. Though this falls short of mandatory arbitration, it has been used many times to come to final resolution with some processors. This is a relatively inexpensive way to continue negotiations when bargaining impasse arises and good faith bargaining ceases. I mentioned the master agreement a moment ago. This agreement includes contractual protection for growers as well as price. Within the language of the contract, grower's rights to deliver are protected. Industry standards for off grade deductions are defined and an understanding of business protocol is presented for both parties of the contract.

The association is our sole bargaining agent. When there are challenges to the contract, the association uses its resources to protect our rights as growers. We have had to enforce our contract on numerous occasions to the benefit of the grower. I would have to say that we are in the low point at this moment. It is rather a ironic situation we find ourselves. In many ways, we have done too good a job of negotiating relatively high prices the last few years. Because of one extraordinary 12.3 million-ton crop year and a consumer demand that has leveled off, the industry is presently stuck with large inventories and reduced processor demand for tomatoes. Our alternative crops are marginal at best.

Therefore, non-CTGA member growers have used this opportunity to slip in and take tonnage away from member growers by accepting contracts from processors for less than CTGA negotiated prices. This has hurt CTGA relationship with processors who have historically supported the pricing process and it's undermining our ability to negotiate effectively. This has hurt our member growers financially and has them weighing the cost benefit of being members. As a result, prices have slumped to historic lows in relationship to the cost of production.

I was asked to give a few details on bargaining or negotiating contracts. I'm not directly involved with the one on one negotiation with processors so I can't be of too much help there. I'm sure John, tomorrow you'll probably relate certain examples of how you go about that. But I'd like to take my last remaining few minutes to spend a little time outlining some points for your consideration.

My first point I've entitled membership communication is a two way street. It is important that members take ownership in their association. The

best way to assure this attitude is to provide many opportunities for the members to interface with board members, staff and the association manager and chief negotiator. Because true and accurate information from the field is of absolute importance for making good decisions at the board level. We initiated a series of small grower member meetings at various growing regions of the state. These informal meetings have been very helpful in solidifying our membership.

The second point I'd like to bring up is entitled staying relevant in a changing environment. This industry has changed dramatically. In the past the products coming out of the canneries were very similar. Most processors were locally owned and they had their niche markets. The demand for processed tomato products paralleled the growth in food service. Our American taste in food, namely french fries with ketchup, was being exported throughout the world. Therefore, the export of tomato products increased significantly. The processors wanted the assurance that what they paid their suppliers for tomatoes was the same as their competition. Our bargaining association was an important vehicle to accomplish that task and bargaining was a lot simpler as demand for product was high and alternative crops were profitable.

Now, what is the situation. We have high inventories. We have a consolidation of retail markets with low or no growth. Exclusive specialty niche markets are not so exclusive anymore. Leveling off of the food service demand, reduction of exports due to foreign production and the high value of the dollar, re-manufacturing of concentrated tomato paste instead of fresh pack, highly efficient, ambitious paste only processors, huge impersonal multinationals playing the role of both manufacturer and paste purchaser. Processors are forcing their way via mandatory harvest and poor prices for alternative crops. Everyone is feeling the pinch to be as efficient as possible. Our challenge is to convince the growers that they will be better off in the long run if they participate in the bargaining process as CTGA members. We need to convince the processors that we can provide them the service they need but can't get by dealing with growers on an individual basis. We have to convince the industry that it is in everybody's best interest to have fair and equating price levels.

My third point I entitled, "Don't shoot yourself in the foot." As a bargaining association board, we run into trouble when we get hung up on a price level that is unrealistically high. That is not to say that we wouldn't like to have more money but we need to stay within the boundaries of the market environment. In the past when we have not we have paid dearly for it in various ways for several years. If you get too far out of line, the

industry finds ways to circumvent you and you don't want that. My fourth point I call "Keep your eye on the ball and keep swinging the bat." Simply stated, in a bargaining association or any organization you have to know what you want to accomplish short term and long term. Sometimes when the short-term expectations are falling apart, it is important to have the long-term goal to keep the organization moving ahead. That would be keeping your eye on the ball. Articulate the goals clearly and often. Deal always on the side of honesty and openness. We get so caught up in the day to day battles with processors that we forget that there are growers looking for the information, direction and leadership an organization like ours can provide. Keep telling the story over and over. This is what I mean when I say keep swinging the bat.

In summary, we growers have this unique opportunity to unite as bargaining associations. Although the concept seems simple enough, there are terrific market forces at work to undermine our cooperative efforts. I have tried to point out some of the factors that influence our organization, and, hopefully, this information can be of some value to you. It has been my experience that organizations usually fail from the inside out. Therefore, what you can do to build strong grower support and loyalty based on high ideals and longer-term goals will be critical for your success.

Biography

Vernon DeLong was born on a potato farm in Maine. He spent four years in the U. S. Air Force. He started growing potatoes in 1966 and farmed for 32 years. He became executive director of the Agricultural Bargaining Council in 1990 after serving as director, secretary/treasurer, vice president and president. (His term as president was for 1988 & 1989.)

He was president of the Agricultural Bargaining Council when the Binding Arbitration Law was enacted in Maine. He has also been involved with the Potato Marketing Association of North America for more than 15 years and is the current secretary. He has worked with the Pacific Coast National Bargaining Association for 11 years. He is director now, but also served as president in 1995 and 1996. He's president of the Fish & Game Club, president of the County Farm Bureau, a Maine Farm Bureau state director, and has been on his local school board for six years - two years as vice chair.

Speech

I'm from northern Maine. A lot of people sitting in this room are friends of mine who I have met over the years and have worked with.

Our bargaining association is a non-profit corporation. We fund ourselves. We've been at it for 31 years. We bargain for potatoes and that's our main crop. Potatoes for french fries. What you get down to McDonald's or the QSR - quick serve restaurants, as we like to call them. We deal with the major manufacturers of french fries, the processors.

In Maine, the manufacturer we deal with is McCain Foods, which is the biggest in the world. We do our best to negotiate a contract on our grower's behalf. That will keep them in business and I keep them competitive with the other potato growers across North America. And the same holds true for that processor. I share my previous speaker's point of view. If you think a bargaining association is the course of action that will solve all your problems and make you rich, you're wrong. These companies today have too much ability to move their production. Their requirements, the logistics of the companies are situated as such that if you get out of line, your growers will suffer because the volume that they have been used to growing will move on you. But you do your best to represent the growers across the table.

In Maine, we are fortunate to have some of the toughest bargaining laws on the books. I think we compare favorably with California and Michigan. We have to the final degree binding arbitration. I was president of the bargaining association when that was put through the state legislature, and they gave us no chance of passing that, but we got it done. There's a long story that goes with that, but I won't bore you with it. A bargaining association has to be more than strictly a bargaining association. I have found that in my 20 years involved with the bargaining association as a director on the bargaining committee and executive director, that there are a number of things that come into play besides that short period of time when you sit across the table and bargain for a contract.

Our group is made up of 330 voluntary farmers. It's a voluntary organization. They pay no membership dues to us. Our finances come from a contract put in place by the bargaining association with a checkoff law under state law that requires the processor to withhold from the proceeds of the growers contract a predetermined sum set by our board of directors. They have to do that on a monthly basis. They will forward that to our office with an accounting of where that money was derived from. That's how we're funded.

Our basic income is from potatoes. Our current assessment is set at 1 3/4 cents per hundred weight for any grower who is our member who takes a contract that we have negotiated. Now you might think “Well, what do the other growers who do not belong to the association pay?” They don’t pay anything. They are what we call free riders and that’s always a problem with bargaining associations. They get like treatment, only under our state law they cannot get preferential treatment. So the best they can get is what we get. So the theory there is why not belong if you can’t get an advantage. Well, over the years there have been ways to figure out an advantage. I’m not going to get into that at the moment.

Our office does a number of things besides bargain. We have a master contract that is put into place at the table. It’s in our office. It’s signed on every page. The grower who signs a contract, as a rule, never reads it. It’s about nine legal pages long. They rely on the bargaining association to be sure that it’s right. We proofread that. It probably takes us two hours and four men. We count every period and make sure every “I” is dotted and every “t” is crossed. The grower walks into the processor, sits down and signs that back page, the front page will be filled in as to his volume and delivery period and that’s when he walks off. When a dispute comes, I have the master contract. It doesn’t make any difference what his says; ours is the one as long as he’s my member. That becomes important and the grower doesn’t give that much thought, but it’s critical that you have that and that it’s signed on every page by the processor and the bargaining association.

Our office is probably the most visited office by growers of any office in the potato industry in Maine. My growers come to my office. We’re a cash organization. We affect their pockets. We’re the only organization, I’d like to say, that tries to put money in your pocket, not take it out. You find me another organization that you can voluntarily belong to that isn’t asking for some money. So they come to my office. They question me. They want to know what’s happening. We pride ourselves on knowing what’s happening across North America in the bargaining arena.

We belong to an association called PMANA - Potato Marketing Association of North America. It is made up of Idaho, Oregon, Washington, Wisconsin, Red River Valley, Maine, Prince Edward Island, New Brunswick, Ontario, Manitoba and Alberta. We normally meet twice a year. This year we started in April on a concerted effort to raise the pace of processing potatoes. I think we met 12 times. It seems to always be Midwest or west too. We share information. I serve as secretary of that association. At times of negotiations, I know the schedule of every negotiation that is going to take place with all the companies across North America. I have that

schedule in my office. The people that we work with tell me every meeting that is scheduled, the time it is scheduled and twenty minutes after that I'll know what happened there. And at least every third or fourth day, I'll do an e-mail to every association so they know what's happening. That's what a bargaining association can do for you. It takes a long time to cultivate that, but it's critical that you know what is happening. You cannot bargain and work in a vacuum. You have to cultivate that relationship in order to make sure that you don't get caught on the short end. Meaning that a processor may take advantage of you because in negotiation he tells you one thing and it may not be quite the fact. They wouldn't lie to you, but they'd stretch the truth a long way if they can get you to sign a contract for less. Probably the most important thing that we have going for us is an information flow.

This past January, we had our annual meeting in San Antonio, Texas. We have gone from North America to global. We had people from Tasmania, New Zealand, Australia and it's going to go further than that. We've had contacts from South Africa. It's going to be a global communications effort through PMANA. We're all in the same boat. We all deal with the same companies. You better know for your own good what's happening. I do a newsletter to my membership monthly. I meet with the financial institutions to see what help we can give them. We make sure they know what the contracts are, what we're doing, and what it looks like is going to happen so they can better finance their growers. We work as lobbyists, not to the degree that we used to when we were putting legislation through, but we still pay very close attention to it. The pesticide control board, environmental issues, we do that. We do cost of production for our growers so they know what it costs them to produce. If you ask every grower what it costs him to produce, you'll get a different answer to the question. I don't know that it's so much more different in other vegetables. They all figure it in a different way. The processor takes advantage of that.

We try to have the financial institutions give us their support in helping us with their portfolio of growers. We ask the bank to give us the information of what average cost is for their group of people to produce by the acre. We do it ourselves with our own growers. We bring them in with their 1040's, it takes us half a day to determine the cost of production, which becomes critical when you're trying to negotiate a contract. You had better know your costs.

We have state laws that are critical to us. We fought hard for them.

Our board is made up of 21 members, which I consider a big board. Sixteen represent districts, five are at large members. The five at large are to be put in place to compensate for pockets that grow more processing

potatoes than others do. Meaning you have a concentration of big acreage in this township you can bring on another representative or two from that township to help balance the scale. I have growers that travel 100 miles one way to a director's meeting. They get no compensation. Once in a while they may get a supper. Last Tuesday, it started snowing at noon. The forecast was for 10 inches. The boys said, "Are you going to call it off?" I said to guys 100 miles away, "You tell me. Do you want it called off?" I had two more that were 80 miles away. "Do you want it called off?" They said, "No, there's no blizzard here, we'll be down." I had 19 show up out of 21 men. That's commitment. You've got to have it if you're going to be effective. These guys are committed. They know that what we do is critical to their operations and their income.

You'd better have the growers support. You can have the best laws on the books with the best executive director you can find and the best committee to deal with the processor, but if your growers aren't supporting you, you're going nowhere, absolutely nowhere. I know, I've been there and done that. Today, 90% of our members who are also growers, grow for the processor. I'm proud of that. It took us a long time to accomplish this. There were a number of ways it all happened. I could tell you stories about how it goes together. That's the kind of support that now you've got a position that they have to listen to you. We have laws on the books that say we have to maintain 50% of the people they do business with or 50% of the volume they use to be certified as a bargaining agent for the handler/processor. When that happens, they are required under state law to sit down in good faith and negotiate. Lacking that, they can file to have you de-certified and they've tried that. It didn't work, but it was tried.

Biography

Jim Ennis is the project director for Midwest Food Alliance, a joint project of the Land Stewardship Project and Cooperative Development Services, based in St. Paul, Minnesota. Jim has over 10 years of marketing and project management experience, leading cross-functional teams in marketing food and consumer products with The Pillsbury Company and The Clorox Company, respectively. Prior to joining the Midwest Food Alliance, Jim was the director of marketing and development for the National Youth Leadership Council. He has a Bachelor of Science from the University of California, Davis, where he studied agricultural and managerial economics. He earned an MBA (with emphasis in marketing) from the University of Minnesota's Carlson School of Management.

Speech

I'm the project director for the Midwest Food alliance. We've been involved with recruiting growers over the last three years, working with over 50 growers in Minnesota, on developing a set of environmental and socially responsible standards around produce and meat products to market to retailers. We worked with the University of Minnesota and the Minnesota Department of Ag in the development of some of these standards.

Currently, we have standards in apples, squash, beef and pork products. We, over the last two years, have done some consumer research both with a food alliance that is based in Portland, Oregon and conducted national research with the Hartman group. The research found that almost 53% of the population has a concern about the environment and would make it a food choice in the supermarkets if given that opportunity if there were some way to identify those products. Based on that quantitative research, the Midwest Food Alliance also did focus groups and then looked at models in Europe and the United States – eco-labels that promote environmental standards. Through those surveys and that research we designed our program which we introduced last fall.

Our current program is in a test market. We have two retail partnerships. One is with Coburns Incorporated, which is located in St. Cloud, Minnesota. They're a 23-store chain. They own Coburn, and they own Cash Wise based throughout Minnesota. The other retailer, based in St. Paul, is Kowalskis markets. It's a small four-store chain based in the east metro area of the twin cities. These two retailers have agreed to work with us to purchase products with our seal of approval by the growers that we have recruited. We have currently 24 growers that we have inspected with the program through the standards that have been developed over the last couple of years. We recruited these growers. Twenty-one of those farms passed the inspection process and then the other three are working and will probably be reapplying. So we have 21 growers in our October launch that were involved and certified in our program.

We basically have a whole farm inspection that we conduct. Growers sign an agreement with us around the guiding principles. We have 11 of them. They fill out an application and they're inspected. If they're approved then they're on the buyer's list of our approved products and provide those to both our stores as well as their distributors. So we've worked with two of the distributors that work with these particular stores. Rustate Wholesale based in Wadeana, Minnesota, and Mallet Produce based in Minneapolis. We launched this program in October around our apples

and squash products. With the beef and pork products we're still working out some of the kinks. Some of the growers and producers in beef and pork, it's been a little more challenging just to get all those pieces in place with the two retail programs. So Coburns and Kowalskis both have expressed interest in bringing in the meat products once they're ready and available. We introduced it with produce. What we found we were able to do in a consumer education marketing campaign in the Twin Cities and St. Cloud and roughly received about 3.7 million median impressions around what this seal means, introducing to consumers who were shopping at those stores.

We did some store events; we had farmers highlighting their products through farmer demos, and then also had others involved in demos over that course of the 12 weeks that the product was available in the stores. Minnesota produce season is short but we leveraged it. Our goal around the program is providing a value added for growers who can become certified that's a value added at the farm level. Consumer research shows that consumers are willing to pay a little bit more for products that have some environmental attributes or characteristics that they can identify with. We've been promoting those particular environmental characteristics that these sustainable standards meet – reduced pesticides. We have some of our growers who are leaders in the IPM movement in Minnesota. We highlighted reduced pesticides. We highlighted locally grown. We highlighted the areas that these consumers cared about. Just one piece of research that was very interesting.

We did our own consumer research of 550 consumers in the Twin Cities market and 89% - we asked the question what shoppers view as important. Out of 21 different characteristics taste, freshness, safety and health obviously were the top four up in the 89 to 90 percentile. Protecting water quality, protecting soil quality, improving environment, preserving rural communities, reducing pesticides were all above 76% or higher. In other words, the consumer data that we had nationally also was reflected in our state. We've done additional focus groups and also got that feedback. When we introduced that campaign, what we saw was that consumers responded very positively both to the seal but also to the message.

We are working right now to expand our program into potatoes, cucumbers, and other products that are grown in the upper Midwest and then expanding also into some dairy products. The way we negotiate our program is that we line up agreements with our retail partners. Our partners benefit because we do the consumer education. Our support currently is supported by the Kellogg Foundation, the McKnight Foundation, and some large foundations that are concerned about positively impacting the

environment through a market based program. We hope that more growers would be interested in finding out how to become certified through this program under these sustainable standards, and then be able to benefit from both the market access and, hopefully, a premium on the products. Some of our farmers have been able to command a premium based on these standards plus the things that they've already been doing in their own production practices. One grower is Peppenheitz Farms, an apple grower in Lake City, Minnesota. Peppenheitz is an area in Minnesota that produces apples and these apples have commanded a premium but he sees this as an additional value added to continue to be able to keep his premium and differentiate himself from other apples. We have apple producers and squash producers.

We're expanding our standards and our number of growers. We should have 30 growers on board by June. We'll be introducing our promotion program July through December of this next year. Then we want to expand it to the rest of the Midwest as we grow.

Our program also has a partner organization, the food alliance based in Portland, Oregon. They've been in the market for over three years. They have been working with over 35 stores in the northwest and have almost 65 farmers on board now. A majority of those are produce farmers but now they're moving into meats and dairy products as well so they'll be expanding. What they've also found is that through their agreements with the retailers, they have been able to bring food alliance approved products from these different farms. One of the challenges we have had is that some of the farmers who are certified want to participate and they have multiple products on their farm. Some get purchased by the distributor and some don't. So then its how do you guarantee that all these growers can benefit the same? That's been a bit of a challenge and the northwest – trying to have equity across all of the membership.

Friday, March 16, 2001

Livestock Panel II and Tobacco

Participants: Larry Holder, National Contract Poultry Growers Association – Siler City, North Carolina; Brian Harris, National

Farmers Organization Hog and Cattle Programs; Bill Courts, Burley Tobacco Growers Cooperative Association – Lexington, Kentucky

Biography

Larry Holder is executive director of the National Contract Poultry Growers' Association in Siler City, North Carolina. He has farmed since graduating from high school in May, 1960. He is semi-retired and raises 60,000 broilers at a time and four flocks a year on his farm near Sanford, North Carolina. Earlier in his career, he traveled throughout the South for a poultry company, while continuing to farm. He's done contract building of pole barns for poultry and cattle. He has also built experimental buildings for North Carolina State University. Three years ago he was elected a Moore County Soil and Water Conservation District supervisor.

Speech

I'm from North Carolina. I've been in the poultry business for practically all of my life. My father had one of the first contracts in the poultry industry in North Carolina. We sold chickens at that time out the door. Well, actually, it wasn't a contract before then but we grew chickens and dressed them and sold them at the curb markets and places like that and then it came along the time that we had the opportunity to sell the birds on a contract. My dad decided that was a pretty good way to go at the time. We got a nickel a head back in the '50s and a Coca-Cola cost a nickel. Today, we get about 30 cents average a head and a Coca-Cola costs nearly a dollar. As you can see, our capacity has gone up to grow chickens but not the earning income. The poultry business is very tough. It's been really tough over the past year because of the high cost of gas. A lot of people grew chickens this winter just to keep their barns full. If you didn't, the processor says, "don't expect any in the springtime." Poultry contractors are the model for other cooperatives, processors and packers nationwide to control the farmer. We certainly feel that the thing that's happening in the contractual world, and contracts are not bad. In the beginning it was bad.

It's just that you had the processor, you had your feed mills, you had your hatcheries, and you had your dressing facilities. Everything was owned independently. Vertical integration came about when Tyson, Purdue, Townsend, and ConAgra all began to put everything together and call it vertical integration. From vertical integration you did everything except control the farmer or the producer of the product and the farmer thought that

was a pretty good deal. Again it was a deal from the beginning it was more equal. You knew whom you dealt with before vertical integration came along. You could go down to the feed mill and talk to the gentleman down there. You could talk to the processors. You could talk to the live hog people. You could talk to all of them.

Today as we go into our contracts, they're subject to change. Change simply means that if you sign a contract today, he can come out tomorrow and change that contract again. We live under contracts of adhesion. It's a one-sided contract. He does all the writing and we only do the signing of our name and that's it. If you're already in the business, it's not a feasible thing to pick up your houses and try to move them because they're not they cost too much. A poultry house today costs somewhere in the neighborhood of \$135,000 to \$150,000. It all depends on the excavation that you have to do to get a pad level enough to grow the amount of poultry that it takes to satisfy the company.

There are people who are building poultry houses. There are people today who seem not to understand exactly what's going on out there. That's the reason we have our association today. Our association started about nine years ago. It's been an uphill battle because some of the farmers are pretty much independent. Some of them get intimidated. Some of them get afraid. They mortgage their farms and other things so that they can build these poultry houses and for the first two or three years they do fairly well. After that, they don't do so well. Their contracts are not contracts that stay the same. In other words, if you have a new house, it works well. But when the old houses begin to wear out, cracks and crevices begin and you have problems with them such as the heating and cooling of them. The farmer only controls three things in that situation. He controls the environment – hot or cold best you can. He controls the feed and water – all that they'll take. The integrator, the company, controls every single other aspect of the growing of poultry in these barns.

Consolidation – there were about 285 poultry companies in the U.S. in the beginning. Today there are only about 45 major poultry companies left. They are all consolidating. About ten companies own more than 70% of all the poultry products in the nation. Tyson food employs 64,625 in the broiler industry. They have 42 slaughtering plants nationwide or from all of the areas that they control their poultry. They have 5,852 farms and 18,000 poultry houses or barns that they control their hatching abilities. Tyson contracts with others. It's a number like 1,331 farmers with three barns apiece that do the breeder flocks. It's actually divided up and this integration is divided up into three parts. It's divided up into the pullets,

which are the young chicks. They are transferred over to the hen breeders, which gather the eggs. They then send them on out to the farmers to grow the birds out on a six to nine weeks basis. If you want a smaller chicken, like three to four pounds, they usually grow them out in about six weeks. If you want a bigger chicken, that usually runs about nine weeks.

That's the way that the contracts are written. They have the right to come in at any time, there's no length of the contracts whatsoever, they have the right at any time to come in and take the contract away from you if they so desire. There are reasons that they might do that. Although that's not a regular practice in their business because they wouldn't do that. Although there are some folks who do lose their contracts after going in debt. They have to retrofit their houses if they get old and this is one of the things that constantly keeps the farmer in debt so that he has to keep his houses up to date so that he can produce the better bird for them according to their standards. We have records to show that in some of the older houses, the birds are actually better or perform better and have better quality than the newer houses that they've built.

Contracting is not bad. It is in this particular phase in the poultry industry it's bad because it's a contracted adhesion. Down through the past 30 years the farmers haven't complained very much. They have been very passive and felt like its no use to complain. That's the reason for our organization. Our organization was not necessarily just do some complaining but our organization was built to do some things that would be necessary to make a better industry for the farmers and give them a better pay day. The average barn only nets a farmer about \$5,000 expendable income per barn and if he's got three of those barns, three or four of those barns could cost him at least a half million dollars. And his only income back out of this is about \$16,000 or \$20,000 depending on the size of his barn and the size of his farm. I get a lot of calls from all over the southeastern United States being the executive director of the National Contract Poultry Boards Association. These guys are complaining about their contracts and what's happening. There's not very much you can do for them. They signed the contracts and the U.S. Government – through the guaranteed loan program – guarantees the banks that they will take up or 90% of the mortgage if they default on any of the loan. The lending institutions encourage it; the land grant universities encourage the farmers to do this in our region. It's not the best system in the world. It's very poor. When we try to do something about it like we're trying to do legislation.

Mr. Eric Tabor this morning really stole my thunder because of all of the things that he said. What he was saying about the poultry industry is

right. Contracts are moving this way and are moving in other commodities hard and fast. The flue cured tobacco association last year signed up 3% of the people in North Carolina on a contractual basis the same as the poultry industry. This year 70% of the farmers are going to contract. A lot of the farmers are duped into going into building these barns with the promises of great things. Like I said, for two or three years it is good. They will pay and they will pay fairly well. But after that it begins to decline and you get down into what we call tournament contract or the ranking system. That's how you are paid. Remember those two words very carefully if anybody ever comes at you with a tournament or ranking system. The ranking system simply means that the company is only going to pay a certain amount of dollar for every bird that they produce this week. Any given company is only going to pay X amount of dollars. No more, no less and that's good business for them because they can't afford to do otherwise. They would lose their shirts probably if they did.

What they do is take the bottom growers and rank them on the feed and on the feed conversion and on the weight of the bird and if you don't perform as well as an average performance, an average is that they'll pay the average of the contract. If you fall below the average, which there are many factors that will make you fall below the average – the weather conditions could be one. It could be genetics in the bird could be one. Any number of things could happen to you that they would put on your farm and make you fall into below the line. When you fall below the line, they take that pay away from you and they give it to the guy above the line and he actually makes more money and that's your tournament contract. It's a little more complicated than that. They can take their own feed if they send you a bad lot of feed, if they send you a bad lot of birds or any number of things that they might send to you and you will go below the line and the birds that they sell from there averaging maybe 6 1/2 pounds and the weekly average was 6.70 pounds and you dropped below ten points. Above the line you gained ten points because of weather conditions or whatever. It may be good in this part of the county and over in this part of the county it wasn't so good. That weekly average that you have your contract then obviously you don't do so very good. Some of the pay can be as much as \$5,000 per barn per flock. That could be pretty catastrophic to the farmer who owes the bills.

Another thing, too, is that they will hold you out. You sign a contract to raise say 60,000 birds a year and they space you out. It throws you off your payment schedules if you've got payments and things of that nature. What happens is in the tournament contracts the contracts would be spaced out like two weeks average. You figure out your payments whenever you sit

down or go to negotiate with them about the contract. You sit down and say okay, we're going to hold you out in two weeks between selling a flock of chickens and receiving a flock of chickens is two weeks. But they end up holding some of the growers out now as much as eight weeks. So what does that do to the contracts and what does that do to them? So this is the way they have control over you and to make you not work. The only way to remedy this is to talk about legislation.

Our motto or our goal, our whole system is to communicate, educate and legislate. I feel like it's very necessary. In the state of North Carolina we're going to go for legislation this year. We went once before and got kicked because we weren't very well organized. Mississippi got kicked a couple of times – almost passed legislation. It passed through the house and the senate and the governor vetoed it. He wasn't for the poultry farmers, for the small guy that's out there digging every day. I think Oklahoma got it through their house today. This Producers Protection Act that Mr. Tabor was talking about earlier is modeled after the Iowa legislation here. We have a bill on the national level. Marcy Kaptur has introduced a bill. It includes some things that are very necessary like the Packers and Stockyards Act. Under the Packers and Stockyards Act, the federal government has no control over enforcing any of the rules with the poultry industry. They do with the cattle and the hogs but they don't with the poultry. It is something that these integrators saw a long time ago and had it all exempted from law. They can come and investigate but they can't do anything except get the guy in trouble that was complaining because the company would take that and retaliate. I wish they were all nice people but they are not. They are hard, tough business people and look at the bottom dollar on their side.

We need your voice. We need your support. We have S20, Senator Harkin's bill and it has the Kaptur bill rolled into on the S20 side. I've talked about the state bills but Georgia is also trying again this year to get a bill passed. We need the support of everybody. We need the support to bring this thing up and it will be good for all farmers. Like I said, tobacco has gone there, corn is going there, soybeans are going there and peanuts are also going there from North Carolina and other states, too. Contracts are coming whether you like it or don't like it. Whether you think it's going to work or not work because it's been that trend now for fifty years and it's all modeled after the poultry industry. We would like the Producers Protection Act to be passed in the legislature. The only way it is going to ever be done is for all the tide to rise all the boats up at the same time. In other words, it's going to affect all the companies in one way and national legislation is the way to do it. We're going to fight on the state levels from our perspective

and do the best we can to get something passed in our states. But to be quite frank with you, with the history of what has happened in the past, it's going to be very difficult.

There are some promising things out there. We need you to contact your congressman or your senator in our district and in your state and say we need you to support the producer protection act. There are some things that you might not agree with but that can be hashed out. But there are some things in there that we feel are very important to us and we would like all of you to really consider.

Biography

Brian Harris, a Kansas native, owns and operates a family feed grain and livestock farm in Walnut, Kansas. He is a ten year veteran of the National Farmers Organization Board of Directors and was named livestock director in September 2000. He was a National Farmers Livestock field representative in the early 1990s, operating several buying stations for hogs and livestock as well as organizing Kansas meetings and delivering presentations. He served on Swine Growers boards and currently serves as a technical advisor to a USDA Sustainable Agriculture Research and Education program (SARE) committee.

Through the years, Brian has participated in Kansas NFO events and activities, and was elected to the National Farmers national board of directors in 1985. As one of the youngest directors ever, he served until 1995, and contributed to the organization as a member of the executive board from 1991-1995. Some of his accomplishments there included meeting and building alliances with other producer organizations. Harris holds a Bachelor of Science Degree from Pittsburgh State University in Kansas. His wife, Susan, is a middle and secondary instructor in St. Paul, Kansas. They have three children.

Speech

What I've laid here is probably the basic concept of what the National Farmers Organization is. That is working together. Today, I'm going to go through some of the steps that it takes to be part of the organization and what some of the organizational duties are, what the national does, what the county does and so on.

First, we start out with the membership. The membership is key to our organization. Before I get any farther than that I need to talk a little bit about how I became part of the organization. It's a life long study of what is going on in agriculture. My father was a member of the organization and I

just progressed on from his leadership as part of the organization. I was a director of the organization for ten years. I ran a collection point for a while. I stepped away from the organization for five years. I went back and got my education. I got an education degree.

I enjoy what I'm doing now because I feel like educating the farmer so we don't end like the contracts that the poultry growers have. I think that's the reason I'm here today because I feel like through the NFO programs that we have we can educate the producers in understanding how agriculture is and how we need to change it so that we can get some of the family farmers back into the system.

First of all, members are key to the organization. Without the membership there and the commitment from the membership it would be very difficult to do what we do from the organizational standpoint. There is a structure that is based upon the counties, which are closest to the membership then the districts, the state and the national organization. Also below that is, as far as the livestock department, and I'm going to be going from a livestock perspective, we've got collection points, we've got barn boards and we've got staff. That's the basic chain of people that are involved in the operations of the livestock department on an every day basis. What are the national office's responsibilities? Some of those responsibilities are coordinating the loads, making the bargaining sales, doing conference calls. That's one of the key things about having a national organization. We have input from everybody across the United States. We have people in Ohio that get on our conference call – Maine, California – on a daily or weekly basis and we discuss some of the issues that are going on in the livestock business.

We also do research. We research to see what some of the best places to move livestock into – packing plants. Also research when it comes to political issues as well. We also have a risk management department. Basically, the individual who is head of that risk management department is in the livestock right now. She also does some work with dairy and grain as well. She's basically a part of my department. And what that amounts to is that allows us to do things like hedges, forward contracts, options, puts. Those type of things that become part of the value added part of agriculture and that's the direction we need to go. We also make block sales.

Merle Suntken is the key man who makes the block sales for the organization. He pools the commodities together. He negotiates the deals with the packers. We also do record keeping when we look at cattle and hogs and namely hogs. We keep a record of the kill sheets – how the hogs are killed out, how they look to the packers, whether we need to be adjusting

where we're going with the livestock because of the kill sheets. It's also going to become very apparent that we're going to need a record on whether we're feeding the right feeds to our animals because we have rules coming down that are going to go into effect April 1st. If you don't have your papers signed, you're not going to be able to move the commodity into the packing plant. So those are some of the things we do. We also do the check writing. We pay the producers. We collect from the packing plants. We also report to the collection points the status of whether they're profitable, whether they're doing a good job, whether they need to make adjustments and those types of things.

One of the key elements that we have in the national department is program development. The program development in reality ends up with the national organization. Those programs start from the ground up. They start from the membership. Somebody sees a need for something out there. Right now we're looking at a need to have a value added hog program. To be able to return more money to the producers. And that has been a key element of mine since I became the director of livestock. The hog producer out there is just one step from that poultry producer. We need to develop some kind of system so the independent producers out there can remain out there. When I'm saying independent producers those independent producers must work together. They don't have to be locked into a system that is going to guarantee a \$1 a head for the rest of their life. They need to have that stability that they can make some profit through the consumer dollar. That is something that we're working on real hard right now and I think we're real close to getting it. That comes from working with another organization that sees the need as well. We're not so big that we think we can't work with other organizations. We are forming alliances with organizations that are going to do the producer justice and that's key.

What are the collection points? The collection points are a centrally located point where producers come together. They are either called collection points or marketing systems. They're managed by the local membership and that's one of the key elements. The membership has the input into those collection points. As the national organization right now, we only own two of the marketing centers that we have all across the United States. The rest of them are owned by the membership.

What are the manager's responsibilities? The manager's responsibilities there are the sorting and the tagging and the every day stuff that goes on to get the hogs, the cattle or whatever to the packing plant. What are the barn boards responsibilities? The barn boards oversee the collection points. They take care of the financial records. They look it over.

They make the decisions. The livestock department does a little bit more of what I just spoke of earlier. Part of it is they coordinate the loads – the collection points. In other words, through the conference calls – in some of the cases that's the reason we do the conference calls is because we've got livestock that's all over the country and we need to pull them together. When we pull them together, then we have the block sales. That's another thing that we do.

We also utilize the niche markets that are out there. The livestock department takes a look at the history through that research and sees where the best opportunity is to move livestock at a given point and a given time to fill the needs of the packers. Not only that but it allows us an opportunity to get more dollars based upon the cash market at that particular time. So right now the best successes we've had are through our holiday blocks where we fill the need for the packers when they're short livestock and they need to have another half day kill. So we look at our history and do that. Of course, the risk management programs as I spoke of earlier are a very important part of the department.

Another part of the livestock department is the communications. We get the news out as we have seen over the last few weeks with the pork check off. It's just like they shut the door on you when they went to a mandatory program. You couldn't even talk to them anymore. We've got some real problems there and I think that's one of the issues that the NFO will get in bed with a lot of other organizations to make what's right right. Because what has happened is the democratic vote has been overturned by some back doors.

Some of the other things we do – we do credit checks on buyers. We are selling to a lot of different places. As you do business, you've got to know whether you're going to get paid for it. The producers, I don't know if any of you were in the previous meeting, it showed how we go through the system with our checks and stuff and how we pay. But we have to do certain things to make sure that the organization is safe, the producers are safe and those are some of the responsibilities we have. We also in certain cases we have plant representatives in there. We sell most all of our fat cattle and hogs on a grade and yield basis. It's the standard way things are done today in the industry. But at the same time, you still need to have a representative there to be able to help make sure that the plants are doing everything right for your producer out there and that has become key. We do not have them in all the plants but we would like to have them in all the plants because when we have a plant representative there, it seems like we have a lot less coming back that is not right.

How do you become involved in the bargaining program of the NFO? One of the key things is that if you've got a local group is you contact one of the members around there and they'll be more than happy, and you have to understand that NFO members are very vocal about their passions of becoming and being part of the NFO. So if you get one of those in your corner and you can't quite understand him, give us a call at the home office and we'll tell you as well. There are some things that we can't do. This is only because we are not as widespread as we would like to be.

There are some situations, for example, in southeast Kansas if you're feeding Holstein steers in southeast Kansas and you want them to go to a good Holstein kill in Green Bay, Wisconsin, if you don't have a full load of cattle – you've got to be able to put those loads together to make it work. As long as the members want to work together and work together, I think we can make some real progress. If you need more information, you need to contact the home office on issues such as risk management. We also have a web page at nfo.org that is very, very informative. We've got a feeder cattle page there. We've got replacement Holstein heifers, which is a program that we have that has become very, very important. Make sure you check that out if you're in the need for Holsteins or if you're looking to sell. We also do some bargaining for organic livestock as well. So if you've got a need for organic livestock, we've got an organic grower of Holsteins that moves a lot of cattle through our organization.

What happens after you become a member and you want to use the marketing program? In most places, the collection point manager will contact you and at that particular time you put your livestock on an inventory. The inventory will then be pooled with other inventory in that area and then the negotiator will negotiate the price of the hogs. You've got to commit your livestock to us and then we will sell it and we will negotiate a good price for it.

How do the producers benefit from group marketing through NFO? National Farmers' Organization:

- Saves on freight by working with fellow members to make full loads
- Has block sales that have been negotiated at a higher base price. That's true most of the time. Most of the time our negotiators are not going to sell at a lower price. If he's got a block together, he's going to do a good job for you.
- Offers quality premiums for quality livestock through grade and yield programs
- Has premiums for niche blocking I covered a little bit ago

- Has premiums for sorting livestock to go to the right packers. That's becoming more important on a daily basis, being able to get the right type of cattle to the right packer. We've got instances where we have to sort cows because some packers just won't kill that kind of cow. Or they won't kill Holsteins or they won't take colored cattle on certain days. So you have to be very particular about that and that's part of what the national does.
- Offers risk management programs that are a key part of what we do. If we can lock in a lot of the prices in the futures market, it gives that producer an opportunity to go back to the banker and express to him that this is what I'm at and this is what I'm going to be showing a profit at. It gives him some safety net there to make the producer stay in business. You cannot go broke making a profit.

There are some disadvantages to the organization. It makes you think ahead. You can't just do that cash sale on a day to day basis. Our national organization and the membership part of it and all through it have to think about a marketing plan, utilizing a marketing plan to make it work. I think the National Farmers' Organization along with some of these other organizations that fit different needs can become very important in what we really want to save and that's the family farm system out there today. Whether it's through organic, whether it's through value added or whatever it is, working together and understanding that the long range goal is that we save that producer out there, that family farmer out there and not get into a position that we're just working for some corporate giant somewhere along the line.

Biography

Bill Courts is a tobacco, beef cattle and sheep farmer from Grant County, Kentucky. In 1995, the Burley Tobacco Growers Cooperative appointed Courts to the Board of Directors of the Commodity Growers Cooperative. They work to help develop markets for tobacco farmers trying to diversify their farm income. He is a ten year member of the Board of Directors of the Burley Tobacco Growers Cooperative Association, a five state cooperative based in Lexington, Kentucky, and is current president of the Grant County Farm Bureau.

A retired high school ag teacher, Courts has been actively involved in issues concerning contracting since 1999. In August of that year, the Burley Tobacco Growers Cooperative Association met with representatives of the Campaign for Contract Agriculture Reform during a board meeting in Ohio.

At that time, the Tobacco Co-op voted to support the national legislation for fairness for farmers, sponsored by Congresswoman Marcy Kaptur. Building on this work, Courts dedicated many days during the 2000 Kentucky General Assembly, working to educate state legislators about tobacco farmers' concerns with the movement of tobacco companies toward contracting.

Courts and his wife, Jackie, live and farm in Dry Ridge, Kentucky. They have three children.

Speech

On behalf of the Burley Tobacco Growers Cooperative and the Commodity Growers Cooperative, we want to thank the Successful Farming magazine and the other participants of this event for including tobacco farmers as part of your meeting this week here in Ames, IA.

Since 1998 our two cooperatives have been working together to better understand how contracting in agricultural has and will affect our farmers across this nation. Your magazine has provided us with valuable information about this topic and we thank you for that role that you've played in helping us. In February 2000, Philip Morris announce that they were moving to contracting and we turned to people in other farm organizations that we had met. Dan Looker, Successful Farming; Steve Etko, Campaign for Contract for Ag Reform; and members of the National Contract Poultry Growers Association and with their input we have learned a lot about contracting. For what progress we have made in Kentucky and the other tobacco states, we thank those of you who are writing and talking about your experiences with contracting. We want to express our appreciation to you here today and we want to continue this relationship. We still very desperately need your help. Our experiences show us that we need federal protection for all of us.

What I'd like to do is tell you a little bit about our experiences in the tobacco states. In Kentucky and the four other states, our tobacco farmers are part of a 60 year old cooperative that has worked to help maintain family farms on our farms for generations. All that may be soon lost due to contracting. All because one large cooperation can pick and choose who will survive and who will not. What has happened to our cooperative and the farmers in our region is a good example of what can and will happen across this great nation. If our leaders don't sit up and listen; if farmers are not provided some protection at the federal and state levels from actions of large corporations to control family farms soon we will simply have no

independent farmers. One or two large companies will control our entire food supply from producer to consumer.

Our cooperative has had to deal with one of those companies – Philip Morris, which is the largest food processing company in the entire world. They admitted before congress that they lied about tobacco. Do we want them to be controlling the food system for the entire world? It is happening today and I'll tell you how this company has treated tobacco farmers and continues to maintain that they are our friends. First, you need to understand a little bit about the tobacco farming and the federal price support program and the production control program. Many people think that the federal government subsidizes the tobacco farmers. We are absolutely not.

Organized in 1941, the “pool” as we're sometimes referred to has provided a stable Burley tobacco market for its producers now in excess of over 150,000 members. This program by the way was developed after tobacco farmers had worked to market cooperatively together without any sort of federal law. But some farmers would move out of the cooperative because they got a better deal cut from some other companies and this led to conflicts. Particularly in the western part of the states where barns were burnt and some farmers lost their lives. Out of desperation, our farm community leaders worked to bring the best cooperative experts in the nation to establish one of the most successful cooperatives as I view. A fellow by the name of Scapiro, which has alluded to today, from California worked with our tobacco farmers to come up with this program. Basically the system allows the USDA to set quotas that allocates the amount of tobacco each farmer can grow. A price support level is established for our producers. When farmers go to the warehouse to sell their tobacco, they either know that the company is going to buy it or they're going to go through the pool which is managed by our cooperative. If a company doesn't offer the price that the farmer needs, then our cooperative the tobacco, process it and store the tobacco until it can be later sold at a profit.

This system provides assurances for farmers that either way they can still realize some profit from their tobacco because of the program and the cooperative system. In fact, this program has made so much sense to folks particularly with tobacco that the public health organization publicly supported the tobacco price support program and the production control. The tobacco farmers are not interested in kids smoking. Neither are they health advocates who have opposed the tobacco companies efforts to market tobacco kids. So in our interest to keep cigarettes out of the hands of children and kids and to eliminate you smoking, we began to talk with the health organization. And I might say this was quite controversial even

among our members. Getting in bed with the enemy so to speak. They have understood the importance of the system and I'm talking about the health organizations. Doing a 1998 national debates on the master ?????? agreement between the tobacco companies and the state's attorney general, the public health organizations such as the campaign for tobacco free kids, the American Heart Association and the American Cancer Society have helped convince members of congress that the tobacco program needs to be kept in place. This is in the best interest of the public interest and the farming communities. But also in the late 1990's the tobacco companies began talking about a system of contracting.

So we began in 1998 and met with other organizations that were contracting poultry particularly. We had a representative from the national contract poultry growers association come speak to our board of directors which met in Ohio. We soon became convinced that if contracting took place in our tobacco country we would soon be at the mercy of one company. Eventually, this one company would contract only wit the large growers and thousands of small farms, which had been sustained by three, or four acres of tobacco would be lost. I personally raise five acres of tobacco. So let me point out to you that almost every tobacco farmer works to supplement their tobacco program or their tobacco income with other crops and farm products. In fact, our tobacco cooperative established a commodity grower's cooperative to help tobacco farmers diversify and prepare for a future that may not include tobacco. What we have learned so painfully that it's not the tobacco crop that has caused farmers to be able to make a living on the farm. It is the program of price support, production control and marketing cooperatives. If we had that sort of system for all other farm products, farmers would be able to realize an income. However, we don't and tobacco farmers can make a reasonable income from tobacco simply cannot withstand the uncertainties with any lack of any cooperative marketing structure for their products particularly tobacco.

When Philip Morris announced that they were moving towards contracting tobacco in February 2000, our general assembly in Kentucky was in session. We learned how much a powerful corporation could demonstrate even when we have 150,000 members who might be hurt by the contracting. We tried to get legislation passed which would establish a bargaining system in tobacco so that farmers would be able to negotiate a minimum contract and the company would have to offer this minimum contract to all farmers large and small whether it was contracting or whatever. The governor of Kentucky, our state attorney general, the Kentucky commissioner of agriculture and the various health organizations

in the state supported our proposal. But it never got introduced the way we wanted it to because other farmer organizations opposed it and the tobacco companies opposed it. So eventually we got legislation passed which required our state tobacco task force made up of legislators from both the house and senate to study the effects on contracting on small tobacco farmers. The tobacco companies went on the defensive and set out to show what a favorable situation it would create for all farmers.

During the past year, they created the best possible situation for farmers who were contracting. They offered contracts to small farmers as well as large farmers. They sent every farmer who was contracting a Christmas basket expressing their appreciation in their partnership program. They also established receiver states that were highly computerized, efficient and impressive. They made statements to the public about their support for the tobacco program. In reality, we as tobacco farmers we knew that what they were doing in essence was trying to destroy our program. We suspected that through contracting that they planned to eventually lower the price of American tobacco to make it more competitive on the world market. They have established tobacco farms in Africa, where they worked hard to have a farming system that they can control from top to bottom. And they did it well. They convinced most legislators on the tobacco task force that contracting was the best thing that could happen to tobacco farmers. They beefed up their public relations work with the press and the public providing stories about how much farmers like the system of contracting.

This issue has divided many of our tobacco farmers in the state because now they are saying to these tobacco farmers that if you do not contract with us, that some day down the road when there is no program we will not offer you a contract. The tobacco task force came out with a report that said that contracting was working well with farmers large and small alike. They convinced legislators that farmers could benefit through the contracting system. So in other words, let's don't do anything. So when the State Attorney General came out with the Model Producer Production Act, we once again approached our Attorney General to endorse it, and he did it. And this got the attention of Kentucky Farm Bureau who had been studying the situation with contracting after they originally opposed our first legislation. So we began to work with Farm Bureau and the Kentucky Department of Agriculture and other farmer organizations.

The Kentucky Farm Bureau developed a policy at their state meeting of supporting state legislation, regulating contracting in all commodities. We developed a piece of legislation that would have provided very minimum standards but even that got defeated even before that was introduced. The

tobacco companies had convinced several of the other commodity groups to oppose any legislation that regulates contracting. So some of our friends and legislators retracted a simple plan, a simple resolution. That's all it was was a simple resolution which would have required the federal government to have inspectors at the company's receiving station and to collect fees from them just like it's done at the warehouses. And through this system the contracted tobacco would have to be inspected and would have to support the program through a fee system. The companies opposed it, and it wasn't even enacted. This was the only resolution. It was not a law. And it wouldn't have been sent to members of congress if the state of Kentucky had supported our federal program.

So the chairman of the house agricultural committee tried to pass a bill which would have simply done another study of the impact of contracting on agriculture across the board on all commodities. The Kentucky State Senate stopped this. It wasn't even considered. We're now trying to get something established through congress that would keep the tobacco program in place with contracted tobacco but what we really need is national legislation requiring some sort of bargaining or negotiating process which will level the playing field just like Marcy Kaptur has proposed. The Burley Tobacco Cooperative is on record as supporting Congresswoman Kaptur's legislation and I personally testified at the congressional hearings on that topic in Ohio this past year. And we are on record in supporting state and national legislation, which protects producers in contracting situations. All producers of all products because what is happening to tobacco farmers in a system, which has kept small farmers and production since our grandfathers were kids will be gone forever.

We need you today to contact your members of congress and help our situation. We need you to mention tobacco farmers when you're visiting the USDA. I'm not going to touch the part on the President's Commission because I have it out there on the desk. A report will come out in the first of May. So support your state legislators when they consider state contracting legislation and it's important to include a bargaining piece. Having contracts that are understandable and open, that's just one part of the puzzle. The most understandable contract in the world does not level the playing field when you've only got one or two companies to deal with. Look at what is happening in tobacco. The contracts are fairly understandable but the playing field is way out of balance.

Having a process to help farmers understand the contract is a good thing but it's not the important piece. We must have contracts that level the playing field. We are all in this together and we will support you and we've

already tried to do this through supporting Representative Kaptur's legislation. In fact, many in the public health community will support you because what one company that controls tobacco – Philip Morris – is also the largest food processor in the world. They own Kraft and they own many of the companies that process your products as well. If it's happened to us, it will happen to you and we appreciate any help that you might be able to provide but we particularly need you to mention tobacco farmers whenever you talk to members of congress. If a group of tobacco farmers can reach out to the different health organizations, then surely all farmers across this nation can reach out to other consumer groups for help and we thank you again for including tobacco farmers in your discussion about contracting agriculture.

Friday, March 16, 2001
Grains – Panel II

Participants: David Denne, Iowa Quality Producers Alliance, LLC – Lewis, Iowa; Linda Reineke, National Farmers Organization Grain Programs; Carmen Fernholz, Organic Farmers Agency for Relationship Marketing (OFARM)

Biography

David Denne runs a corn and soybean operation in Griswold, Iowa. He has been the chairman of the Board of Managers of Iowa Quality Alliance since its inception in 2000. David graduated from Iowa State University in 1981 with a Bachelor of Science in agronomy.

Speech

Basically, our group is about two years old. We started from a blank sheet of paper, said anything goes. There were about four or five of us that got together and said, “Hey, this isn’t working. What can we do to change our opportunities?” We formed the Iowa Quality Producers Alliance. Right now our Alliance consists of 82 farmer/producer members. We raise primarily corn and soybeans. Each of its members contributes \$1000 to the limited liability corporation.

Our mission was to create earnings and opportunities for our members beyond what each member could generate individually. In other words, what the group could generate that otherwise individuals couldn’t. Our vision – a system in which grain producers could earn a fair return on their investment depending on what you think is a fair return. Maintain their independence. Being able to say I’m an individual family farmer. To respond effectively to changing customer markets. Not only customers but also consumers. And to participate in the value added supply chain and grain processing and merchandising. In other words, merchandise a product.

We had two goals when we started out. We had a Phase I goal and a Phase II goal. Phase I was to increase our members’ income through marketing, information and contracting services. As of today, we’ve got two corn contracts that we’re making available to our members. One is an innovative white corn contract that is a contract with both the seed company and the end user. The seed company is helping develop this. The processor is going to share some of his downstream revenue that the seed company is able to find some markets that just weren’t available. It’s a new contract that’s just become available, and it’s something I haven’t seen before but I’m hoping that’s kind of the way of the future where the end user will share some of his profits to get what he wants. In other words, a quality product that is delivered just in time.

Our second goal was to create opportunities to diversify and increase income through participation in the value added supply chain and grain processing businesses. In southwest Iowa, we’ve got some bean processing facilities but there really isn’t anything for corn. We’ve had a consultant contact us through seeing our name in the media. And we’re looking at a possible dry mill opportunity to get in the value added supply chain. Right now we’re in a pre-feasibility study and we’re looking to spend some of group’s money to do a full-blown feasibility study. The opportunity we’re looking at is five years down the road to see what we think is going to be there and position ourselves to be there.

I said before we're a limited liability company where the farmers are the owners. The membership units were \$1000. Right now we're just operating off the interest off that money. We're got two part-time consultants working for us. The Iowa Quality Producers' Alliance is located in southwest Iowa. We've got a 19 county area. Back about ten years ago, a research farm was put together by farmer member owners and we've got a facility there. They provided office space for us. We've got a part-time staff person there and we've got a part-time merchandising consultant working for us too. We're managed by a nine-member board of managers. I am the chairman of the managers. We will derive our revenue from charge for fee services. We hope to not have to go back to our members for the \$1000 again. Hopefully, we can create enough revenue that we're self-sustaining.

We held some membership meetings last winter. We had over 300 producers come. Right now we're at 80 members. This winter we've been concentrating on looking for markets. I think our efforts have kind of proved that just by getting your name out people will come to you but sometimes it isn't always the most lucrative. People are willing negotiate, if you can offer a service to them. If you can prove that service and a lot of times it's just delivering grain when it is needed on an as needed basis. When we started our organization, we talked to a bunch of different alliances that had already started. A lot of the questions we asked – What's the critical size, How are you going to capture that gain, how much can you capture yourself personally and what is your management? There are a lot of different styles out there and some groups have failed, some have prospered. I think a lot of it is time and effort and putting that right person in the management category.

Our ultimate goal is to provide upscale merchandising programs. We want to capture the value in that market. Number one goal – put profits in the pockets of our producers.

Biography

Linda Reineke was raised on a 640-acre dairy, grain and livestock farm in Cass County, Iowa. She played an active role in the operation, working on all aspects of the farm. The farm has expanded and her father and brothers continue to operate it. Linda attended Arizona State University in Tempe, Arizona, majoring in accounting. She and her husband operated a 720-acre farm near Greenfield, Iowa, for eight years. The farm consisted of a feeder calf and grain operation. National Farmers hired Linda in 1989 as an assistant bargainer in the Grain Department. In 1991, she was promoted

to regional grain bargainer. She also served as manager of the bargaining unit. In May 1996, she became director of operations in the Grain Department. As director of operations, Linda coordinated the Risk Management Seminars presented by National Farmers Grain and sponsored by USDA's Risk Management Agency. She has also worked with the NFO organic grain advisory committee to implement an organic program for NFO members. She is also on a committee to develop a Marketing Agency in Common for organic products. Linda lives in Massena, Iowa, with her husband, Don and children, Travis and Cody. She belongs to the St. Patrick Catholic Church in Massena, Iowa.

Speech

I'm the director of the grain department in National Farmers Organization. I come from a farm in southwest Iowa. I was born and raised on the farm. It was a 720-acre grain farm, some livestock and I guess I just couldn't leave the farm and stayed with NFO and here I am.

I wanted to tell you a little today about the grain marketing programs that NFO offers. Our main program that we've been using since 1989 has been called Marketing Plus. It's been said that farmers market their grain in the bottom third of the market. I think that many of you have seen that. Most farmers have a very big tendency to get trapped in that greed, hope and fear syndrome when prices are going higher. They're waiting, waiting, waiting and wanting to hit the top. After they start falling comes the hope phase and they hope it goes back up to those prices they had before. And finally they get in the fear phase and typically that's near the bottom of the market. They go ahead and sell out of fear. When marketing plus was developed in 1989, we decided we needed a disciplined marketing approach and a system to sell producers grain that wasn't necessarily designed to hit the top of the market. It was designed to achieve a good average in the market by selling in multiple sales and selling during historically high time frames of the year and multiple sales. Don't put all of your eggs in one basket. I'm going to tell you a little bit about the system that we've developed and how our collective bargaining efforts work in that system.

The first thing that we want to do when we developed marketing plus, we wanted to make this a personalized system. We wanted it to create a personalized marketing plan for the producer, to create risk management strategies that the producer felt comfortable with and that would not put him in a speculative position. We wanted to be personalized to his particular financial and time management needs because every producer is different. You can't create one system for everybody. The next thing we looked at

was NFO goals of raising the general price level of grain and also in marketing that producers grain in the top third of the market. So the plan became creating disciplined sales in that optimum time of the year and this was a complete marketing plan for the farmer. The disciplined sales approach – pulling the trigger as you know is one of the hardest things for farmers to do - to actually let loose of that grain they've created.

We put in his plan, then, the multiple sales and the futures options for risk management. In these volatile markets, you need those options and to use the risk management. We also give advice within this personal marketing plan on locking in LDP or posted county prices. Unfortunately, at this point in time you have to be able to farm the farm bill as the saying goes. We give advice on locking LDPs and posted county price. Marketing plus for grain is based on four basic principles. The future is unpredictable. If you can cover your cost of production, it's a good time to protect that cost of production with either making sales with that grain or by using put options to protect that price. We use disciplined selling in multiple stages because it does take pure luck to hit the top of the market. We use that pattern that has been established. When we created it in 1989, we looked back at 20 years of history in the grain markets and there was a definite pattern in a wet year, in a drought year, in a year following a drought year and we utilized those patterns in creating the selling structure for marketing plus. And then we used volume selling to impact markets.

Some of the most fun I've had with NFO is when I was a bargainer and selling grain for the farmers. One time we had a region where we had about 30 farmers that marketed their grain through us and they went to these five different elevators. They gave us the choice of any of those elevators telling us what their freight costs were to get there or we could take it into the river terminal. When we started accumulating this grain in there, the grain prices locally were horrible. They were just way out of whack so we started shipping the grain into the river terminal. Well, eventually the local market noticed the loss of that grain. We were selling approximately 150,000 bushel of corn every two weeks that we were taking away from their market, from their local area. Eventually, these prices in the local area, we'd call them every two weeks and say, "I have 150,000 bushel of corn, what will you pay me?" or "This is what I need for it to come to you." And eventually, we raised the local area price by 10 cents on corn, easy. We weren't taking it to the river terminal anymore. We were delivering it within the local area. Funny story, one time these elevators got together and decided that they would form a pact. They weren't going to bump their bids for NFO anymore. Well, next time we voted to sell, I started calling the five

elevators and started making the rounds and each one said, “Sorry, Linda, I can’t bump your bid today.” We took the grain to Minneapolis to the cities. The next two-week period we voted to sell. I started calling the elevators. By the time I got to the fourth elevator that first elevator was on the line saying, “Okay, I’ll bump my bid. I need that grain to fill a train.” We never had to ship it back to the river terminals again. They realized they needed that grain, and they were going to have to pay for it to get it. It doesn’t take that many farmers working together to affect a local price. If you can do that with about 30 farmers, in moving the market, it works. We’ve used discipline sales, multiple sales, options for risk management and advice on locking the LDP.

This sales strategy has managed to put producers in the top third of the market consistently since we started in 1989. In this marketing plan, you decide the number of bushels you want. Whether you want us to market 10% of your production or 100%. You choose where you want us to sell your grain to, which delivery locations. You choose when you want to deliver, when it’s feasible for your time management and financial needs. We had a buyer over in eastern Iowa who I was talking to one day and he said, “Linda, you guys have done a fantastic job marketing your farmers’ grain through us. I really don’t understand why you don’t have a lot more farmers using this program.” He sent me what our average selling prices were over the course of the year 2000. We compared that to the average selling price of farmers and that’s what we came up with. As you can see, especially on the forward contracting, we like to use the “carry” in the market. That’s how we managed to get into the top third of the market.

We also utilize options – call options. We can use call options if we feel or if you feel that due to a weather scare or for some reason you’re real bullish the market and you want to still be in it. As long as you’ve floored the market with selling the grain, we can buy you call options and help make recommendations that I think are realistic. Also, I know many of you have probably run into a situation where there’s a big strong LDP right at the beginning of the harvest but you don’t have anything out of the field yet. Using call options is a good way to protect that. We use put options on behalf of the producer to protect price on the downside. Unsold inventory that you’ve collected the LDP on, I think that in this volatile time is real important.

Also on new crop – if you have more new crop, we only recommend forward contracting on non-irrigated acres about a third of your production due to weather scares or weather concerns. Also pricing – if you forward contract a third at better than your cost of production and the prices do go

higher, you still have two thirds to sell into that higher market. But put options at very favorable times of the year are a good tool to use. We also have gone high tech. Grain marketing plus.com is a web site that we've developed and also with this we have an internet e-mail based market advisory service. This service twice weekly sends e-mails directly to a farmers mailbox. It's a farmer friendly web site we feel. Just click on your state and you can get to different department of ag university extension services too. Everything is located right on that state, just click on your state.

We make sales recommendations. We make LDP recommendations. We give the farmers sell side information. I believe we put in there information that they wouldn't hear on your Farm Dayta. We provide fundamental and technical indicators. A little over a year ago we started marketing specialty crops for our producers – organic grain and non-GMO grains. Those niche markets. I've included some of our key people here. These are our key representatives in Iowa, the eastern region. This person is located in Illinois, Kansas. Warren Myers in Minnesota and South Dakota. And Lonnie Kobza in Nebraska. That is the basic program that NFO is offering. I really feel that utilizing Marketing Plus is good for a producer but the real strong hold when you can get a lot of people in a vicinity that can affect local markets. And you'll hear more about that tomorrow from Gene and Darlene Ferguson from Kansas. They'll tell you how they have used the NFO programs to get more members for the NFO but to help influence price in the area by using the group marketing techniques.

Biography

Carmen Fernholz farms 350 acres of certified corn, soybean and small grains near Madison, Minnesota. He started farming in 1972 after teaching high school for seven years. He has a diversified, 100% certified organic operation of corn, soybeans, small grains, flax and alfalfa. He is part of a 300-sow three-site farrow-to-finish hog operation with his brother and nephew. He operates a NFO Marketing Center near Madison that allows smaller hog operations the opportunity to have greater market access to both live daily markets and futures contracting. Besides serving as state president of the Sustainable Farming Association of Minnesota, he serves as state secretary for the Minnesota NFO and was recently elected vice president of Organic Farmers Agency for Relationship Marketing (OFARM). He and his wife Sally have four children; the youngest is a junior in college.

Speech

As the song goes, I was organic when organic wasn't cool. I started farming in 1972 and in 1973 I started moving towards organic certification on my farm and was able through a lot of research, headaches and paying tuition to get my entire farm certified in 1991. The thing that eventually over those years began to crop up as an issue was marketing. So about two years ago I was down here visiting the NFO office and talked to some of the people in the grain department. They said, "Hey, if we in organic grain marketing for sure don't get our act together quite quickly, we're going to be singing the same tune as many of the conventional growers out there today." As a result of that, over two years time we put together with six organic marketing co-ops, a marketing agency in common called OFARM, Organic Farmers Agency for Relationship Marketing. Probably one of the most operative words there is relationship. We not only want to relate with our farmers but we want to relate with those six co-ops and more co-ops in the future. We want to form a positive yet assertive relationship with the buyers and the processors out there. So the functional word there is relationship. The structure is quite simple. OFARM has six marketing co-ops. We're still open to more co-ops to enter.

What is our mission statement? Simply stated, to coordinate efforts of producers marketing groups to benefit and sustain certified organic producers. What are some of our aims and objectives then. First of all, to strengthen the marketing programs of the member organizations and then to inventory production and manage organic marketing in a responsible way. Certainly all of us know the power of inventory. I have a son who works for Ford motor in the engineering division and as you will note I think it was just a month or so ago Ford motors said, "We're going to shut down for a couple of weeks because our inventory is getting a little too big." That is something that we in organics want to learn as well. We want to manage our inventory in a responsible way. Then we want to exchange pricing and marketing information among the members because I'm out there in western Minnesota and a buyer happens to call me and says, "I'll offer you \$12 for your soybeans."

How do I know what the buyer is offering the next person down the road or the next person in the next county or the next state? Through OFARM because of our exchange of information among those six marketing groups, we will know that the current going rate for food grade soybeans all the way from Ohio to western Nebraska and from Texas to Minnesota is \$17 to \$20. So that if a buyer happens to call me and I dare to market it one on one, I know if the person is in the ballpark or not. To develop and support

communication among organic producers along with the pricing information there are other things we should know. Are there certain varieties of beans, are there certain varieties of corn, certain varieties of whatever that we should be looking at? What works in one area may not work in another area. We can exchange agronomic information.

Some other things that we deal with are:

- to research, support and enhance market development. In western Minnesota, we're starting to develop golden flax. What I will be doing over the next year or two will be informing the other co-ops about golden flax. Its health benefits, the potential markets for it. They in turn can get that information across to the rest of those co-ops.

- to assist producers and consumers in broadening their knowledge of organic marketing concepts. We want to always be of assistance to the producers. We want to keep in mind that this is a producer-oriented organization.

- to promote public policy – research, education and support of sustainable agriculture. What policies – to deal with the policies of genetic engineering. How are we going to deal with that? How are we going to deal with marketing globalization. Be on top of some of these issues and the bottom one of course is to deal with other objectives as the OFARM may see as important.

So how can you become a part of OFARM? Very simply, become a member of an existing Capper-Volstead qualifying organization representing certified organic producers. But become a member of one of those organizations or form a new one. I was up in the Red River Valley last week and talked to a number of farmers there, and they are, in fact, thinking about doing this.

One criterion that we have definitely set for OFARM is that every individual member must be a farmer. That's one criteria we have set and the farmer of course means an individual who is engaged in the production of agriculture. A person who owns farm land and rents it to another for cash is not an eligible member but if this person does have a say in how some of the crops are sold or it has an interest in those crops of course they could be eligible. What are the qualifications then? First of all, you have to have a minimum group of ten individual, certified organic producer members with current membership status. In other words, you have to form a marketing group. You have to have paid the annual membership fee to OFARM. So that marketing group will have to have paid \$500 to OFARM and \$10 per member. That is going to be one time initial payment.

Next, you will have to have provided OFARM with the name and address of its primary contact person. And annually provide the members and the certification agency. Have elected authorized representatives to go to our annual meeting and have an established marketing program, so your group has to know how it's going to market the members' products because each of these six marketing groups in OFARM is autonomous.

They each act on behalf of their membership but they share the information among themselves and that's how the concept of marketing agency in common comes into being. We can share lots of information. We have established and maintained a method for inventory so each of these marketing co-ops will know how to inventory their membership so that we can share that information. So that if we find out, come fall, that we are very, very overproduced according to market trends on a certain crop, we can start telling the membership, "Hey, let's start all of us looking at doing a better job of inventory that so we can maintain strength in the market place." I would apply this then to NFO. I happen to be in NFO out in western MN and there is no organic marketing group out there. So that was part of the benefits of me being a member of NFO. By paying my \$75 a year membership, I've automatically put NFO as my marketer for organic. So NFO is one of those six existing marketing groups right now. So NFO is going to work the very same way as the others. NFO has made me the organic grain coordinator for Minnesota at this time. Of course, maintain a report member inventory to OFARM. In summary, what are the benefits of belonging to OFARM if you're an organic producer out there?

Number one – you become eligible to share reliable wide area price information with other producers. I can find out right now what organic corn is going for in Michigan. I can find out what hard red winter wheat is going for in Kansas. I can share reliable, wide-area inventory information with other producers. I can find out if in fact there may be a shortage of something. Last August, we were talking and we began to say how come the food grade soybean price isn't any stronger than it is. We were talking to some producers from Illinois, and they were saying our crop this fall was very poor. All of a sudden we started talking together, and we saw the food grade soybean price move \$1.5 to \$3 over a period of a month and a half. Because we were able to share reliable wide area inventory information.

We remain current on market and market trends. Here was another case in point. Using that same example, we find out that we do a contract for soybeans and the processor says, "I'll take your feed grade soybeans but I'll only pay you \$6 for the screenings." We find out in Illinois

they can't get enough feed grade soybeans including screenings, and they're willing to pay \$10 to \$12 a bushel.

Remaining current on market trends and information. Eliminating one on one negotiations with buyers. This is probably one of the biggest complaints I get from growers out there is they are calling buyers and getting different information from different buyers and then having to deal with the buyers. I had an incident that I won't go into detail about, but I can tell you that having belonged to OFARM saved me \$6.5 a bushel. The reason it did is because I called the negotiator at NFO and said, "There's a problem with this buyer and my beans. Take care of it." Within a week, it was taken care of. I didn't even talk to the buyer. I let the negotiator talk to the buyer. Critical thing because I found as growers out there we don't have the ability to negotiate because we fall apart. Like Linda said, we get too emotionally involved and we don't know when to say no. That is a very critical point.

Develop and monitor producer friendly contracts. We've talked about and will talk about contracts into the next day and you won't believe some of the contracts that are out there. Not only in organic obviously but in a lot of other areas. We, by sharing information, want to start developing producer friendly contracts. We want to develop contracts and present them to the buyers. Obviously we'll do this from a position of strength.

Develop and monitor a list of sound, creditworthy buyers. I can't tell you how many growers out there have either not gotten paid until three, six, nine months later or some of them have never gotten paid. It's somewhat unique in organic because organic buyers and processors don't have the deep pockets yet that the big conventional grain processors have and so an economic issue or a weather issue can send some of these buyers belly up within weeks and all of a sudden the grower is held without anything. So we want to find out which buyers out there are sound buyers, buyers that we can depend on.

And finally, we want to **enhance opportunities to add new crops and agronomic practices to rotations.** I mentioned that little thing about golden flax. Because we are a bargaining agency we want to start setting targets. Here's what we've started to set as some of our target prices. Note they're target prices. Because if you go down a highway you'll know that the price of gas differs from station to station and from town to town. Well the price of soybeans is probably going to differ from southern Missouri and from here to northern Minnesota as well. We're talking target areas. This may not mean anything to some of you but it's the areas that we want to start really letting people know where our base lines sit. This briefly is the

structure. These are the six co-ops and we have several others that are expressing strong interest in becoming involved.

Friday, March 16, 2001

Vegetables and Produce – Panel II

Participants: Al Dietrich, Michigan Agricultural Cooperative Marketing Association – Lansing, Michigan; Dick Walsworth, Michigan Agricultural Cooperative Marketing Association Asparagus Program – Lansing, Michigan; Ron Schuler, California Canning Peach Association – Sacramento, California

Biography

Al Dietrich is a fifth generation apple grower. He is in partnership with his brother Joe in Ridgeview Orchards. They have 500 acres of apples, as well as a fresh apple packing line. They also grow and pack fresh asparagus. Al is married to Helen and they have six children. He is a member of the Michigan State Horticultural Society, the Kenowa Pomsters and the Michigan Agricultural Cooperative Marketing Association. He has been the chairman of the Michigan Process Apple Growers for four years. He's played an active role in the bargaining subcommittee for the last few years.

Speech

I'm chairman of the apple division of Michigan. It is abbreviated MACMA – Michigan Agricultural Cooperative Marketing Association. We negotiate processing prices with our Michigan processors. We have about twelve Michigan processors that actively buy our product from us. The Michigan apple industry often trades off with the state of New York. We're number two and number three apple producing state in the nation and most of our apples, processing apples, are a product that doesn't make the fresh sales. A lot of it is sold in the fall to processors but apples in Michigan are also stored in controlled atmosphere buildings and can be sold up to twelve months after harvest. Also we have our by-product that comes off of our fresh packing lines. That is sold throughout the whole season. A lot of our apples move twelve months out of the year. Our processors will take our

apples and produce either apple juice or applesauce, or slices used for baking pies and other items. But we do negotiate with these processors.

We have a negotiation process that we've used for a number of years. We have about 750 members in the state. We probably represent a majority of the state's bushels – maybe 70 to 68% of the state's tonnage is represented through our members. Tom Butler, who is here today is the manager of our organization. I believe our organization got started in 1959. That's how long we've been around. The first thing that our organization had to do was organize the growers. We had to get the growers interested in organizing. I always heard it said that organizing farmers is like taking a wheelbarrow full of frogs across the yard and telling them not to jump out. It is hard to keep farmers organized and to organize them. It was just as challenging then as it is today. Farmers are independent businessmen. They like to do things on their own but faced with large crops and low prices the need to negotiate became more and more apparent.

Our organization started to grow and grow. By 1962, MACMA had over 50% of the state's growers. I guess as I was sitting down putting some of my thoughts together I thought that it's kind of funny me standing up here telling about our organization growing in 1962 and the only reason I could remember is because it happened sometime after February because that was the year I was born. Our parents organized this group. My parents did and were part of the first members of this organization. I think it has helped us negotiate some of the highest prices here in the nation. It's not all rosy. A lot of our processors will bargain with us. They'll recognize us but we have an occasional processor that still won't recognize us. They still refuse to negotiate with us. There's been a lot of ways that we've come to deal with these particular processors. One way is we launched our own sales organization. Our growers come to our sales organization at no charge to our growers and we kind of channel apples away from this particular processor that is trying to buck the whole system.

Sales are done on a day by day, load by load basis. We also have a newsletter. We send a newsletter out periodically to our growers. When they receive that in the mail, they can't wait to open it because there's a lot of information on there – what the market is doing, what other states' crops look like, how they're progressing, what stages of growth other states' crops are in, how much apples are left in storage, what's a marketed price, is somebody giving incentives for a particular variety of apple? The newsletter has really become very popular.

Quite some time ago there was one way we dealt with one particular processor that was really, seriously bucking the system. We picketed him.

Of course, the negotiation process has got to be done during the fall. A lot of our growers are out getting the crop harvested, bringing the crop in. So who do you think got stuck doing the picketing was the wives. A lot of the wives took the kids with them. There were baby carriages going up and down, marching in front of the processors. It was an ugly situation but it did work. In time, they came to recognize us and we called a truce. In 1973, we received our accreditation under a law called the Michigan Agricultural Marketing and Bargaining Act. It's Public Act 344. Noel Stuckman is here today. He was very instrumental in helping us accomplish this. This required our processors to deduct marketing fees. In turn, they pay the marketing fees to help keep our organization finances in line.

I guess I've always got to tell the good and the bad of everything. There have been a few problems with the public act, and we're trying to work towards resolving them. One of them is that there was a clause in there that a processor can opt out during the negotiation process that allows them if they notify our state department in time, department of ag, that they refuse to negotiate, they can opt out. That's something we're working on. We hope to alleviate that some time soon. We're involved in kind of a messy situation too with our co-ops. We have people on our board who are members of not only of our board but are members of a co-op. So are they negotiating with themselves. It's kind of a unanswered question at this time. A particular co-op that likes to buck the system as much as possible took us to circuit court and ruled in their favor. We in turn appealed it. We won in appeals court. So now it's in Michigan Supreme Court. Whether they hear the case or not we don't know how that's going to turn out this time. We're hoping that the Supreme Court does kind of look at the appeals court and use that decision. We feel confident that they probably will. Most of our processors negotiate with us. They feel it creates stability in the marketplace. They know that one processor is not getting a product cheaper than their competitor is getting it for.

Overall, I'd say that most of our processors are more than excited about working with us. When we run into a situation where we're in disagreement with a price or with a grade with a particular processor most of our disputes are handled through an arbitrator. It is handled in our state level through the department of ag. We're hoping that we can sometime get it similar to what you have here in Iowa. The attorney general's office here in Iowa does have an agricultural department which is separate and if we can get this into the attorney general's office we feel we can get much more results in getting these disputes solved in a much more timely basis. It drags on and on and by the time a lot of our disputes with one particular processor

is settled, the crop is harvested and it's too late. We need more timeliness in accomplishing this but you have to understand that we negotiate for processing prices.

We do impact the fresh market also. If a grower has apples that they have taken to a packinghouse and their packouts are a little bit marginal; they automatically divert it to the processing market. The bottom holds the top. It always has and it always will.

Our organization has worked closely with Farm Bureau. Farm Bureau has a number of lobbyists that we work closely with and we've been able to acquire a number of things that helped eliminate the glut of product that we have on hand. One is we've been able to accomplish a number of USDA purchases through the school lunch program, the needy children, the prisons. There's a number of programs that the USDA has helped us along to help get rid of the number of oversupply. We recently were instrumental in helping with an anti-dumping suit against China. China was dumping some juice in here at prices well below the cost of production.

Our growers don't grow juice apples. You can't afford to grow juice apples. You would go broke if you did. But this by-product that comes off of our packing lines or whatever does help in alleviating some of our cost of growing. There are little loopholes in there that we have to watch out for. The USDA, of course, is the watchdog that is in charge of watching that. We have past histories of some of this juice can come in through other countries like Turkey. There's no way that U.S. apple growers can produce enough apples for the juice that U.S. consumes so it has to come in through importers. We just ask that it's on a level playing field. It's an expensive process. It did cost us a little over a million dollars.

Now that China is on the world trade organization we feel that if there is another problem this whole process is going to be a whole lot less painful in the past. Label of origin is another issue that we have worked on. If you ever grab a bottle of apple juice, by law they're supposed to have on there the country that this juice came from. There's been some problems with mislabeling so we've helped watch out for the mislabeled and sent it to the U.S. customs department. Fines have been handed down.

Our board is made up of 32 members. We took our state and divided it up into districts. The number of growers that are in our state is directly correlated to the number of members that are on the board. We have been successful in negotiating some of the highest processing apple prices in the nation. It doesn't mean we're getting rich by any means. We're experiencing difficult times just like everyone is in the nation. I guess it does show our growers that we are doing everything in our power to help

them and our organization has strengthened over the years. Our growers do stick with us. We're experiencing tough times in ag and all the different ag commodities that we're involved in but I want to encourage everyone to not give up and not throw in the towel. Help continue to strive for different solutions to keep us all viable.

Biography

Dick Walsworth and his wife Marcia started growing asparagus in 1968. Their operation now consists of 300 acres of asparagus, 400 acres of corn and small grains and 250 acres of alfalfa. Their son, Ryan, and his wife, Janice, joined the operation in 1993. His involvement in the asparagus industry has taken him to Washington, California, Ontario, Mexico and Peru. Dick has been a member of the Michigan Agricultural Cooperative Marketing Association, an affiliate of Michigan Farm Bureau, since 1972. He has served as chairman of the Asparagus Marketing Committee since 1985.

Speech

I thought I'd give you a little background about the Michigan asparagus industry. We were 22,000 acres. We're down now to about 17,000. With the advent of the hybrids we're producing more pounds on 17,000 than we used to on 22,000. We think we're pretty big toads but when you roll us into the national picture, California is the king. They're primarily a fresh industry. Washington is a close second. They're about split half processing and half fresh. And that leaves Michigan a humble 12%. Up until just recently, we are about an 85% processing industry and that's where our association has really been a value to us because that's been our niche. It was primarily just what we call can, cuts and tips. We're now moving into some spear business both frozen and canned.

We were born with a cut and tip business that really migrated to Michigan from New Jersey. New Jersey had an industry in the 1960's and 1970's. For one reason or another they had the Jersey decline with disease problems and Michigan was able to fill that void. We have been bargaining for price since the law came into being in the early 1970s. We have about 300 members. At one time we had maybe 400 but like all businesses the consolidation of growers is getting much larger. We produce as an industry 30 million pounds. We've got some million pound growers. We have lots of half million pound growers. So you can see that probably of our 300 members I'm going to say that 75 are producing 80% of the tonnage. We do

have some small family farm type growers. Our association represents 68% of the growers but 86% of the tonnage. So if a processor wants to buy from non-members he finds pretty slim pickings.

We're an affiliate of Michigan Farm Bureau. We're a sister organization to the apple division. At one time there was a cherry division, a grape division but we currently have two active divisions. Farm Bureau has been a plus for us in year's gone by. If you get into a scrap with a processor and you need some dollars or some help from mother so to speak, it's good to know that it is there. That has been a real plus for us. Like the apple division, we publish a newsletter. We collect assessments from growers. They pay us a 2% deduction. We can set that annually but the cap in our contract with growers is 2%. That's about where we're going to be this year. We look at what it is going to take to fund the organization and to build a little reserve and 2% will be our assessment this year. We have a hired executive director, Jerry Campbell, who works for us. We function with a 14-member grower committee that helps us govern our organization. This group gets together during our negotiating period and sets our asking price that we go to processors with.

In Michigan, we've got two production areas. One is what we call a northern or west central and one in the southern part of the state. We developed a mechanism for price discovery because we had about seven or eight processors that process and as all of you know that are in this business, they'll be seven different prices or seven different terms of delivery. Variation makes it very difficult to compare apples with apples. So the thing we were able to do early on is we established a grade standard. All processors use that grade standard. It's been in effect for 15 years or more, maybe 18 years, and it works. Once in a while somebody wants to tinker with it and we go back and say, "Guys, it works. Don't mess with it." And we've been able to keep that. That puts everybody on a level playing field when it comes to our pricing. Our industry grew. When we first began, processors fought us the first couple of years when the act came into being. It took a year or two to become accredited, when we stepped up and said, "Folks, we now represent the asparagus industry." We took the grower out of the loop. Processors can't negotiate price with growers. They do that with our executive director and usually a bargaining committee member or two.

The grower works with his processor on how many tons will be delivered. He can't go to them unless he wants to pay more than the association price. That has happened. Sometimes if we set a base price and the processor will go to a grower and say, "I've got a deal. I need some

oriented spears. I'll pay you five cents over the market if you'll orient them, if you'll do something additional other than just field 20-bushel box. So we set the base price, and it can't be lower than that. They can negotiate a higher price with a grower if they so choose. We've had a tough time. Al was talking about the picketing. I still have one grower member who I can't get to sign an asparagus agreement because he says, "You guys picketed me in 1964." He hasn't forgotten that. Some people won't sign even if you give them a \$100 bill. Our membership is voluntary. The law that we operate under defines a member in the bargaining unit. Any member who sells \$800 worth of asparagus at the first point of sale is a member of the bargaining unit. That would mean to me that he is a target for me and I want to get him signed up. You don't have to sell much asparagus to be considered at 60 cents a pound to be considered a commercial producer. When I give you that number there's some that we don't have, they may be selling \$1,500 worth of asparagus but still they're defined by the state bargaining board as a member of the bargaining unit.

The other thing the law does for us is that it defines a marketing period. For asparagus, it says we have to announce to our processors by March 15 our asking price, grade, and terms of delivery. Then he has a short period of time to use a provision, what they call an opt out, if he doesn't like what we presented or he just says we're not going to do asparagus this year. He sends a letter in and he's out of the loop. He doesn't have to negotiate with us. Then it allows us a 30-day negotiating period. If we can't agree, then we have last offer binding arbitration. By that we select an arbitrator. They pick a panel of five. We get to each throw out two and end up with one. We present to the arbitrator. The arbitrator has 20 or 30 days to give us his decision. His decision is binding. We all know that negotiation is better than arbitration. We had to use that provision probably three or four times in thirty years now. I think we have won 3 1/2 times of the four. One time the arbitrator split the issue. It was a grade and a payment issue and they're not supposed to do the deal that way. He gave us the grade and the processor the other half. So we won half of that. We've been very successful in arbitration but believe me negotiation is still a better way to go.

The law is implemented by a marketing and bargaining board. It's a board appointed by the governor. That board hears complaints and probably the weakest link in the Michigan law is the marketing board's enforcement. For example, we had a processor last year who decided that all asparagus brought to him was going to be a 90 grade which means a 10% deduct from the grower. Historically, field run asparagus will run 96 to 97. He just said, "Boys, if you're going to deliver to me it's 90. If you want better than that

then you'd better deliver somewhere else." Well, if you're a grower that doesn't have a choice, you were forced to deliver to him. We filed an unfair practices act against him. This took place in May. We had the first hearing in August and just a month or so ago they have decided that they're going to look at his records or they did look at his records and determined that he owes growers \$7,000 or \$8,000. We have spent more in legal fees to get that process that far. We could let him get away with it but you can't do that. You have to bring him to task. Otherwise, this spring he'll say anything that grades above 85 take somewhere else. It's one of those deals you can't win even if you win. But if you ignore you lose in a big way. You have to deal with it.

The shortfalls like any law, it's a little bit of a paper tiger when you start. The law says this and when you get challenged you put up the bucks to go to court to see if the law really says what it says in law. Parts of our law have now been tested in court and parts have not. It has held up, I would say, pretty well. When we went to court, we've done quite well. That's true with any bargaining law - no matter who drafts it or when you draft it - until you walk it through the court system once you aren't sure if the way you interpret the law is what you've really got.

We talk about short falls. One thing that the asparagus division has not done is we have not negotiated for tonnage. We've negotiated for price grade terms of delivery and down through the years that's just the way our growers have wanted it. They said let us make our deal with who I sell to. Most growers will sell to three or four different packers and maybe some of them five or six. They want that choice to float between different processors. So we haven't interfered with that. We don't bargain for quantity. We could go through this process and a processor could agree to the terms of the contract and buy one ton. That's never been an issue with us but it is one if you were starting over you might want to consider. I'm sure a lot of bargaining associations to negotiate for tonnage. In our case, we have been fortunate enough to have not quite enough to go around. Now that is rapidly changing due to the advent of countries like Peru and our neighbors to the west. Things are beginning to change. In a nutshell, that's what we do.

We have been, I think, very successful. We are thirty years old. I have been producing asparagus since 1968. There are three years that we negotiated contracts that I did not feel good about. When we got done, we had to sacrifice more than what I thought we should have. The rest of those years - there have been many a year that we have nailed the price and that's been the deal. We've got very little processor violation. I think part of that

record goes is that we have made a great effort to spend a lot of time and money educating our directors, our marketing committee. We have traveled to other parts of the country. You need to know when you're face to face with your processor or your bargainer that when he says, "You know I can do thus and so and I can buy it cheaper here," you need to know if he is telling you the straight skivvy or whether he's putting you on. And if you know the answer you can rebut him and win. I think that's been part of our success. Probably the good news is we've held the umbrella too high and the competition is now here and we've got tougher times ahead.

Biography

Ron Schuler of Sacramento, California, has served as president and chief executive officer of the California Canning Peach Association since July 1974. As president, his responsibilities include the overall administration and execution of policy established by the association's board of directors. His primary responsibility is representing association members in price negotiation and marketing of their production.

A graduate of the University of California at Davis, he received his Bachelor of Science in agricultural production and was with a processing and marketing cooperative in California and Wisconsin for 12 years before joining the CCPA. He also manages the California Freestone Peach Association with sales in canning, freezing, dried and fresh outlets and managed the Frozen Freestone Peach Council from 1989-1994.

He is past chairman of the board of the National Council of Farmer Cooperatives in Washington, D.C. and serves as a member at large of the California Cling Peach Growers Advisory Board. He is past chairman of the Agricultural Council of California, past director of the Canned Fruit Promotion Services and has served two terms on the USDA National Advisory Council for Commodity Distribution. He is the past chair of the University of California, Davis College of Agriculture & Environmental Science Dean's Advisory Committee. In September of 1992, Ron received the Award of Distinction from the College of Agriculture at U.C. Davis for his service to agriculture and the University of California. In 1999, he received the National Agricultural Alumni Development Association Award for services to U.C. Davis, a part of the land grant system.

He and his wife Laurie reside in Sacramento. They have three children.

Speech

I represent the oldest active bargaining association in the United States, the California Canning Peach Association. We were formed in 1922. We're 79 years old and four years ago we wrote the book, actually one of our past chairman actually wrote this, "*A Home and a Price.*" I'll spend some more time talking about that title.

The Canning Peach Association, as I said, is the oldest acting association but we emphasize that we're a cooperative marketing and bargaining organization. I put the word marketing in there because if you don't market the product, you can do all the bargaining you want and you're never going to be able to achieve a price that your people want. As I tell everyone, bargaining is 12 months out of the year. There is no such thing as just sitting down to negotiate with the organizer of the bargaining committee at a given time. You're constantly making the call. And I cite an example.

Many years ago I called on the Nestle people in Chicago and it was Libby's then that was actually doing the buying. As I was sitting in the Libby representative's office, he got a phone call from a tomato grower or organization in Indiana. I could tell during the conversation they were setting a time and had some discussion about pricing for the coming year. When he hung up the phone, he said, "You know, Ron, I only hear from that guy when he wants to set a date to bargain." If I could leave with one parting shot for the whole conference, it's that you have bargaining all the time. You have to know the business and what it means to get out there and understand it. We know how to answer the question because we've been there and done our homework. We represent 76%. Probably after the 2001 season we'll be above 80%.

Our objective, as most bargaining associations, is to enhance the growers return, seek ways to maintain industry profitability. We do that any way we possibly can through either contracting – negotiate prices with processors, negotiate terms of sale, government advocacy, supplemental marketing, and volume control (which we've utilized) and research. On the contracting side, we take title. We own the peaches, and we try to do it on term contracts. We've just negotiated with Signature Fruit Company, the one that's buying Tri-Valley growers. They are supposedly going to close today, maybe next week. The sooner the better. We've negotiated two up to five year contracts for all the peaches that Tri-Valley had except we went from a tonnage contract to an acreage contracts, which is what we have with everyone else. Those two year to five year contracts needless to say on the growers side, we've got a two year and he wants to know why he only got a two year and the five year guy he's happy. But we have title and it's my responsibility to try and make sure everything has a home. We are just

going to finish full bloom on Monday of this week. So that gives you some idea that we really don't know what size crop we'll have.

In terms of sale, there is a lot of money won or lost. We talk about how we must become more efficient. Well, efficient is what we can negotiate into the terms of sale. Sometimes it isn't always dollars. It's the size tolerance, the time of payment. The time of payment has been very critical. Time costs money as everyone is being squeezed. So in the negotiations and the terms of sales, we talk about grading and how uniform grading gives you a level playing field to start from.

I've had to go back for school lunch numerous times. School lunch is a means of taking care of not only feeding the children in America but also removing surplus in ag production and we've utilized it to the best of our ability. We also talk about government advocacy to make sure that the budget is there for school lunch. I had one Republican congressman really trying to limit government programs, who said it's my job to make sure that America feeds it's children. It's your job Ron to make sure they eat peaches. Two of our people were back in New York and Ontario this past week as we do out of state sales and ship fruit across the country. We do quite a bit of business in Ontario for DelMonte there.

We closed the Mexico plant down two years ago because of imports coming in from Greece and that is tearing us apart in the export arena, tearing us apart in our own eastern seaboard. Last year we had a tree pull program. We've used it four times in my 26 years. We pay the growers to remove trees. Negotiations are on a sliding scale by price and take some volume out and it generally reaches a point where hopefully we can get the price that we desire. Do we like to do it? No. Does the public like us to do it? No. Does the press hate us because we do it? Yes. So we don't want to do it. I lost one director this year because he just strongly believes we should just let it fall. But if you let the price fall with all of the input costs going up and the price going down, you're going to break more growers than losing that one director off the board by doing some volume control. So I say you have to do what you have to do to try and achieve a price that's necessary to save as many as you can. That's the role that we try to play.

Research – we've been really involved in new varieties. New varieties have been where we've probably made some of our biggest headway over a 20-year period and we have two new varieties out. One is very successful today and one is not so successful. We try to assist processors in new packaging. Many of you have heard about California and their energy crisis. Many of you are not too sympathetic from what I can gather. I don't blame you. We're not too excited about how we screwed up

out there either. But it's going to have a major, major, significant impact on our processing season if it's not resolved before harvest. We were talking to one processor who happens to be at the bottom end of a grid and basically the end of the line. We may have to help him put in generators and that's what I say is all necessary to try and make sure that we handled and marketed as much of that fruit as we can. Do I feel that I have to sell it all. No. I have a clause that says I will do my best effort to sell it all. The board believes that and we've been telling growers that if you plant without a contract, you are vulnerable to a different pricing arrangement.

We will pool – let's take the 12,000 unsold tons from last year's crop. If it's there in three weeks, it will be sold wherever we can possibly sell it and some of it may not be sold. The board reserves the right then to pay the grower who came out of contract through no fault of his own. (His contract just expired and nobody renewed it.) He will get paid differently than the grower who planted without a contract who is now delivering peaches off that orchard. Last time we did that was 1995 and growers are quick to forget that there were some real poor prices paid to those growers who had planted without contracts and they may see that again in 2001. I don't think there's any doubt in my mind at all for 2002 because in the last three years we have overplanted our industry far exceeding our marketing capabilities, especially with the Greek imports.

So we're going to struggle and have to deal with a lot of issues to try and put our best foot forward. I mentioned our 79 years. We've had four managers. I'm the fourth one. Not too far away from retiring but I'm the fourth one. It's been a job of good stability. I like to think that it's because we have built and maintained a strong relationship with the processors and have worked with them all the way to try and understand their problems. Hopefully, they'll understand the grower's problems.

Negotiations, it's always good to remember, there's another year. You're going to come back to the table and you're going to have to meet the same individuals over and over. DelMonte has been our key player. I've had nine different guys at DelMonte that I've had to negotiate with. On the structure of what we are, we're 700 peach growers out there. There are 560 of them or thereabouts in the Peach Association. We break the state down into ten districts. We have 51 delegates elected annually. We appoint 49 committeemen. So you can see there is 90 to 100 individuals out of 560 that we really have communications with to try and keep the communications going.

We have 24 board of directors. I do not consider that too large. You do have to worry about the 8, 8, 8 syndrome. Everybody will say what do

you mean by that. That's the eight guys that talk all the time, the eight guys who say very little and the eight guys who never talk. Just remember when it comes time for the vote, the eight guys who never talk will vote. Don't be misled by just the eight guys that talk. Find out what the eight silent ones are thinking. We have four committees on the board – management sales, grower relations and executive committee and then we have the staff, my position. We have a VP or a chief operating officer and we have three field offices and we have a staff of 13 people. So we function and try to sell as many peaches as we possibly can. Whatever that supply is and we may sell some to juice and I agree you don't grow it for juice because the price is terrible. But we may put some in the juice market.

Saturday, March 17,2001
Structuring a Bargaining Group

Participants: Randall Torgerson, Deputy Administrator Cooperative Services, USDA; Marvin Beshore, Attorney, Milspaw and Beshore – Harrisburg, Pennsylvania; Bill Courts, Burley Tobacco Growers Cooperative Association – Lexington, Kentucky

Biography

Dr. Randall Torgerson became Administrator of the USDA's cooperative program in 1975, then known as the Farmer Cooperative Service. He came to the USDA in 1974 as a staff economist to the administrator of USDA's Agricultural Marketing Service. Before then, he

was a faculty member at the University of Missouri-Columbia and helped organize the Missouri Institute of Cooperatives, serving as executive secretary from 1969-1973. He also helped form (and was executive secretary of) the Graduate Institute of Cooperative Leadership, University of Missouri, 1971-1974. As deputy administrator for cooperative services, Randy directs a staff of 43 people.

Who Are The Players and How Do They Relate

As a student of group action in agriculture and long time observer of organizational initiatives among farmers in the U.S. and Western European countries, I have observed a distinct pattern of memberships and organizational behavior used by farm operators. Simply put, there are two basic types of organizations to which farm operators belong: professional associations and cooperatives. Professional associations are membership organizations that represent farmers as an occupational group and their interests in the business of farming. They are associations of people. Cooperative on the other hand are businesses that are the off-farm extension of the farm firm in the acquisition of farm supplies and services and the selling of products produced on the farm. They are economic associations of farm firms offering farmers ownership and control of their product beyond the farm gate as a means of garnering higher returns commensurate with their investments in marketing (including value-added), the cooperative's performance and market power.

Ultimate success in representing the economic interests of the farm firm depends on a symbiotic and close working relationship between these two basic organizational forms. It takes coordination, mutual reinforcement, and a healthy respect for the functional roles of each type. Both need to be on the same side of the bargaining table. If relations are contentious, they can end up being destructive to the overall objective of enhancing farm incomes. If they are mutually supportive, they can lead to synergies, which maximize producers' influence in the market place, before Congress and governmental administrative bodies.

Professional associations are of two basic types: single and cross-commodity. We often refer to the cross-commodity associations as general farm organizations. They appeared first historically on the agricultural scene and are typified by the National Grange, National Farmers Union, American Farm Bureau Federation, and the NFO (to the extent that they are membership associations). As producers became more specialized they also affiliated along commodity lines to associate professionally and to promote generic products. Hence the presence of commodity associations

for nearly every type of commodity produced in this country. Examples are the National Corn Growers, National Wheat Growers, National Pork Producers Council, National Beef Cattlemans Association, National Turkey Growers Federation, California Tomato Growers Association, Raisin Bargaining Association, etc. Producers growing under piece-wage production contracts have also affiliated through associations like the National Contract Poultry Growers Association.

Speech

Membership in cooperative business is common for acquiring farm supplies such as fertilizers, crop protectants, feed and petroleum needs. Services such as artificial insemination, electricity, telephone, and farm credit are also provided on a cooperative basis. Cooperative marketing that includes processing and further distribution is also a vital means for farm operators to gain market and to build a consumer franchise for their products thus returning more income from the market place. It is uncommon for American farmers to hold membership in 8-10 different cooperatives depending upon the production mix and service needs of the farm firm.

It is typical that farmers belong to both professional associations and cooperatives. In fact, many cooperatives exist due to the catalytic role that professional associations played in fostering their development and growth. That phenomenon continues today largely through the stimulus of commodity associations encouraging their members to organize what are popularly called “new generation” cooperatives. Examples are found in the pork, wheat, corn and other sectors.

How Do Farmers Achieve Marketing Power?

When talking to farm groups, I like to use the analogy of a prizefighter to farmers use of these basic types or organizational structure. Each fighter (the farmer) has two arms that are used to strategically represent him in the ring. Farmers’ organizational arms are their professional associations and cooperatives. How effective they are in representing their interests is dependent upon how these arms are coordinated and finessed in duking it out in the market economy. Each is needed to win the fight for higher farm income from the market place.

There are two methods of achieving market power. One is through the horizontal organization of producers through their professional associations, and also the horizontal organization of cooperatives through

marketing agencies-in-common or federations. The second is vertical through ownership of value-added processing and distribution.

This conference is focused on the horizontal approach to representing farm interests, namely how can farmers better achieve acceptable (fair) farm gate prices and incomes. Professional associations play a fundamental role in articulating to society at large what is fair and acceptable treatment to them. This is done not only through representation of farm interests to state and federal bodies, but also in the negotiating process over prices for member growers.

The Sapiro school of cooperative thought, often referred to as the California model, first identified elements for horizontal organization of farmers. It was developed by Aaron Sapiro, a California attorney and one time Director of Markets for the California Agriculture Department in the 1920s. He advocated that growers should organize on a commodity basis with membership limited strictly to growers. Ironclad contracts would be maintained with members on a multi-year basis. He stressed the need to organize a large market share before contracts would take effect. The association would *hire and maintain professional management*, pool products and engage in orderly commodity marketing. This organization idea swept the country and elements of it have many applications to the organization of farmers for purposes of farm bargaining, both by professional associations organized on a commodity and general farm organization basis, and by marketing cooperatives selling raw or value-added products. In fact, the vast majority of cooperative bargaining associations and marketing cooperatives today are organized on a commodity basis. While a number of multi-commodity bargaining associations or marketing cooperatives exist, they are more the exception than the rule.

Recent efforts by tobacco companies to contract with growers and interest in marketing identity preserved crops has given new impetus to the horizontal approach to representing farmers' interests. These organizational efforts come in many forms in addition to bargaining associations and are often called guilds, alliances, etc. But the organizational purpose and approach is very much the same.

Bargaining associations are most prevalent in industry sectors where farmers contract for sale of commodities to processors. This approach is used less often for fresh marketing with the exception being in the dairy industry. Fresh marketers do, however, use horizontal forms of organizations, often organized as marketing agencies-in-common for market information exchange.

Examples of bargaining associations include the California Tomato Growers Association and Ontario Vegetable Producers Bargaining Association in row crops, Raisin Bargaining Association, California Canning Peach Association and Michigan Agricultural Marketing Association for vine and tree crops, and Manitowoc Milk Producers and DFA/NFO in dairy. These organizations play a critical role for members in contract negotiation with processors over price and non-price terms (before planting for row crops). This negotiated price often sets a benchmark for the entire industry in the region.

A gray area exists in determining the classification of professional associations engaged in negotiated pricing (especially those that take title to product) and marketing cooperatives involved in the elementary step of assembling raw commodities for sale to buyers. The differences become less gray as marketing cooperatives engage in value-added marketing of differentiated products including developing brand names for these products.

We can observe in many countries around the world and here in the U.S. that farm operators hold membership in both cooperative bargaining associations (professional associations) and marketing cooperatives at the same time. Each has its distinctive functional role - one for helping to determine farm gate value and the other to add value and return on investment from processing and product differentiation beyond the farm gate. Producer influence and market power is derived from effective use of each organizational type in representing the economic interest of the farm firm. It is important that farmers do not lose sight of this holistic concept of representation, and also develop institutional rules and structure to augment their interaction. Note that this classification differs substantially from Mike Cook's taxonomy of co-ops.

What Type of Structure Works Best for Negotiated Pricing

A direct membership organization (centralized) organized along commodity lines appears to work best for farm bargaining. As noted in the Cooperative Services reports on bargaining by Ralph Bunje and Gerry Marcus, there are several approaches used in representing members. Once, typified by the California Tomato Growers and Michigan Farm Bureau's apple and asparagus growers, provide that the association will serve as the exclusive bargaining or selling agent for members. Members are tied to the association through membership agreements that provide that the association will negotiate the prices and terms of sale of contracts between the member and the buyer. Title to the product remains with farmers until sold, not with the association. Members agree that they will not sell or contract for the sale

of their production except under the minimum terms and conditions established by the association. If they do sell outside of the terms negotiated, then there is a provision for liquidated damages against the grower member.

Another approach, used by the tree fruit associations in California, has the association taking title to the production of its members and then negotiating the prices and other terms of sale with buyers for the tonnage sold. The association typically operates one or more pools, diverts products to alternative uses as needed, and the average returns from the pool are paid to members.

In both cases, a key role for professional management is to develop marketing intelligence about industry conditions such as inventories, product movements, supply prospects (acreage and yields), and financial condition of buyers, i.e. facts needed for effective negotiations. Sophisticated economic models such as those developed by the late California Professor Sidney Hoos are used to target price levels based on these marketing conditions. Management plays an important role in educating board members about these marketing conditions so that reasonable demands are put before buyers, and not pie in the sky ones. This internal bargaining process with association members, as noted by Ralph Bunje, is one of the necessary but can be one of the more difficult parts of the negotiating process. Committees of the board are used in concert with managers, directly or indirectly, to then negotiate prices and other terms with buyers.

Specialty crop producer bargaining associations have been successful in Maine, Michigan and on the West Coast because their production is concentrated in certain regions due to climatic or other growing conditions. Enactment of state bargaining laws has also greatly aided the process. When products are grown over much wider regions, and even countries associated with the global economy, producer associations in those regions have often formed marketing agencies-in-common to serve as a means for associations to share marketing intelligence, and in some cases even joint pricing activity. Domestic examples include Central Milk Producers Cooperative (CMPC) for over-order pricing of milk on the Chicago order, and Cherr-Co for pricing tart cherries. On the international scene potato, tomato, nut and other commodity associations have formed marketing agencies or hold annual conferences to discuss market conditions in their respective sectors. This information exchange aids growers greatly in determining realistic price expectations, and also understanding the dynamics of markets and the major developments among buyers in them.

What has evolved in the California model in terms of inter-organizational relations is of particular interest. Cooperative bargaining associations negotiate prices with non-cooperative processors. The resulting prices and terms become the benchmark for the industry as a whole and often apply to nonmember (open) tonnage purchased by marketing cooperatives. The industry has the benefit of knowing price levels by grade and size at the onset of the packing season, as well as other terms of trade. Members of marketing cooperatives also have a farm gate benchmark against which they can measure the performance of their organization, which competes head to head with non-cooperative processors in the industry. Those members expect to receive farm gate prices at least equivalent to the negotiated price plus a return on their investment in assets of the cooperatives based on superior marketing of value-added products. Those cooperative members also have the advantage of having a market carved out for them, rather than relying on a non-cooperative processor that could exit the industry leaving growers without a home for their product.

A similar pattern of organizational structure and functional roles was identified in Northern European countries in the 1970s. In this case however, negotiations were carried out by the farmers unions (professional associations organized on a multi-commodity basis) under government policy determined in the 1930s. Marketing cooperatives in many cases had up to 100 percent share of the relevant markets. Producers were in a position to maximize their organizational presence in those markets by virtue of having strong farmers unions and marketing cooperatives working in concert to achieve effective producer power at the bargaining table.

Summary

This brief description of structuring for bargaining is much broader than that typically discussed because it encompasses the whole bundle of organizational activities by farm operators. This approach requires more study and evaluation with particular attention to building the institutional framework for negotiated pricing. A number of state laws have already accomplished this feat and farm operators have benefited from them. Creating the momentum for more comprehensive Federal legislation is necessary to further define the process and assist producers to assert greater presence at the bargaining table as well as increase the effective use of each organizational component.

Biography

Marvin Beshore is a partner in the law offices of Milspaw & Beshore in Harrisburg, Pennsylvania. He is an incorporator and past secretary-treasurer of the Agriculture Awareness Foundation of Pennsylvania. Marvin is a member of the American Agricultural Law Association, the American Bar Association, and the Pennsylvania Bar Association. Publications include “Chicken Integrators’ Price-fixing: A Fox in the Capper-Volstead Coop” which appeared in the South Dakota Law Review in 1979. He also wrote the Agricultural Marketing Agreement Act for Agricultural Law in 1982. In 1974 and 1975, he worked in the dairy division of the USDA as an order enforcement assistant. His law degree is from Georgetown University in Washington, D.C., and his undergraduate degree is from Dickinson College in Carlisle, Pennsylvania. Marvin lives in New Cumberland, Pennsylvania with wife, Anne Marie. They have six children from ages 11 to 21.

Speech

What I would like to do is attempt to go back to some of the fundamentals of the legal structures that we all work under at the present time. We need to be aware of and understand the potential that is there for developing C.l.o.u.t. in the marketplace for your commodities with the programs we have in place which, of course, begin with the Capper-Volstead Act. If I can just reinforce some of those fundamentals and provide you with some of the points that you need to be concerned with - whether you’re forming a new organization or whether you’ve got existing organizations and are working on your present programs - if I can just identify some of those points of importance, that would be my objective with you here today.

There are four points I want to discuss: Three topics which organizations need to pay attention to when organizing for C.l.o.u.t. and what legal issues farmer bargaining organizations will be facing in the future.

First of all, to have clout in your bargaining organization you have to be established under the Capper-Volstead Act. It is a very fundamental, longstanding point but absolutely critical. Without it, you have no bargaining rights; you, as farmers, are individuals in that marketplace, and purely individuals, unless you are structured to meet the qualifications of the Capper-Volstead Act under federal law.

Secondly, and this is critically important, is contractual clout. Randy [Torgerson] touched on this in a lot of ways. But cooperatives, producer bargaining associations, are no stronger than the contracts that you have with your members and with your customers. That’s what you are. You are the

contracts that you have in terms of your assets, your capital, and the contracts you have with your members and your suppliers. That is what you are and what you can bargain with and nothing more.

Third is organizational clout. Probably the toughest thing and there's no legal prescription but there are lots of issues that are critically important in terms of how your organization is set up. That's going to determine whether you stand as an organization, whether you hang together as a group or whether you fall or become divided or fractionated because of diverse interests in the group or differences within the group.

The Capper-Volstead Act, passed in 1922, is a piece of federal legislation. Why was it passed? It was passed because without clearer federal legislation (and there was a predecessor to Capper-Volstead) individual farmers' activities were scrutinized under federal antitrust law, the Sherman Act and the Clayton Act, the trust busting statutes that were passed in the late 1800s and early 1900s to give the federal government abilities to deal with the United States Steel monopoly and the Standard Oil monopoly and some of those large industrial organizations that evolved at the end of the last century. The Sherman and Clayton Acts treated, and still would treat, without Capper-Volstead, every farmer in the same way that the law treats Microsoft or Exxon-Mobil or General Motors or any other industrial entity. And that entity is one economic entity and each of you individual growers, ranchers and farmers are one economic entity. Without Capper-Volstead, you're treated the same under federal law as Exxon-Mobil. Capper-Volstead, however, provides an exemption from federal antitrust laws. The legislators at the time said this is to give farmers and ranchers the right to combine the same way corporate America does. And when you do, the individuals are not subject to prosecution under the federal anti-trust laws for price fixing or other activities that would otherwise be subject to anti-trust scrutiny.

Capper-Volstead does two things. It authorizes those horizontal combinations among producers that Randy [Torgerson] referred to, and it authorizes common marketing agencies among horizontal associations. So both of those authorizations are very important. That's the Act. I'm not going to read through it verbatim, but as federal laws go, it's not large. Section II of the act was attached in the way that legislation gets attached as a compromise to appease the non-rural senators and congressman who said, "Oh, we're creating a monster here. We don't want to give farmers too much power. We have to have a check and balance on this thing. They're going to come to the city and make us all pay too much for our food, etc., etc." So Section II says the Secretary of Agriculture has the authority to take action

against any Capper-Volstead association if it unduly enhances the price of any agricultural commodity. How many times do you think that's been used since 1922? [Silence] Enough said. It's on the books. It's probably got a committee at USDA. Randy might even be on the committee. But it's not something that we, as farmer bargaining organizations, have succeeded in invoking.

Okay. Who is under Capper-Volstead? What do you have to do to get Capper-Volstead status. It's right in the language of the legislation. You must be an association of persons engaged in the production of agricultural products as farmers, ranchers, dairyman, nut or fruit growers, planters, etc. It says that those individuals may act together in associations, corporate or otherwise. Now notice that the word cooperative is not in the statute and the statute itself authorizes getting together in associations, corporate or otherwise. You don't even have to be incorporated to technically have the coverage of Capper-Volstead - have the exemptions of Capper-Volstead. You don't have to be any particular type of association. You don't have to be a cooperative corporation. You can be a nonprofit corporation or any other sort of corporation and certain bargaining associations and other organizations out there are not cooperatives per say. NFO is one of them. It's a nonprofit corporation. The statute itself authorizes farmers to. . . "Prepare for market, handle and market" What products can be handled and marketed? Whatever products they're producing as farmers, ranchers, dairymen, nut growers, etc.

The second major authorization in Capper-Volstead is that associations may have marketing agencies in common. The agencies may make the necessary contracts and agreements to effectuate such purposes. Marketing agencies in common. They're a part of Capper-Volstead that probably has been under used. There are challenges in structuring them. You still have individual associations but Randy [Torgerson] referred to some of the ways or situations they can be effective.

The statute does have a couple of provisos, which are important, because they're qualifying provisos but they're not difficult to comply with generally. The association must be operated for the mutual benefit of the members as producers. It means that if you had an association that was a captive association being operated for some private benefit of a packinghouse and not for the mutual benefit of the producers, it probably would not qualify as a bona fide Capper-Volstead association. Also, there was a limit put on the extent to which capital could dominate the internal control of the association. The legislation says you can't be paying greater than 8% on capital if you've got any kind of weighted voting within your

association. So the practical effect of that has been to, as I see it, require cooperatives - Capper-Volstead associations - to keep their internal structure on a more democratic plane in the sense of closer to one farmer one vote (although that's not mandated per se). There are limits to which capital can be the base for return of economic value in the organization.

An additional, important limitation is that an association cannot deal in the produce of non-members more than to a greater value than it can of members.

What has happened since 1922 in terms of how Capper-Volstead's been applied in the courts? First of all, the United States Supreme Court held in 1938 that Capper-Volstead does not entirely displace the anti-trust laws. That is that cooperatives - Capper-Volstead associations - are still subject essentially to the anti-trust laws in the way that any other big corporation is or small corporation for that matter. An association is still going to be subject basically to the same rules that Exxon-Mobil is subject to under the anti-trust laws or that Microsoft or any other large corporation is but treated as one entity. The anti-trust laws are not entirely displaced. Important limitations: You cannot have any non-farmer members in the association or in positions that are controlling the association in distinction to the farmer and producer membership. This was determined again in an early Supreme Court case in 1938 in which the Borden company had been entangled with producer cooperatives in the Chicago marketing area and Wisconsin area. There had been some very collusive arrangements, which the Supreme Court held went beyond what Capper-Volstead was authorized to do. The cooperatives could get together, set the price for their milk, set up collective processing or marketing for that milk but you can't get in bed with the buyers in terms of deciding who is going to be able to buy the milk among themselves or where the buyers, Borden's on the buy side, have control of the marketing of the production in a decision making kind of way. There is no protection for predatory practices. Cooperatives do not have licenses under anti-trust, under Capper-Volstead, to prohibit persons who choose not to be members of the cooperative from having freedom in the marketplace to sell to other willing buyers of their products.

There have been a few cases over the years where cooperatives with strong market positions mostly in the dairy industry and a few fruit cases, entered into contracts which prohibited buyers with whom they were dealing from having anything to do with any non-members of the association. If you've got a market share at a certain level that is not necessarily going to pass muster under the anti-trust laws. You are not going to be allowed to tell truckers for instance that are hauling product for you that they cannot haul

product for anybody else if you've got a certain level of market share. Some of those kinds of predatory exclusionary practices are still subject to scrutiny under anti-trust laws. There is no exemption for any agreement with non-farmers. Any agreements with purchasing organizations or with non-farm entities are subject to review the same as any other agreement under anti-trust law. But voluntarily setting or fixing the price of your product is absolutely protected. We don't always think about this but we need to remember, Capper-Volstead absolutely authorizes producers of 100% of a given product to join together and voluntarily establish the price of 100% of that commodity. You are authorized to have an absolute monopoly in an agricultural product if it is done on a voluntary basis among farmers. There was an early case which involved the cranberry growers who had about a 95% plus market share at that point and the federal courts held that that in and of itself did not constitute any illegal monopolization in violation of the anti-trust laws so long as it was a voluntary association and organization of the producers involved. So you've got a lot of tools there now and I'm not saying that they do not need to be enhanced with any additional legislation or bargaining authorization but there are a lot of tools there now which authorize a very powerful bargaining position.

Besides Capper-Volstead when you're structuring your bargaining association you have to be aware of other statutes that provide particular privileges or prerogatives to bargaining association cooperatives. I won't go into them. I certainly don't know many of them in detail beyond dairy, which is the area where I've done most of my work. But federally, the Agricultural Marketing Agreement Act, which authorizes federal marketing orders involving milk, fruits and vegetables, has additional privileges which associations of producers can have under that statute. You need to be aware of as a bargaining group of all the options under federal and state marketing programs that may be available to you to enhance your position in the marketplace. There are other federal statutes. There are many state statutes including in California. There are lots of statutes in the northeast. We've got statutes in the dairy area in New York and in Pennsylvania and otherwise in the Northeast Interstate Marketing Compact. So you want to structure yourselves to take advantage of all statutes available including Capper-Volstead and other state and federal statutes.

Contractual clout. The basic difference between cooperative market power and industrial market power is that cooperative power is derived from contracts, and industrial power is derived from the ownership of capital. I can't emphasize this enough. The history of cooperatives under the antitrust laws has been that every so often when they get to a certain level of

influence in a given commodity, the non-farm sector in government says they're getting out of hand here. We've got too much power. These cooperatives have too great a market share. In the '70s the justice department had quite an anti-trust offensive against cooperatives. The basic thing that is misunderstood in my view between those who are not involved in the farm area and analyzing market power and market shares of cooperatives is that cooperative market shares and market power is just based on their contracts with their producers. You don't own the oil that's in the ground that Exxon Mobil owns. You don't own the pipelines as cooperatives. You don't own the rights to the software that Microsoft or whoever owns. All you have are contracts with farmers. Those contracts have duration. They can be terminated at any given time or whatever their terms are. The farmers come and go in terms of turning over their operations to the next generation or selling and going off into something else. There are many, many limitations to that market share which is not fully understood by those who are not involved in the agricultural sector including people in the Department of Justice in Washington frequently.

But your contracts are what give you bargaining clout. In particular, there are basically two categories as I analyze them, the membership and marketing contract. This is probably the most important document you've got is your membership and marketing contract in terms of structuring an organization for bargaining. It's got to be a contract in my view that gives the association essential exclusivity in respect to that member's product. Now there may be differences from product to product in various areas but if not, you don't have a lot to take to the table with the buyer you're negotiating with. The duration of the contract is important. Obviously the longer it is, the more clout you've got at the bargaining table, the more that you have to offer. Enforceability is absolutely critical, and there are two elements to it. Number one, what does the contract say about what happens if the member breaks it. Number two, which is almost as important, maybe even more important, is the association going to be willing to enforce those contracts? It's a tough thing for farmers - members of association - if their neighbor who also is a member of that association decides he's just going to walk away from his contract because he's got a sweetheart deal over here with a buyer of a product - it's a tough thing to go and enforce that contract. But your bargaining position is only as strong as the remedies you've got in that contract and your willingness to hold the membership to it. Termination of contracts is, again, just part of the nuts and bolts.

On the customer side then, this is the other side of it, to what extent are you able and is it worth while to have exclusive supply arrangements

with customers? You can do this when you're not in a very high market share position. Pricing formulas vary all over the place from commodity to commodity and area to area. But, your bargaining position, your bargaining clout is going to be measured by the extent to which your professional negotiating ability, your professional management can build into those contracts the value added that you as an association, as a group of producers, can bring to it such as premium service charges, handling charges, etc. The enforceability of contracts with customers is also an important issue.

Organizational structure or organizational clout. This again is incredibly important but incredibly specific to your organization or your group. What's going to work? A bargaining association is fundamentally a membership organization, which is going to live and die with the desires of its membership. How do you structure that association internally to have the right balance between absolute free democratic participation and an efficient business-oriented enterprise that can make decisions, make the right decisions and carry them out. There's no formula that I can have here and say this is the way you have to structure a bargaining association because the geographics of your memberships are all going to be different depending on the commodities. The size and numbers of the membership are going to be different. From area to area, your own personal views and the history of the membership in terms of what you're used to and what you're not are going to dictate what that is. But you've got to both be participatory so that the members are going to feel a part of and dedicated and committed to the enterprise but also efficient in a business way so that you can have that effective bargaining clout.

What are the future cutting-edge issues as I see them? First, who is a farmer? There has been some litigation even over the past, the broiler marketing case a few years ago. When does an agribusiness enterprise that is integrating backwards into the production sector become a farmer which has the same protections that all of us as farmers and ranchers do now? It's a question that's going to be presented in the courts again. In the broiler marketing case, the Supreme Court said there were broiler associations, which did not have sufficient ownership of productive resources at the broiler level to be considered farmers within Capper-Volstead, and the broiler marketing association was held to be a non-Capper-Volstead association. They had to reform its membership and get the bad guys out of there in order to stay within Capper-Volstead. It's going to happen in other ways in the future.

Second, joint ventures. What are the limits under Capper-Volstead of large cooperative enterprises combining in a partial manner with proprietary

organizations, Suiza Foods, which is the second largest milk processor in the country is partially owned by DFA, the largest producer marketing cooperative. They've got a 30% to 35% interest in there. It's not been an issue to date, and the Justice Department has approved it. But, at some point, those types of arrangements are going to present some questions.

Finally, common-marketing agencies. Dairy America is an organization where the cooperatives that process probably 70% to 80% of the nonfat milk powder in the United States have joined in a common marketing agency. Again, this is an association of associations to set the price of some of the marketing conditions of the nonfat milk powder. In the dairy business, that sort of thing has gone in the processing side. And there will probably be more to come.

Biography

Bill Courts is a tobacco, beef cattle and sheep farmer from Grant County, Kentucky. In 1995, the Burley Tobacco Growers Cooperative appointed Courts to the Board of Directors of the Commodity Growers Cooperative. They work to help develop markets for tobacco farmers trying to diversify their farm income. He is a ten year member of the Board of Directors of the Burley Tobacco Growers Cooperative Association, a five state cooperative based in Lexington, Kentucky, and is current president of the Grant County Farm Bureau.

A retired high school ag teacher, Courts has been actively involved in issues concerning contracting since 1999. In August of that year, the Burley Tobacco Growers Cooperative Association met with representatives of the Campaign for Contract Agriculture Reform during a board meeting in Ohio. At that time, the Tobacco Co-op voted to support the national legislation for fairness for farmers, sponsored by Congresswoman Marcy Kaptur. Building on this work, Courts dedicated many days during the 2000 Kentucky General Assembly, working to educate state legislators about tobacco farmers' concerns with the movement of tobacco companies toward contracting.

Courts and his wife, Jackie, live and farm in Dry Ridge, Kentucky. They have three children.

Speech

Since 1998, our two cooperatives, the Burley Tobacco Growers Cooperative and the Commodity Growers Cooperative, have been working together to better understand how contracting in agriculture has and will affect our

farmers across this nation. Your magazine has provided us with valuable information about this topic and we thank you for that role that you've played in helping us. In February 2000, Philip Morris announce that they were moving to contracting and we turned to people in other farm organizations that we had met - Dan Looker, Successful Farming; Steve Etko, Campaign for Contract for Ag Reform; and members of the National Contract Poultry Growers Association and with their input we have learned a lot about contracting. For what progress we have made in Kentucky and the other tobacco states, we thank those of you who are writing and talking about your experiences with contracting. We want to express our appreciation to you here today and we want to continue this relationship. We still very desperately need your help. Our experiences show us that we need federal protection for all of us.

What I'd like to do is tell you a little bit about our experiences in the tobacco states. In Kentucky and the four other states, our tobacco farmers are part of a 60-year-old cooperative that has worked to help maintain family farms on our farms for generations. All that may be soon lost due to contracting. All because one large corporation can pick and choose who will survive and who will not. What has happened to our cooperative and the farmers in our region is a good example of what can and will happen across this great nation. If our leaders don't sit up and listen; if farmers are not provided some protection at the federal and state levels from actions of large corporations to control family farms soon we will simply have no independent farmers. One or two large companies will control our entire food supply from producer to consumer.

Our cooperative has had to deal with one of those companies – Philip Morris, which is the largest food processing company in the entire world. They admitted before Congress that they lied about tobacco. Do we want them to be controlling the food system for the entire world? It is happening today and I'll tell you how this company has treated tobacco farmers and continues to maintain that they are our friends. First, you need to understand a little bit about the tobacco farming and the federal price support program and the production control program. Many people think that the federal government subsidizes the tobacco farmers. We are absolutely not.

Organized in 1941, the "pool", as we're sometimes referred to, has provided a stable burley tobacco market for its producers now in excess of over 150,000 members. This program by the way was developed after tobacco farmers had worked to market cooperatively together without any sort of federal law. But some farmers would move out of the cooperative because they got a better deal cut from some other companies and this led to

conflicts. Particularly in the western part of the states where barns were burnt and some farmers lost their lives. Out of desperation, our farm community leaders worked to bring the best cooperative experts in the nation to establish one of the most successful cooperatives as I view. A fellow by the name of Sapiro, which has alluded to today, from California worked with our tobacco farmers to come up with this program. Basically the system allows the USDA to set quotas that allocates the amount of tobacco each farmer can grow. A price support level is established for our producers. When farmers go to the warehouse to sell their tobacco, they either know that the company is going to buy it or they're going to go through the pool which is managed by our cooperative. If a company doesn't offer the price that the farmer needs, then our tobacco cooperative processes it and stores the tobacco until it can be later sold at a profit.

This system provides assurances for farmers that either way they can still realize some profit from their tobacco because of the program and the cooperative system. In fact, this program has made so much sense to folks, particularly with tobacco, that the public health organizations publicly supported the tobacco price support program and the production control. The tobacco farmers are not interested in kids smoking. Neither are they health advocates who have opposed the tobacco companies efforts to market tobacco kids. So in our interest to keep cigarettes out of the hands of children and kids and to eliminate you smoking, we began to talk with the health organization. And I might say this was quite controversial even among our members. Getting in bed with the enemy so to speak. They have understood the importance of the system and I'm talking about the health organizations. During a 1998 national debate on the master settlement agreement between the tobacco companies and the state's attorneys general, the public health organizations such as the Campaign for Tobacco Free Kids, the American Heart Association and the American Cancer Society have helped convince members of Congress that the tobacco program needs to be kept in place. This is in the best interest of the public and the farming communities. But also in the late 1990s, the tobacco companies began talking about a system of contracting.

So we began in 1998 and met with other organizations that were contracting poultry particularly. We had a representative from the national contract poultry growers association come speak to our board of directors which met in Ohio. We soon became convinced that if contracting took place in our tobacco country we would soon be at the mercy of one company. Eventually, this one company would contract only with the large growers and thousands of small farms, which had been sustained by three, or

four acres of tobacco would be lost. I personally raise five acres of tobacco. So let me point out to you that almost every tobacco farmer works to supplement their tobacco program or their tobacco income with other crops and farm products. In fact, our tobacco cooperative established a commodity grower's cooperative to help tobacco farmers diversify and prepare for a future that may not include tobacco. What we have learned so painfully is that it's not the tobacco crop that has caused farmers to be able to make a living on the farm. It is the program of price support, production control and marketing cooperatives. If we had that sort of system for all other farm products, farmers who would be able to realize an income. However, we don't and tobacco farmers can make a reasonable income from tobacco simply cannot withstand the uncertainties with any lack of any cooperative marketing structure for their products particularly tobacco.

When Philip Morris announced that they were moving towards contracting tobacco in February 2000, our general assembly in Kentucky was in session. We learned how much a powerful corporation could demonstrate even when we have 150,000 members who might be hurt by the contracting. We tried to get legislation passed which would establish a bargaining system in tobacco so that farmers would be able to negotiate a minimum contract and the company would have to offer this minimum contract to all farmers large and small whether it was contracting or whatever. The governor of Kentucky, our state attorney general, the Kentucky commissioner of agriculture and the various health organizations in the state supported our proposal. But it never got introduced the way we wanted it to because other farmer organizations opposed it and the tobacco companies opposed it. So eventually we got legislation passed which required our state tobacco task force made up of legislators from both the house and senate to study the effects on contracting on small tobacco farmers. The tobacco companies went on the defensive and set out to show what a favorable situation it would create for all farmers.

During the past year, they created the best possible situation for farmers who were contracting. They offered contracts to small farmers as well as large farmers. They sent every farmer who was contracting a Christmas basket expressing their appreciation in their partnership program. They also established receiver sites that were highly computerized, efficient and impressive. They made statements to the public about their support for the tobacco program. In reality, we as tobacco farmers we knew that what they were doing in essence was trying to destroy our program. We suspected that through contracting that they planned to eventually lower the price of American tobacco to make it more competitive on the world market.

They have established tobacco farms in Africa, where they worked hard to have a farming system that they can control from top to bottom. And they did it well. They convinced most legislators on the tobacco task force that contracting was the best thing that could happen to tobacco farmers. They beefed up their public relations work with the press and the public providing stories about how much farmers like the system of contracting.

This issue has divided many of our tobacco farmers in the state because now they are saying to these tobacco farmers that if you do not contract with us, that some day down the road when there is no program we will not offer you a contract. The tobacco task force came out with a report that said that contracting was working well with farmers large and small alike. They convinced legislators that farmers could benefit through the contracting system. So in other words, let's don't do anything. So when the State Attorney General came out with the Model Producer Production Act, we once again approached our Attorney General to endorse it, and he did it. And this got the attention of Kentucky Farm Bureau who had been studying the situation with contracting after they originally opposed our first legislation. So we began to work with Farm Bureau and the Kentucky Department of Agriculture and other farmer organizations.

The Kentucky Farm Bureau developed a policy at their state meeting of supporting state legislation, regulating contracting in all commodities. We developed a piece of legislation that would have provided very minimum standards but even that got defeated even before that was introduced. The tobacco companies had convinced several of the other commodity groups to oppose any legislation that regulates contracting. So some of our friends and legislators retracted a simple plan, a simple resolution. That's all it was was a simple resolution which would have required the federal government to have inspectors at the company's receiving station and to collect fees from them just like it's done at the warehouses. And through this system the contracted tobacco would have to be inspected and would have to support the program through a fee system. The companies opposed it, and it wasn't even enacted. This was the only resolution. It was not a law. And it wouldn't have been sent to members of Congress if the state of Kentucky had supported our federal program.

So the chairman of the Kentucky House Agricultural Committee tried to pass a bill, which would have simply done another study of the impact of contracting on agriculture across the board on all commodities. The Kentucky Senate stopped this. It wasn't even considered. We're now trying to get something established through Congress that would keep the tobacco program in place with contracted tobacco but what we really need is national

legislation requiring some sort of bargaining or negotiating process which will level the playing field just like Marcy Kaptur has proposed. The Burley Tobacco Cooperative is on record as supporting Congresswoman Kaptur's legislation and I personally testified at the congressional hearings on that topic in Ohio this past year. And we are on record in supporting state and national legislation, which protects producers in contracting situations. All producers of all products because what is happening to tobacco farmers in a system, which has kept small farmers and production since our grandfathers were kids will be gone forever.

We need you today to contact your members of Congress and help our situation. We need you to mention tobacco farmers when you're visiting the USDA. I'm not going to touch the part on the President's Commission because I have it out there on the desk. A report will come out in the first of May. So support your state legislators when they consider state contracting legislation and it's important to include a bargaining piece. Having contracts that are understandable and open, that's just one part of the puzzle. The most understandable contract in the world does not level the playing field when you've only got one or two companies to deal with. Look at what is happening in tobacco. The contracts are fairly understandable but the playing field is way out of balance.

Having a process to help farmers understand the contract is a good thing but it's not the important piece. We must have contracts that level the playing field. We are all in this together and we will support you and we've already tried to do this through supporting Representative Kaptur's legislation. In fact, many in the public health community will support you because what one company that controls tobacco – Philip Morris – is also the largest food processor in the world. They own Kraft and they own many of the companies that process your products as well. If it's happened to us, it will happen to you and we appreciate any help that you might be able to provide but we particularly need you to mention tobacco farmers whenever you talk to members of congress. If a group of tobacco farmers can reach out to the different health organizations, then surely all farmers across this nation can reach out to other consumer groups for help.

Saturday, March 17, 2001
Tips on Bargaining – Panel I

Participants: Tom Butler, Michigan Agricultural Cooperative Marketing Association; John Welty, California Tomato Growers; Brad Wade, Ag Guild of Illinois; Vernon DeLong, Agricultural Bargaining Council of Maine; Gene and Darlene Ferguson, NFO Grain Programs

Biography

Tom Butler is the manager of the Michigan Processing Apple Growers' Division of the Michigan Agricultural Cooperative Marketing Association (MACMA), which is an affiliate of Michigan Farm Bureau. Tom has worked for the organization since 1973. Tom received his Bachelor of Science Degree in biology at Grove City College in Western Pennsylvania. He also received a Master's Degree in botany at Syracuse University in Syracuse, New York. Tom previously worked for UniRoyal Chemical Company as a technical representative in sales and field research and development for ten years. He worked on fruit and vegetable crops in New York, New England, and the Mid-Atlantic States as well as Ohio and Michigan. Tom has worked with growers across the country on various apple industry issues including successfully obtaining country of origin labeling on concentrated apple juice, research funding for fire blight, and most recently, the Chinese apple juice concentrate anti-dumping case. He has successfully negotiated apple contracts for the 750 apple grower members of the Michigan Processing Apple Growers each year since 1974.

Speech

I think bargaining is like selling and every situation is different, every commodity is different, every state is different. The attitudes of growers in one part of country are different from that in another part of the country. But I think there are some ingredients that an association ought to have that allow for effective bargaining and if you'll bear with me here, my opinions are that you have to have a strong membership – an association with a strong membership.

In our case, we represent 750 apple growers in Michigan. That's the majority of the industry. They're loyal members. We have a very small turnover of membership. That's the number one ingredient. You know I hear a lot about bargaining legislation and we need a license to be able to bargain but we can't do anything without a strong membership. We had to build our organization to be able to use some bargaining legislation that was passed in Michigan back many years ago. We've kept the association strong ever since.

The other thing that is often times overlooked, you must have an association that is also financially able to do what needs to be done on behalf of the grower community of your membership. Many associations think they can hire good employees without paying them very much and they think they can operate without assessing themselves much money. I don't believe that. I think it's important that an association is able to lobby on your behalf when that's necessary, to go to Washington, D.C. and visit Capital Hill whenever the need arises to lobby USDA for purchases. It used to be with USDA many years ago business was all done on a handshake basis. You could go down there and visit with the fruit and vegetable people in our case that were in charge of purchasing on a handshake basis. You could sell millions of cases of product and that isn't true anymore. Those people in Washington only operate according to how much political pressure is applied to them. Unfortunate but true. You can't do any of those activities unless you have a strong financial position.

You also need to have a strong Board of Directors. The growers have to be in charge of the operations of the program. They have to hire management and other employees. But the growers have to be in charge of the program. It's their program, and they have the ownership. So many times with cooperatives, the management in my opinion, they get out of control; they lose their perspective and just who is that they're working for? If you're going to keep a strong bargaining position, the management can't ever get out ahead of the grower community. They have to stay right with them, step by step. I think that's 100% important.

In our group, during the late summer or spring, prior to apple bloom, we try to know economically what's going on in our business. We try to know more about the business than anyone else, including the processors. We educate ourselves throughout the season as we lead up to bargaining in the fall. We are, in fact, the experts of the industry. The statistical book that we put together each year is used by the industry all over the U.S., and we're proud of that. It enables our growers, our elected growers, to make the best decisions possible – the informed decisions that they need to make when it comes to price recommendations.

We tour producing areas in many parts of the country. We have a formal meeting of our board, and we announce our intentions to the industry well in advance of harvest time what our intentions are price-wise. Our objective is to arrive at what we call a true market value for the crop. Not what a processor says it is or what an enthusiastic group of growers decide they deserve. It's what is the true market value. I haven't had many

economics courses in my life. You can see on my credentials that I have a degree in botany. I did have a course in economics.

An old German Professor said, “the market price is the price that people are willing to pay.” Not what they say they’re willing to pay, what they’re willing to sign their name on a dotted line and pay. That’s what we’re looking for. Supply and demand is all part of it but it’s not all of it. I get so tired of listening to people talking about supply and demand because supply is only what people think it is and demand is only what people say it is. It may be altogether different than what you read. There are so many opinions; so much leverage is used to create impressions that can affect price.

Many years ago I managed a small group that negotiated a contract with Vlastic foods and it was for the kraut cabbage tonnage that Vlastic foods grew each year in Michigan. It was a classic one on one arrangement for an annual crop and it was for quantity, and price and quality and all the things that you negotiate or that it’s possible to negotiate when you’re dealing with an annual crop. Many of the growers sat in on the negotiations. I guess I spoke for them and there was a tremendous amount of discipline that was exercised on the part of those growers when they had an undelivered speech to give, they didn’t give it. That’s probably the most deadly mistake that can be made in bargaining is to have a group that lacks discipline sit in front of a buyer and have all the opinions of the people in the room come flying off in various directions. Believe me, it’s nightmarish if you end up with the lowest common denominator. Whatever the lowest thinking is in that discussion, that’s what you’ll end up with. That’s one type of bargaining is this classic one on one for the annual crop.

For our apple deal, we have a perennial crop and we don’t negotiate quantity with our processors because quantity is by chance in the apple business. One year you can have a very good crop and weather conditions the next year can create a situation where the crop is quite a lot smaller. What we negotiate is price and other terms of trade with the processors. They then sign agreements with the association. The negotiations go on with individual processors. We don’t do any negotiating with processors as a group. For one thing, their needs are different for different varieties of fruit, for different products, and so forth.

The growers allow me to speak for them in the bargaining process with processors but believe me they have the final say. Al Dietrich, who is the chairman of our apple group, is here. We have 32 elected board people to deal with on our board, and we’ve learned to live with that. We have subcommittees carved out. A bargaining subcommittee that handles the

bargaining that I'm in touch with almost on a daily basis during that period of time we're making a price. Then that group goes to the entire board and recommends a price to settle. And it seems to work well.

The other thing we do when dealing with several processors (and several meaning about a dozen) we go for the strength. We have friends in the processor community and you better take care of your friends first. And you better let them help you make the market where you think it ought to be made. So you for them, you don't go to solve the most difficult tasks first. You save them. You go with the people you can trust. The other thing that I've learned in the bargaining business is, and I love to talk about a lot of different subjects, and I do that with the processors, but never lose sight of your objective. And that is to get the most amount of money out of the crop that you possibly can.

Timing is everything in the bargaining business and if you have a good deal in front of you, don't hesitate to cause that to happen. I think it's important with associations to have some mechanism devised where they can settle prices right now. I mean within a day without having to deal with some sort of a cumbersome process of going to the entire membership and figuring out do you like it or don't you. That good deal won't be there when you come back and look at it two days from then.

The other piece of advice that I would give you is that in all of our industries there are cooperatives that emerge. I'm talking about processing cooperatives. You can come up with many a different reason to not deal with those people just let them sit out here because after all they only return to their membership the money that they make and everything. You better make certain that they're part of that whole bargaining process. If you don't, they'll destroy all the rest of what you have put together. If you just allow them to sit back and sell below the market, and it happens every day, in this country. We try to make the cooperatives act just the same as the private companies. We've gotten away with it for a lot of years and I wouldn't trade that concept. I know when I go out to the national bargaining conference every year, I've been saying you need to bargain with cooperatives. Especially university faculty disagrees with that. Well, how can you do that? Well, you just do it that's all. You just do it. Those are cooperative members of ours, and they want to be represented at the bargaining table. You can't let their company take them for a ride either.

Biography

John Welty is executive vice president of the California Tomato Growers Association, Inc., which he joined in 1984. He is past chair of the Future Farmers' Foundation, Processing Tomato Foundation and the National Committee of Cooperative Agricultural Bargaining and Marketing Associations. He is currently a member of the California Agricultural Leadership Associates, and serves the Speaker of the California State Assembly on the Agricultural Cooperative Bargaining Association advisory committee. John is chairman of the National Association of Growers and Processors for Fair Trade, and a delegate to the Agricultural Council of California, the National Council of Farmer Cooperatives, and the World Processing Tomato Council. While at U.C. Davis, he worked for California Research Consultants analyzing and tracking legislation that would have an impact on agriculture. This experience led to his appointment as legislative director of the California State Grange, the state's oldest and second largest general agricultural organization. John also successfully managed the family's 300-acre almond ranch for 23 years and has served as a visiting lecturer at California State University, Stanislaus. John's Bachelor of Science is in agricultural economics. Continuing his education, John earned a Master's Degree in agricultural economics from Utah State University in 1971 and returned to U.C. Davis, where he successfully completed post-graduate work in agricultural economics. He and his wife of 26 years, Susan Willey Welty, also raised in Modesto, have two children, Anne, 20, and Elizabeth, 23.

Speech

I'm the executive vice president of the California Tomato Growers Association that has been serving growers for 54 years. The growers produce 95% of the U.S. supply of processing tomatoes and 40% of the world supply. I think contracts are becoming a staple in the agricultural production and marketing system with one-third of the crops and livestock production and 40% of the U.S. fruits and vegetables production in 1997 being contracted according to the latest statistics by the USDA. That's more than double the amount of commodities produced just a decade ago. Contracting is here. It's growing. It's a very critical part of our production system. I love the saying by Neil Hamilton, "Why own the farm, if you can own the farmers."

First we had market contracts, where the price for the crop was set before it was produced. The farmer retained ownership of the crop and any resources it took to produce it right up to delivery. Then we saw production

contracts, where the processors maintained more control of the production from beginning to end including seed variety, ownership of the crop once the seed was in the ground, harvesting and hauling. Now we're seeing risk sharing contracts. That, in fact, becomes a way for risk to be shifted with the momentum tilted against the farmer side of the equation. Lynn Hayes, an attorney for the farmers legal action group says, "Right now, these contracts are written so that farmers have either to take them or leave them. Maybe it's time for farmers as a group to take the second option. Farmers can just say no to these contracts in general until they can get the power to negotiate better agreements." Now, I really think that this speaks a lot to why we're here today.

With the limited time that I have available, what I would like to do is cover the five points where Bargaining Associations add value to growers trying to set a price. The first item of the five is the growers gain a sense of market power. What does this mean? We hear it a lot. Basically, the weakness of growers is that we're many small producers and we're dealing with very large and powerful buyers. When the bargaining laws went into effect in the '20s, this was a major concern. It was at a time when the U.S. was experiencing rapid economic expansion. Companies were getting powerful and yet there were still a large percent of the population on the farm. It was widely recognized by Congress that there was a disparity in the market power. So Congress provided an exemption to the anti-trust laws to say that growers could freely join together to be able to gain a measure of market power equal with processors. I would maintain that the degree of market concentration is as acute or worse than it was in the 1920's. I believe there's a greater need or as much need now as there has ever been for growers to join together in order to try and gain equal footing at the bargaining table and I'm sure there's a lot of you that would agree.

It is important to understand how Bargaining Associations function. The California Tomato Growers Association, for example, does not take title to the fruit. We act as the exclusive bargaining agent for our members. So growers join together to increase their bargaining leverage in the industry. The Association has a contract with its growers wherein growers agree to only sign contracts approved by the Association. The grower also has a tomato contract with the processor. What happens is the processor goes to growers early in the season and says they'd like to have you grow next year. The grower says fine and when any discussion of price or terms-of-trade comes up, the grower directs the processor to his Association. Processors can talk with growers about varieties, tonnage and delivery times but not

price and terms-of-trade. The agreement reached between the Association and the processors is memorialized in a Master Agreement.

I'm sure you've read these contracts that have been prepared by the processors without any input from growers. It is hard to believe anyone in their right mind would dare sign one of those things. They are written totally to the benefit of the processor, 110%, without a doubt. They're scary to read. A Master Agreement on the other hand is a negotiated document that addresses those aspects that are of the most concern to growers and to a certain degree allocates the risk between grower and processor. We address such things as delivery schedules, deducts, rejects, canner remaining open and, of course, base price, quality incentives, payment schedules and premiums.

In the broadest sense, the contract requires processors to take every ton contracted for, and, of course, growers are obligated to deliver those tons as well. The Association provides this contracting service without taking title, further processing or handling the crop in any way. Our dues are 17 cents a ton, so on a crop value of \$50 per net ton that works out to be .0034%. The dues are paid directly to the Association by the processors from proceeds due the grower. You can see that the growers' investment or cost to be a member of a Bargaining Association is minimal. What makes the Association work is growers working together to increase their bargaining power.

The second item that Bargaining Associations afford growers is a control of timing during the Associations. Timing is critical. As you know during your crops cycle there are times when the grower has more leverage and there are times when a growers' leverage to obtain a fair price is decreasing. We had one processor who was actually advocating that we set the price during harvest when the crop was ripe in the field and ready to go to market. That's when we would be absolutely the most vulnerable. When you'd put \$1,800 an acre into tomatoes and they're red and ripe on the vine, there's no bargaining power at that juncture. So what we try to do and what we're somewhat successful in doing is moving that timing into a more neutral time period. So we begin our negotiations in November/December. Planting starts in California as early as February. Once the seed goes in the ground our position becomes somewhat weaker. So the controlling of the timing is a critical factor. By having an Association, there's a responsibility by both parties to conduct themselves in a fair manner. In a sense, we're operating in a court of public opinion. In other words, neither party can be unreasonable or get out of line and that's what we rely on to a great degree. The processors in our state have an obligation to bargain in "Good Faith",

which means they have an obligation to meet at reasonable times to try to overcome our differences. So if we ask for a meeting, they have an obligation to accommodate us. In certain cases, they may wish to hurry things up or slow things down depending on the circumstances. But having the Association involved allows some control of the timing in the setting of the price.

The third area where Bargaining Associations provide value to the growers is market intelligence. This activity in a large part leads to price discovery. How do you discover the price? It's the real value of the Bargaining Association. The Association researches and studies all of the factor inputs and market conditions that affect a growers' ability to be profitable. Then we do the same for all the factors that affect our processors' ability to be profitable. It is critical that we understand the concerns of our customers, the processors. It's a very comprehensive list of information that we're continually gathering. If you think about, and the way I view our Association is that we're a service organization and what we have of real value is information. The more information we can bring to bear on the question of the price the more service we're providing our growers. It's an ongoing business and every year we go back to revisit the issue on how we can do a better job in getting information and communicating it to growers. Marketing intelligence is a critical part of the value that a Bargaining Association can bring to growers.

The fourth is securing a home. When growers attempt to negotiate their own contracts they tend bargain away items of considerable economic value to secure a contract and a base price. It is perfectly understandable - having a home is of paramount importance. What the Association brings to the table is the ability to maintain important terms-of-trade, which it evaluates in conjunction to the base price and other provisions. It's very easy to overlook the value of having a foundation of industry standard terms-of-trade to assure that all processors in the industry are playing by the same set of the rules. It does provide a tremendous amount of stability.

The fifth area that really brings value to members of the Association is that we close the deal. We sign contracts. As you know, if you're one-on-one, you may come to an agreement but actually getting the deal closed and signed may drag out. In some cases, it may only be verbal and never get signed or there may be some other complications. We have the ability to actually sign the contracts, ink the deal and insert the price and terms-of-trade into the grower contract. Every year we publish a price book that shows a summary of all of our contracts. Processors take comfort in the

Association's transparency, being able to view the contracts of their competitors and establishing an industry price.

One last thought I'd like to leave you with while I've got a minute is to urge you to support Agricultural Fair Practices Act reform as proposed by Congresswoman Marcy Kaptur. California, Michigan and Maine are very fortunate to have state bargaining laws that require "Good Faith" bargaining, provide for a dispute resolution mechanism and have enforcement provisions. Those of you that produce crops grown in multiple states needs national bargaining legislation that provide for the same basic rights that we enjoy in California and I urge your involvement. Thank you.

Biography

Brad Wade currently farms 4,300 acres with father, Harold Wade. They grow 100% high oil corn, seed beans, and high-isoflavone soybeans. He's been a member of the Ag Guild of Illinois since 1998 and is currently vice chair. Brad is also a member of the Central-Illinois Fiber Cooperative. He and wife Kristy have two children, Amy, 14 and Jacob, 11. Brad graduated in 1985 from Illinois State University with a degree in agribusiness. He graduated from Illinois's ag leadership program in 1992.

Speech

My negotiating skills up to a few years ago were going to the local co-op and trying to pry another couple of cents out of them on the basis for a bushel of corn. That was the extent of my negotiating needs for commodities at least. A lot of the people in our area kind of got sick of that lack of clout and that's where the Ag Guild idea came from – banding together, joining together so we would have some bargaining power.

Currently, there are 54 members in the Ag Guild of Illinois. We have an aggregated acreage allotment to our board of directors of about 10,000 acres out of that group. That's something that the Ag Guild has. It's unique I think. When you sign on to be a member, you're giving that management board access to 200 acres of your farm or 20% of your acreage whichever is less. That management board has until March 31st to find a home for your acres. After that time, you can do with it whatever you want. We're not going to go out and grow up asparagus or apples or something that is not indigenous to what we're trying to do right there. It's going to be a corn or

bean project more than likely but that gives us the ability to go to a processor or to answer a need.

We were getting phone calls as individuals saying we need 10,000 acres of STS but we don't know who to call. We'll have a big farmer meeting. We'll get everybody and try and convince them to do this. Then they have to go convince their wives and their landlords and it's a long process to get that done. When the first STS soybean contracts came out a few years ago we ran into this. This time of year we were having farmer meetings trying to get farmers convinced to grow STS beans for 20 cents extra. It really was a hassle for the processor, the end user, the farmer and for everybody involved. So that's how the Ag Guild got started.

As far as negotiating goes, we all negotiate every day many different things. I'm negotiating right now with my wife over my son's birthday present. She got him a bird feeder for his birthday and I'm coming out here to Iowa State University and what am I going to get him for his birthday. She says well, get him something to go with the bird feeder. So we're negotiating back and forth. I want to get him a BB gun. We're working on it.

I have a little bit different background than these guys. I'm a producer writing my own contract also representing a lot of my neighbors and relatives – think that's tricky. My father-in-law is involved. My wife's uncle is involved. My wife's other uncle is involved. My dad's involved. So it gets a little tricky. We started off from scratch three years ago with a blank piece of paper working with Protein Technologies Incorporated, Cargill and our local FS co-op. We worked around the table, sitting down. The end user needed a soybean that was naturally occurring in high isoflavones. "We want you guys to figure out which beans those are and then grow them for us." Identity preserve them through your local co-op using their storage, using on farm storage, using commercial transportation, and using the local mill. Cargill, luckily, is located right in Bloomington which is in the middle of our growing group, and shipping that stuff to Tennessee to their mill. We had a blank sheet of paper to start with it and it took forever to get that thing signed. I'm talking six months and a lot of meetings. We learned a lot in that process.

First thing, we did not have a track record. We were a group of guys banded together, formed an LLC, espousing our great wonderful farmers in McLean County. We could do anything. Well, prove it. First year's contract was worth about 25 cents a bushel premium on a graduating scale depending on the level of isoflavones. We had no knowledge base of what their price parameters were. We didn't know what isoflavones were worth

to them. They might have been worth \$100 a bushel to them and we didn't know. So that's been a process. You have to know what your customer is able to do with the product you're producing in order to be able to bargain with that. At the end of the day, I think somebody said you want to get the most you can for your commodity. In a bargaining situation, I think I need to get the maximum amount of dollars that my opponent is willing to give me when he first steps in the room. Anything less than the maximum that he is willing to put down there, I didn't do my job. I didn't extract that out of him.

Case in point, we've worked with two different processors on isoflavones. The first round of negotiations, a friend of mine went to St. Louis to meet at their corporate headquarters. There were two of us and there were three of them. Bad mix. We were on their home turf. We were outnumbered and it made a difference. Not a huge difference but you get wore down and if we're working one on one with each other and I'm by myself, your fellow negotiators could be discussing a point kind of to the side keeping me occupied and I've got to think on my feet what are they talking about and what am I talking about with you.

If you're at least even one-on-one, that's the best situation in the room. You need to know ahead of time when you're talking about contracting, how many people are going to be in the room, where is the room going to be. That negotiation didn't go as well as I thought it could have. Second time we had a negotiation with another processor, it was on our turf. They were 400 miles from home. They were outnumbered five to three. Deal went wonderful. By 5 o'clock, boy, they were really wanting to get home and they just capitulated. "Oh, fine all right, you can have the nickel." Now maybe there was a dime there to get and we didn't know it. But it made us feel good about it anyway. So you have to take your victories where you can get them.

Some basic things if you're a farmer group just starting or if you haven't been negotiating for contracts, I think it's important to look the part. If you're dealing with a corporation, as much as I hate to say it, wear a suit and tie. Don't wear cowboy boots and denim to negotiate with a corporate person because they're going to look down their nose at you like it or not. Market knowledge – knowledge is king. You've got to know where they're coming from as far as their process and what they've got to give you. We're still working on it. Our goal is to have market transparency. We want to give them knowledge base about our growers and our farms and what we can do and in return we want to know what their processes are, who their customers are, what their customers want. We're trying to make the pie a

little bigger for all of us. We're not trying to eliminate our local elevator. We're not trying to eliminate Cargill by building our own mill to do this kind of thing. We only use the pieces in places that are already there.

You've got to know your customer as well. Know your opponent. Know yourself. You've got to know what you're really able to do. You can't overstep your bounds. You can't promise things you can't deliver or you're not going to be at that table next year. We've been there too. Promised some things that maybe we shouldn't have promised and the customer wasn't very happy with us.

I got the one nugget from this conference that I was looking for from Ron Schuler of the Peach Growers' Association yesterday and that is negotiations take place year round. I knew that but I didn't really know it. He gave an example of a fella that called on the phone to his processor only when he wanted to negotiate a contract. He said that guy only calls me when he wants something. Don't let that happen to you. Be in touch with your customer year round even when you don't need anything. Keep that line of communication open and head off problems before they happen. Stay ahead of the game. Don't be outnumbered. Home field advantage. Be willing to give up terms that don't matter as much. Negotiation is a two way street. Their job is also to pay you as little as you're willing to take. That's why it's called negotiation. It's give and take. So go to the table with something. For example, we know we want six different months delivery period. We know we want November through May delivery periods every month. Well, we may not be able to get that. I guess we're willing to take four but let's don't tell them that up front. You've got to have something you're willing to give up as well. Patience – like I said, they can take six months. Ideally, it takes an afternoon. Now subsequent years, we didn't have a blank piece of paper to start from. The negotiations aren't taking nearly as long. We have proven that we can do what we've said.

In a couple of circumstances, our contracts are getting better. This year our contract is with 45 and there's a little plum out there that they've got an incentive if we can reach an ultra high level of isoflavin, it's worth another 20 cents a bushel. It's the first time we've been able to get out of them that if we can have an actual super high isoflavone bean that it's worth a lot more to them. That gives us incentive to do research. To do more determination on our farms – This sloping field has more isoflavones than this flat field or this soil type is better than that field. It's giving our group an incentive to look for what that processor is wanting.

The last thing is perseverance. If you don't get what you really wanted out of that contract, do the best job you can with what you're

working with and use that as ammunition next year to try and get a few more cents out of them. Work together to make them more profitable in the process as well.

Biography

Vernon DeLong was born on a potato farm in Maine. He spent four years in the U. S. Air Force. He started growing potatoes in 1966 and farmed for 32 years. He became executive director of the Agricultural Bargaining Council in 1990 after serving as director, secretary/treasurer, vice president and president. (His term as president was for 1988 & 1989.)

He was president of the Agricultural Bargaining Council when the Binding Arbitration Law was enacted in Maine. He has also been involved with the Potato Marketing Association of North America for more than 15 years and is the current secretary. He has worked with the Pacific Coast National Bargaining Association for 11 years. He is director now, but also served as president in 1995 and 1996. He's president of the Fish & Game Club, president of the County Farm Bureau, a Maine Farm Bureau state director, and has been on his local school board for six years - two years as vice chair.

Speech

I've been involved with the farming game for 30 years or better. I've been involved with bargaining for 20 of that 30. I came up through the ranks of a bargaining association. I enjoyed it, but understood the consequences of it and the pitfalls that go along with the job. I assumed the Executive Director's position of our bargaining association 11 years ago and it's been a full-time job from that point on. Bargaining is a year round commitment. You work at it every day with the processor. We have an agreement with our processor that I can unexpectedly show up there at any time and I do.

I've got the farmer habit. If you were used to getting up at 5 o'clock in the morning you will do that. I usually open up the office of the building I work in and I usually close it up. It's a hard habit to get out of. A lot of times, when I'm on my way to the office, I really don't go there, I go to the processor. I am the buffer between the grower and the processor. That's part of what the negotiations and the bargaining associations are worth to you. You don't have to face the processor if you've got a problem. My phone rings from a member and he says, "Gee Vern, so and so is going on over there." I have the ability to go check. I check in and visit the field department and monitor the receiving area. I can check the equipment to see

what is happening. That's important but it's also important because I'm always visible. That goes on year round and you have to have that. Anytime you don't have that ability then you are at a disadvantage.

To get prepared to go to the table you've got to know your product, you've got to know your contact, and you've got to know the people you're taking in the room with you. You better take a committee that has some backbone. They will soon figure out the weak link in the chain. You better have one spokesman and you don't all get into a discussion sitting there across the table. That time comes when you adjourn and have your own caucus. It's the only way that it will work. Personalities become very important in that game. You've got to be able to read who is the boss on the other side of the table. Have you dealt with him before or do you have a background on him as to where or what makes him tick? If you've got that, you've got a leg up. You need the history of your bargaining commitment over a period of years. You've got to have the history of your contract.

You need to have good people sitting with you. I love to take one gentleman that I have on my bargaining committee. We get chastised as negotiators for taking the same people to the bargaining table year after year. You need new people but you do it slowly. You are limited to the number of people you can have. There's a rule, an agreement on how many you can bring and how many they'll have. You give them a list beforehand. To short your ability by taking people off of that committee who have a history and know the players, you are taking away a card that you need to have in your hand. I have a gentleman on the board that usually sits to my right. He's a mathematician. His mind works like a calculator and I love him because it doesn't make any difference what they throw at you, within two minutes he'll have it calculated and tell what it will cost you. All I have to do is listen to him, just lean over. If you were to replace him on that committee, you would hurt yourself. But, you take criticism for keeping him there. These things are important.

Completion date to get this done was very important. There's a sequence in our system. We have binding arbitration so there's a date you have to have it done and there's mediation and there's good faith bargaining and so the first thing you do is set the ground rules. In our case, it's quite easy after the first one. You have it done on the anniversary of when you signed the last one. That's what the law says.

You've got to be credible. It better be workable. Know your costs because they know your costs. They'll fight you on that if you make a mistake on it. You can have pages and pages of costs but if you go to arbitration or you really get down to the nitty gritty, they'll pick out one item

that you made a mistake on and that's going to be the problem. Once they've got that, they've got you so you're not credible. So credibility in dealing with them and in your numbers is of utmost importance.

You've got to keep the processors on equal footing. You can't cut a deal with this processor and take on another processor and give him a lesser treatment. You can make all the changes in the contract you want to make - terms of delivery - you can do anything you want. You can put the emphasis anywhere you want but when you get it figured down to the bottom line, it better be equal because if it isn't, they'll make it equal for you. Because the higher one will come down to that level and you can't stop it.

Another thing that I found out over the years that has to happen and growers don't like this but I have members that say, "We think you should bring that contract back to the growers for approval. Have a grower meeting." We've tried it and it was a disaster. The people who do that and make it work - God bless them. I don't know how to do that because inevitably there will be two or three people in that crowd who will get on the floor and when it gets all done, they'll vote it down and send you back to the table where you know you haven't got a chance. Then while you're fighting about that, they'll go and offer to grow it for that price or less. We've been there, done that.

Our negotiating committee is made up of a committee of the board but it doesn't necessarily have to be. We can use any member on that committee. But when that committee reaches a tentative agreement, we call a board meeting and the board has the authority to make the decision and we ink the contract. We do it with the board of directors. It's the only way we can make it work. The longer you wait, the less chance you have of holding the deal together. These are some of the things that are hard lessons learned over a long period of time. They come with a lot of history.

I'll give you one more tip. If you ever get into binding arbitration and you know going in when you start at the table there's a chance of going to arbitration you can pretty much read it. You know basically where you're headed. If you've been astute in working with that processor over the years and you know what the other processors are doing around North America, and we have to look at it on a North American basis, you know when you're out of sync with the rest if you've got a better contract than your counterparts in Washington, Oregon, or wherever it is and we're in northern Maine. You know that the company has its mind made up that you're going to sacrifice something because of the company's sister plant somewhere else is getting it for less. You better have an ace in the hole when you go to

arbitration because in arbitration you're going to come out a winner or a loser.

My experience is always keeping a situation on the table that the arbitrator would find it most difficult to deny. Keep it visible because as you go through the process, whatever is still on the table is part of the final offer. Maybe you give that up if you get the agreement on the end, but if it goes to arbitration you need it to win the case with. It's just one little thing that over the years you learn.

Biography

Eugene and Darlene Ferguson farm near Mound Valley, Kansas. Gene has lived on the family farm his entire life except for five years he spent in Wichita, Kansas. There he attended Wichita State University and graduated in 1972 with a business degree. He and Darlene moved back to the Mound Valley area to farm in spring, 1974. They have two grown children, Chad and Kelly. They have a 2500-acre grain operation with wheat, soybeans, corn and milo. Gene is state treasurer of Kansas NFO; Darlene is the county NFO president.

Speech – Gene Ferguson

Collective bargaining is not a new term. I think a lot of people think it is. But a lot of you know that it isn't. It's been around for many years. My family is currently in their 40th year as NFO members. We came back to farming in 1974. It's done a lot for us. We have a mostly grain operation in southeast Kansas.

We kind of represent what I call the bread and butter crops out here in the country. The hard red winter wheat, soybeans, grain sorghum and corn. These are crops that are raised all over the country by hundreds of thousands of producers and there's about that many places to go to sell the grain and that many buyers around. True, there's just a few buyers actually out here at the final end but there's a lot of places to divide people. So we started with NFO's national help coming up with some programs that would help us in the community.

We've got what I call a cluster around my county in southeast Kansas. We've probably got 30-35 memberships in my area that market grain through NFO. In the state of Kansas, we have clusters around the state. NFO is more of an organization that works from local membership. They don't have a lot of paid staff. It takes a lot of money to keep people out there, and they have to work with local members to help gain membership in

the organization and keep people interested. So across the state we have probably ten clusters and each cluster will represent two or three counties in the area. When we can, we market our grain as a whole throughout the state. A lot of times we can't. We'll market it with this cluster idea in mind.

We have regular monthly meetings in our county, and we usually have 20 to 25 people in attendance. We sign up the grain that needs to be sold and we set target prices that we'd like to attain. I'm a firm believer in forward contracting. I like to forward contract at least a third of my crop before harvest and then we'll market the rest of it throughout the year. Any time we feel like we can get a cost of production out of our product, we'll start forward contracting. Our grain committee discusses what we want and this is something you have to plan ahead for. We get the grain together. We know what we're going to plant if we haven't gotten it planted or it's something that we're growing we know what that is. We get an idea of how many bushels we've got to market and the price that we would start selling for and work from there so that when the market gets there, we're ready to go with it. There are a lot of times the market will go up in a day and by the end of the day it's back to where it started or lower. In the meantime, maybe you've had a chance to gain a dime. Well, there are times when that dime looks pretty good. My wife, Darlene, has examples of some sales that we've made over the past year.

Speech – Darlene Ferguson

Gene and I both feel very lucky that NFO has provided us with the education, the tools and the flexibility to sell members grain in our area because we're the ones that are out here and know our markets, the basis levels, what our members preferred delivery time is, and what they have. That works out very well for us.

For example, some of our 2000 new crop sales from a year ago February are that we sold wheat for harvest delivery at \$3.00. The average price, this is for hard red winter wheat, was \$2.96. That wasn't a big gain but at least we had a gain on the books. When you get to the other three grains we sell, it is really amazing what a difference this has made. We sold grain sorghum in March of last year. The problem with forward contracting is that we have so many farmers who say, "Well, I haven't even planted it yet." I've heard from several of these men here today that, first of all, timing is everything. Second, that bargaining is a year round job. You don't wait until your tomatoes are ready to come off the vine. You don't wait until your wheat is ready to come out of the field to market your grain. So in March, we sold grain sorghum for \$4.11 per hundred weight. At harvest, it

was \$3.14. So we gained almost a dollar there. Then you add our LDP's onto this, and we ended up with about \$4.77 per hundred weight for grain sorghum.

A lot of you may not be that familiar with grain sorghum so here's a good example on corn. We don't raise a lot of corn in our area, but it's becoming a little more popular since we can't seem to raise soybeans anywhere. We sold on May 3rd of last year, corn for \$2.63 a bushel for harvest delivery. Our average price in the area was a dollar less than that at harvest and by the time you get your LDP on that, we had \$3.11 bushel corn. Now we didn't get that for all of it but that was a start. On May 3rd, we sold soybeans for harvest delivery for \$5.74 a bushel. The average harvest price was \$4.87 in our area. That's almost another dollar. By the time you get your LDP on top of that, we were looking at \$6.82 beans.

But the interesting story is the market that bought these beans called me when we were just about ready to deliver them. He said, "Oh, I need to talk to you about that Darlene." He said, "We're not taking beans this fall." I said, "What do you mean? We have a contract for \$5.74 to deliver these beans in October/November." He said, "We'll buy your contract out. That's not a problem. All you need to do is figure out what you're next market is, the difference between what you sold for \$5.74 and the other market, which is pretty close and we'll pay the difference minus a ten cent contract cancellation fee." There were several members involved in that. I was furious. I was smart enough to get off the phone with him. I called Pete Lorenz, who is one of our regional grain-marketing managers at NFO. I asked him if they could do this. Can they charge us ten cents a bushel when they cancel the contract? He made a call to them, and the next time I spoke to that particular grain bargainer, he was as sweet as pie. We never paid a ten cents cancellation fee. My point is that it is important that your bargaining organization is there to support you.

I've always known that forward contracting has worked well for us. But two months ago we had a fellow member who lives four miles from us, whose been active in the program for ten years, and we were talking about how farmers need to organize and bargain together now. He said he realized that if he hadn't joined NFO and learned these programs and used these marketing options he didn't believe he would be farming today. He said his banker didn't think he would either. That made me feel like maybe we are making a difference. One farmer may not have very much leverage with these grain bargainers. It's very important to have a good relationship with your bargainer just like some of these men said. Most of the people that I deal with when I sell grain, admittedly we're not all happy with the big guys,

but most of the people I deal with are people just like us – hard workers. If you have a good relationship with them, it can make all the difference in the world.

Speech – Gene Ferguson

Most of you probably heard Congresswoman Kaptur speak last night. I thought she gave a moving speech. She did say a lot of things and part of it was about the concentration in the markets. She used some examples in the different markets. Grain is no different. The grain is eventually controlled by three or four big, major companies. They're going to be around, and there's only one thing they understand and that is bargaining power. We've got hundreds of thousands of grain producers out here. Each one can't go in and negotiate a price with them. They're going to laugh at you. The name of this conference is CLOUT. You put your clout together. You take 100,000 farmers and put them in a room with some of their people and it's going to have an impact.

Saturday, March 17, 2001

State and Federal Bargaining Laws

Participants: Noel Stuckman, Michigan Farm Bureau retired, Michigan laws; Vernon DeLong, Agricultural Bargaining Council, Maine laws; Randall Torgerson, USDA Cooperative Services, federal

laws; Steve Peck, attorney, Hanson & Bridgett – San Francisco, California – California laws; Steve Etko, Campaign for Contract Agriculture Reform Policy

Biography

Noel Stuckman is past general manager (1971-1990) of the Michigan Agricultural Cooperative Marketing Association (MACMA). Before that, he was manager of the market development division for the Michigan Farm Bureau for 21 years.

He has a Bachelor of Science in agricultural economics from Purdue University and a Masters of Science degree in agricultural economics from Michigan State University. He also worked as both a graduate assistant and research economist at MSU in the department of agricultural economics. He owns his own family farm in Elkhart County, Indiana, and other farm properties in Clinton County, Michigan. Noel lives in a restored farmstead on a farm near Dewitt, Michigan.

Speech

I'm Noel Stuckman from the Michigan agricultural marketing association. I've spent a career in agricultural marketing and bargaining. I've seen some old friends and a lot of new people. I'm grateful that you're interested in learning more about this whole area of agricultural marketing and bargaining, and I hope I can contribute a little bit here with a few comments.

As a farm boy in Indiana on a general farm, we marketed our commodities in a lot of different ways. I really started farming with my father and also independently back as a teenager. We had a dairy herd and the milk went to a local co-op. We had hogs that went to a local independent auction. We grew potatoes and onions that we marketed directly to consumers and a lot of them came right out to the farm because Stuckman's potatoes were the best anywhere and they couldn't live without them. We grew cabbage and other vegetables for processing – under a contract with processors and it was on a take it or leave it basis. We had no say so in the price just whether we wanted to grow it or not. As a kid, I grew pickling cucumbers under contract with the local broker on the same thing, take it or leave it. I started out growing broilers in a 5000 birdhouse around 1950 and that was really large. I happened to be located in northern Indiana where the broiler industry started. The growers were independent people. Most of us of a German background and we took risks.

We adopted the new technology and learned how to raise broilers on a large scale and fight the disease problems. The local veterinarians and the breeders came up with meat type birds. The veterinarians provided the service and that's where the broiler industry started and pretty soon how do you market. We used a local auction. Actually, I went off and sold to a buyer in Chicago who sold the birds direct to consumers who moved up from the south. They were used for chicken dinners and started with a live chicken. I produced for that market and made a lot of money. It soon dried up as iced broilers came on the market and disappeared. So what was left. A contract that gave me little opportunity to make very much money. I could see I was going to be working for wages. So at that point in time, I said well, I'd like to go off to college. So I went off to Purdue and ended up in a career in ag marketing with a lot of experience.

In 1960, Michigan Farm Bureau decided to get into marketing and bargaining. There was a lot of interest in the state and a lot of growers, fruit and vegetable growers primarily. We had a fairly large processing industry in the state and started organizing bargaining associations. They had a tough time. A few guys get together and come up with an idea and you get an association. It's legally organized. It's trial and error and they weren't really going very well. One of my first jobs in 1960 was working with several of these associations that were struggling and I could see the advantage of forming a multi-commodity marketing and bargaining association. One umbrella organization with the various commodities organized with their own membership and marketing agreement. They have their own elected marketing and bargaining committees and staff working across commodity to get some efficiencies and to share expertise and the like.

Of course, we visited successful fruit and vegetable marketing associations, particularly those in California. We got a lot of good ideas. We spent a lot of time and if we're going to do it, we're going to do it right. So in 1961, Michigan Agricultural Cooperative Marketing Association commonly known as MACMA, was organized and launched. We used attorneys, set it up legally to operate under Capper-Volstead act and under our state cooperative law. We came up with the membership and marketing agreements, legal documents that the members would appoint the association as their exclusive marketing and bargaining agent. They agree to abide by the terms of the contract, agree to pay marketing service fees - processors could deduct the fees from the proceeds paid to the producers. It was pretty much, at that time, a state-of-the-art cooperative marketing and bargaining association. Went out and signed up members fairly

successfully. The old rule of thumb at that time where you've got a large number of growers, a third of them are joiners, a third of them are non joiners and then you've got the third in the middle that you have to convince. And if you're doing a good job, they'll join and become good members.

So you can see that you can fairly readily get 2/3 of the growers out there and they elected their marketing committees and went off to talk to the processors. The staff and committeemen, at that time many of the processors would talk to us. They didn't really want to bargain with us but many of them would refuse to recognize and negotiate with us. That was despite the fact that we would have a majority of the commodity of the producers that they bought from. Some processors discriminated against growers because of their membership in the association. Most of the processors refused to deduct the marketing service fees. So what we ended up with was spending a lot of our time collecting fees from our members to keep the association going. Back in the middle '50s we supported the enactment of the federal agricultural fair practices act – S109 at that time. We were disappointed that as that bill was finally enacted into law that it didn't contain a provision that negotiating in good faith be included. That to us was extremely important and processor opposition knocked it out of there. So there was still nothing to require the processors to negotiate with us. It wasn't even an unfair practice.

I'm sure that the existence of the law reduced the number of processor activities designed to reduce our effectiveness. It had some value. It became obvious after several years that national farm bargaining legislation was needed. We worked closely with other bargaining associations such as American Farm Bureau Federation and other organizations to secure the enactment of national legislation. But that moved slowly so we took the initiative to get state legislation. We were successful in getting the Michigan legislature to enact a state farm bargaining law in 1972. We spent a lot of time drafting the bill. We spent almost two years. We talked with everybody who knew anything about the subject, had meetings, ag economists, and on and on. What we came up with was a comprehensive bill. The idea was that we would have everything in there that was needed for effective bargaining. Although we had some advice and they would say oh, you'll never get it through the legislature, you start small and you keep adding to it through the years. Well, we decided to go the other way. We would start big and if the opposition was such back off if necessary. We were in hearings and so forth.

Everyone who bought what farmers sell opposed us. Out of every agricultural commodity industry led by the Michigan Canners and Freezers

Association and their lobbyists they really came out hard against it. But the thing we had going was a powerful state senator, Senator Zoller, who comes from southwest Michigan, a major horticultural area. He was an industrialist, a republican who knew the processors by name and he just determined that this legislation was needed and used his influence frankly to get it enacted into law and we didn't have to back off very much and we got our comprehensive law enacted.

The Michigan Agricultural Marketing Bargaining Act commonly known as PA-344 was based on the exclusive agency concept and that would eliminate the free rider problem – the non members benefiting from the activities of the association, getting the same prices, terms of trade without paying the association fees. It required also that processors negotiate in good faith with accredited associations. Provisions for arbitration to make negotiations meaningful were included and several of the MACMA divisions have operated under the accreditation under the state law for more than 25 years. This has occurred despite processor opposition and processor initiated litigation in the state courts. Processors couldn't beat us in the state legislature so they were ready to go to the state courts as soon as anything happened. Our asparagus division was the first one accredited, and "bam", they had us in court right away. And it slowed things up and several accreditations got sort of suspended temporarily but it pretty much moved along. It got all the way to the Michigan Supreme Court who remanded it back to the local circuit court, hearings and to get more facts, and stuff like that. But in the end, the Michigan Supreme Court by unanimous vote upheld the constitutionality of the act.

The court also ruled that PA-344 was not preempted by the Federal Agricultural Fair Practices Act and that was one of their main contentions. The Michigan Food Processors Association then appealed the Michigan Supreme Court's decision to the U.S. Supreme court contending that certain provisions of PA-344 were preempted by the Federal Agricultural fair practices act. The U.S. Supreme court decided to review the decision of the Michigan Supreme court and the case attracted national attention. We had other organizations, other bargaining associations that supported us there. Briefs by the California Tomato Growers Associations, apricot producers, olive growers, council of California Raisin Bargaining Association, Prune Bargaining Association, American Farm Bureau file an emeritus cretori, on and on. Of course, the National Food Processors and our Michigan Food Processors Association were on the other side. Kind of interesting but this law became effective in 1973 and finally, in 1985, 11 years of litigation in the state and federal courts, the U.S. Supreme court ruled that PA-344 is

preempted by the federal agricultural fair practices act only to the extent that PA-344 allows for the exclusive representation by MACMA members in bargaining for the sale of commodities and the payment of fees to MACMA by non-members. Exclusive representation of both members and non-members and the payment of fees by both members and non-members. What they did is they ruled that we couldn't represent non-members and we couldn't collect fees from them. Everything else in the law was held intact. That was a consideration because it put the entire cost of negotiation and everything on members. The exclusive agency bargaining concept is based on those who benefit help pay the cost. We were back to members supporting the effort.

Let me talk a bit about the law itself. As I said, it's comprehensive. I won't go through all of it but agricultural commodities are covered. It started out all agricultural commodities in the state. Well, that was one of the things where it backed it up to perishable fruit and vegetables. There's a whole list of crops that are eligible to receive accreditation. It's administered by a five person agricultural marketing and bargaining board appointed by the governor with the consent of the senate. The requirements are no more than three shall be in the same political party. Two of them have to be producers. One of them has to be a lay person who is neither a producer nor a processor or anything to do with agriculture. And in practice then although not required in the law there has always been at least one processor appointed to that five-person board. They really make the decisions on accreditation and so forth. They operate within the Michigan Department of Agriculture and MDA staff work with them. There's a list of unfair practices that's more extensive than the Agricultural Fair Practice Act. There's eight of them that apply to handlers and I won't go through them. But interestingly enough there are five unfair practices that apply to associations to keep associations in line that they don't do some things that are really unfair in this whole process. So it's in there both ways.

Bargaining units. This is really important. A bargaining unit is defined as "the commodity, the area that it's grown in the state, the size of producer. There's a minimum size producer that leaves out the hobby grower and the like. The bargaining board upon petition by an association sets this bargaining unit. Then the association of that growers can apply for accreditation. There are certain requirements that they have to meet as far as being a democratic cooperative and electing marketing committeemen and so forth and so on. But the key one is that the association has to have at least 50% of the producers in the bargaining unit who grow at least 50% of the commodity. And the state department of agriculture bargaining board is

responsible that they ask the processors for the last three years who did you buy from, how much did you buy from them. And they are compelled to submit that information. The association submits the member names and lists. The department of agriculture matches that up and generally, if the association has at least the majority of both growers and production, they will receive the accreditation but they have to meet the other requirements.

Good faith bargaining is defined in the law. It's fairly commonly understood. You might think that's a problem because it's nebulous, but there's a wealth of legal precedent in both state and federal labor legislation that really defines good faith bargaining.

There's a provision for mediation. If the parties want a mediator, but in 25 or more years that the law has been operating there's never been one case because there is a provision for arbitration. The arbitration is the final offer selection process. The bargaining board sets a first day of the marketing period. It's generally a little before harvest of asparagus or apples or whatever occurs or in contract vegetables it's a point that the contract should be agreed upon so there's time for contracts to be offered to the growers and signed and so forth and so on. But if the accredited association and the handler are not in agreement by that date it automatically goes to arbitration. Each party submits it's final offer. The way that that is handled is that there is a three-person arbitration committee established. One person representing the association, one person representing the handler and the third person either agreed to by those two persons or if they can't come up with somebody the agricultural marketing/bargaining board gives them a list of five names and these are generally professional arbitrators. They are members of the American Arbitration Association.

And so it's a striking process. The association can strike two names. The handler can strike two names and the one remaining is the chairman. They meet, hold a hearing, get all the information and it's really in the chairman's hand that has the swing vote. He or she has to decide whose offer is going to stand. There's a winner and a loser. Nobody likes that. Handlers don't like it. Associations don't like it. You don't want to come out of there a loser. So what has happened in many times is that the arbitrator will allow the two, the association and the handler, to change their final offer to the same amount and the good arbitrator really works hard to make that happen. It doesn't always happen but in some cases it's happened. There's been I don't know how many arbitrations that have gone all the way to an award by the committee. I've lost track. I know Dick Walsworth in his talk yesterday he remembers three of them. In apples, there's a bunch of them. Kraut cabbage we've had them and on and on and

on. Maybe I'd estimate 25 arbitrations through the years. In my view, you've got to have it in there to make the bargaining process work that 's set up in the law.

Otherwise, you get into this stall thing and crops have to be harvested or crops have to be planted and once that happens particularly from the growers standpoint, you are in a weak position to bargain. You're dealing with a biological process. That's what this law is designed for. A biological process. A certain time things have to happen and if it doesn't that time doesn't occur until another year. We deal with perennial crops in vegetables. We've dealt with annual crops, same thing. It's still being challenged in court from time to time. We have some processor that doesn't like something or other. In recent years, it's sort of how do we deal with the processing co-ops who some of them don't like to deal with the association although we have a lot of members in common and they don't want to commit to paying their members a certain price. They argue well, we're a co-op and we operate on the co-op principle. If we can't at the end of the marketing year can't afford to pay the price we shouldn't be forced to. Since we have members in common we shouldn't be bargaining with ourselves and so forth and so on. Sometimes we've had problems with processing co-ops. Other times we have a good relationship with Pro-Fac, which is a major one in the state. It's Pro-Fac Agri-Link now. We've had litigation and we've had our difficulties but we got that worked out and we have a good relationship going now.

It's doable, and I appreciate the opportunity of sharing some of our experiences with you.

Biography

Vernon DeLong was born on a potato farm in Maine. He spent four years in the U. S. Air Force. He started growing potatoes in 1966 and farmed for 32 years. He became executive director of the Agricultural Bargaining Council in 1990 after serving as director, secretary/treasurer, vice president and president. (His term as president was for 1988 & 1989.)

He was president of the Agricultural Bargaining Council when the Binding Arbitration Law was enacted in Maine. He has also been involved with the Potato Marketing Association of North America for more than 15 years and is the current secretary. He has worked with the Pacific Coast National Bargaining Association for 11 years. He is director now, but also served as president in 1995 and 1996. He's president of the Fish & Game Club, president of the County Farm Bureau, a Maine Farm Bureau state

director, and has been on his local school board for six years - two years as vice chair.

Speech

It's a pleasure to be here. My name is Vernon DeLong. I come from northern Maine. Our law is patterned after the Michigan law. My predecessor was Mr. Jack Ashley, who worked long and hard beside Noel Stuckman in mirroring our law in Maine, basically after the Michigan law. There are a few differences in our law.

The main bargaining board is our avenue of certification and dispute resolution. That bargaining board is made up of five people who are recommended by the Commissioner of Agriculture and appointed by the Governor. We, as a bargaining unit, have to be certified to bargain with a particular handler. Our law says that we have to represent 50% of the growers he does business with or 50% of the volume he uses. It doesn't have to be both. We are under a law that requires good faith bargaining. Also, the next step is required mediation and failing those, binding arbitration. Mediation is imposed upon us by the state. They assign a mediator. The binding arbitration is somewhat different. We are presented with five names. The two parties toss a coin to see who has first right to strike a name. We alternate name striking until one name is left. That name becomes the arbitrator. At that time, each party is required to write a final offer addressing the items in dispute. The arbitrator has broad powers and may issue a subpoena and examine witnesses and records to help him or her make a decision. When a decision is reached, it will be binding on both parties.

Now to get binding arbitration through the legislature, if you talk to a legislator in your community, they'd say don't even think that. You can't make it happen. Well, you can make it happen, but it's not an easy process. I happened to be president of our local association when this was done. It was a well-orchestrated procedure. We had three commodities on the piece of legislation - one being blueberries, wild blueberries anyway, poultry and potatoes. When push came to shove, we lost the blueberries and the poultry. And in reality, they stepped aside to salvage the binding arbitration bill because with them on it, they created enough opposition that we felt it was going down to defeat. So they stepped aside hoping to come back into the picture after the bill was established. The poultry business did not ever make that and the blueberry business has not ever accomplished that either, because we have thousands of growers of blueberries - small acreage a lot of them and non-residents and it's been a nightmare to try to make that one happen. Potatoes survived.

I'll give you a little history on how that came about, because it's interesting. All of the forces and all of the people need to be lined up in a certain order. We had a new Governor. The first thing we did shortly after he was elected was to invite him to our annual meeting. Being a new Governor, he committed himself to helping us in any way he could. We had a speaker of the house who was domineering. He had been there for years and years and years. He came from our county and was a good friend who swung tremendous political power. His name was John Manin. You might have even heard of him. Term limits put him out of the legislature, but he's back in, not as speaker, yet, but it wouldn't surprise me. The chairman of the agricultural committee was a dear friend who ran that committee and the hearing with an iron hand. Sometimes maybe not necessarily according to Hoyle, but nevertheless, it was a well-oiled, well-greased machine. We took advantage of it, and we put into effect binding arbitration under state law. You would think that having binding arbitration solves all of your problems. Well, I've got news for you, it doesn't. But it does make things a little easier. The processor really doesn't like to go there because he knows that the sentiment is not with him. We don't like to use it because it's kind of a court of last resort. We've been there three times with processors. We have prevailed twice. The processor prevailed once, but it's on the books and we keep it in the forefront of what we do.

We have an Unfair Business Practices Act that goes along with this bargaining bill. We have filed unfair business practices against processors. We will not hesitate to use that when we feel that they have used an unfair method against us. The Maine bargaining board is our course of action there. We file it with them. They are required to hold hearings and render a judgement. If the judgement is determined by either party to be unfair, they may appeal it to the courts. We have not been to the court with that yet. We have been to the board a number of times.

If I could leave you with just two or three thoughts, you can have all of the laws on the books you want, and truthfully, they will help you accomplish your goals. The first thing you must have is the support of the growers and you must also have a membership agreement that has some teeth in it. If you don't have those two things, you're not going to go very far, even with the best laws in the world. You must have the support of that grower community. Those people who are your members are the one you're going to serve. You also must have a membership agreement that gives you the power and inhibits them from going around you to bargain on their own. Our membership agreement is a lifetime agreement. The processor says to me, "Is belonging to ABC – Agricultural Bargaining Council – a lot like

getting married? It's death do us part." I said, "Yeah, if I have my way, that's the way it's going to be." But in reality, they have one month out of every year, in June, that they can resign from our association. They have to send a registered letter to our office that I have to sign asking that their name be removed from our membership list. It's the only way you can get out. You have one month out of the year to do this. Other than that, you're a member. When you become a member, you give the bargaining association exclusive right to deal with whichever handler it is we are certified to deal on your behalf. Until we get that done, you aren't going to make it happen.

We're kind of lucky in one way, because Maine, in the processing business that we're in, is all a pre-season contract. You don't plant processing potatoes without a contract. It's just taboo. It just doesn't happen. We have the anniversary date of the previous contract as a completion date and you back up so the grower knows when we're going to be done. It works well for us. So like I said, if there are two things I could leave with you – laws are great. I encourage you to do it. Don't be afraid of trying. Make the effort. You might not make it the first time, but don't be afraid to do it. It gives you something to work with and you need something to work with. The best thing you've got to have is a membership agreement that gives you some level of support to work with, and that you know the grower is committed to you and the membership has to let you do the job. Without that, you can have all the laws you want and you won't make it happen.

Biography

Dr. Randall Torgerson became Administrator of the USDA's cooperative program in 1975, then known as the Farmer Cooperative Service. He came to the USDA in 1974 as a staff economist to the administrator of USDA's Agricultural Marketing Service. Before then, he was a faculty member at the University of Missouri-Columbia and helped organize the Missouri Institute of Cooperatives, serving as executive secretary from 1969-1973. He also helped form (and was executive secretary of) the Graduate Institute of Cooperative Leadership, University of Missouri, 1971-1974. As deputy administrator for cooperative services, Randy directs a staff of 43 people, primarily agricultural economists and cooperative specialists.

Speech

A strong legal foundation exists for group action in agriculture based on a number of laws beginning with the Capper-Volstead Act of 1922, and the Cooperative Marketing Act of 1926, which provides for our Cooperative Services activity in USDA. The 1926 Act also provides for the ability of different levels of cooperatives such as locals, regionals and marketing agencies - in common - to exchange information between those levels including price information. These laws were followed by the Agricultural Marketing Act of 1929 that provided for the Federal Farm Board. This was a top down effort, as a part of farm policy at the time, to establish national cooperatives in grain and a number of other sectors. It was followed by the Agricultural Marketing Agreements Act of 1937, which provided for a system of federal marketing orders commonly used in fruits and vegetables, dairy, and even one in tobacco for cigar leaf, as well as some other commodities. Then the Agricultural Fair Practices Act of 1967 was passed, and I will spend a little time elaborating on some features of this new law.

The Agricultural Fair Practices Act is often referred to as round one in farm bargaining legislation. It provides for this in the enacting statement in very lofty and noble language that recognizes producers can be adversely affected unless they are free to join voluntarily in cooperative organizations by law. This is a very significant statement by Congress because it further states that interference with the right to organize is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce.

The Act came about through the efforts of bargaining cooperatives on the West coast, such as the California Canning Peach Association of which Ralph Bunje was manager at the time; and the California Tomato Growers Association which was in a little different organization form than today, the pear growers and so on. The old line bargaining cooperative associations had a very major influence in this becoming law. They worked in concert with the Farm Bureau at the time. American Farm Bureau Federation carried the water for enactment of this bill on Capitol Hill with the bargaining associations backing it up. What they came out with was a statement of prohibited practices.

There were three specific and isolated new bargaining initiatives ongoing at the time, and problems associated with them, that added a great deal of momentum to passage of this legislation. One was the raisin growers in California were organizing a new bargaining association at this time called the Raisin Bargaining Association. Burdensome crops and the fact that raisins were produced by a large number of producers with relatively

small acreages drew attention of the California farm community to this organizational initiative.

Another big influence was from vegetable growers- tomato growers in Ohio who were organized through a Farm Crops Association. A fellow by the name of Bob Summer experienced a lot of discrimination in getting that organization up and running. So the need was felt for state legislation that became a forerunner to efforts the association supported to enact the national fair practices bargaining statute. There are parallels in the evolution of this legislation with what we are discussing at this conference here today.

Then there was an effort by contract broiler growers in Arkansas to organize for negotiating purposes. Like today, these are basically piece-wage growers producing under production contracts. In other words, they are providing production management for grow out and integrators were involved in ownership of the birds. But these contract growers got the full load of discrimination against them when they attempted to organize, including contract cut backs. If they joined the association, a grower would find he was not getting placement of flocks in his houses on a timely basis. In some cases, there were contract cutoffs. People who had made the investment broiler houses found they didn't get contracts anymore if they joined the association. In some cases they were even black listed. These were lists that were kept by the companies of people who were members of these associations and weren't going to get bird placements again because of this type of treatment. The grower organizing effort was part of the Arkansas Agricultural Marketing Association affiliated with the Arkansas Farm Bureau. Embry Raley was manager of the grower association.

It was these types of examples that were used before Congress in the legislative enactment of this bill and were brought home very vividly. It took a lot of guts for some of these people who had suffered this type of treatment to come before Congress and testify on it. Not an easy thing to do particularly in the broiler industry, but they did it. As a result, Congress passed the enacting legislation and a list of activities that were prohibited.

But something else got snuck in the law largely through efforts of poultry integrators through Senator Everett Jordan (D-NC). They put in a disclaimer clause, section five of the act, that said nothing in this act shall prevent handlers and producers from selecting their customers and suppliers for any reason other than a producers membership in or contract with a producer association. And secondly, nothing in the act would require a handler to deal with an association of producers. Some of the people who had worked tirelessly to get this law passed, kind of let that one sneak in just to get the legislation on the books. But that provision in there, and

subsequent reference to it in Michigan litigation of state as farm bargaining law, has been very damaging to the overall farm bargaining effort since that time because a processor out there can use it as an excuse that he doesn't really have to recognize the association because he's not compelled to as provided in this disclaimer clause in the act.

Another disquieting feature of the Act was an enforcement provision, which said the Secretary of Agriculture would have to ask the Attorney General to seek a restraining order to stop a prohibited practice. Now just imagine why this hasn't been effective. If I'm a broiler grower in the state of North Carolina and I have a problem with having my rights violated through one of these prohibitions, the facts are that the Secretary has to take that to the Attorney General, which ends up on the hands of a U.S. attorney some place. There are no penalties provided so a grower could receive compensation for damages from an infraction. From the U.S. attorney's viewpoint, individual growers problems are infinitely small compared to the cases they deal with on a daily basis. So the mechanism for enforcement has not been an effective one. Quite the opposite. It's been a non-winner. There have been a couple of cases prosecuted in association with the Packers and Stockyards law that have provided some legal history behind it.

Nevertheless, the Fair Practices Act ends up as an important but a fairly weak statute overall in its final form. What we can say then is the weaknesses of this act are: 1) the inclusion of the disclaimer provision; 2) lack of inducement for handlers to negotiate, and 3) the lack of sufficient penalties for violators other than a slap on the wrist if they do violate. Of course, it also doesn't deal with the free rider problem as some state laws like Maine and Michigan have.

What has happened is that a number of state laws have been enacted with various provisions addressing some of these basic issues. Grower bargaining associations deal with a lot of major national companies that view the state statutes as a patchwork of state laws. The national companies complain about this and perhaps rightfully so since they have to deal with different laws in each state, producers in these different states, and it becomes a nightmare in terms of how they are affected in having to reckon with these different laws as presented. This suggests a compelling need for a more adequate national farm bargaining law.

There was an important study conducted in the Department in the last four years headed by Professor Emeritus Dan Padberg of Texas A&M University that examined concentration in agriculture. Among the findings from that study group were that enabling producers to bargain as a group without recrimination is a minimal public position. It should stand.

Likewise the right for producers to have limited antitrust protection under the Capper-Volstead Act should be preserved. And we can certainly agree with these two. Thirdly, instruments should be developed for redressing producer grievances with large integrators. This gets at the poultry and some of the problems in hog contracting and so on that have been faced. They also suggested that sufficient safeguards are needed to protect the right of associations to bargain. Finally, the report recommended that Congress should, in fact, amend the Agricultural Fair Practices Act to require good faith bargaining. So there's a little history of recommendations of this study group.

In addressing changes in federal law, three features should be dealt with in one way or another: providing for good faith bargaining; having a dispute resolution mechanism put in place whether it's conciliation, mediation or arbitration or a combination of them; and, administrative enforcement - something that has teeth in it whether it's treble damages or some other type of compensatory damages. Enforcement should be available through the courts and through the Agriculture Department.

You may be interested that when the Kaptur bargaining legislation was introduced a year or two ago and the Department was asked to comment on it, the Department was not very excited, to put it mildly, about getting into certification or getting into some aspects in dispute resolution. The Department wanted those features determined by other means. It did go along with the idea of stronger enforcement.

What I'm simply suggesting to you is that there's a great deal of education, including political education, that has to be done as new legislation is framed, including knowledge about the facts and the problems that these producer bargaining associations are running into. Serious questions have to be asked as to how much bureaucracy is needed to effectuate the act. How much do you really want USDA getting into some of these processes? Now I would suggest that there might be a different need for those dealing with production contracts of the type broiler growers have in their industry in contrast to the marketing contracts that tomato, peach and other types of bargaining associations are dealing with. There are some clear commonalities but because of the very weak position of people in the production contract arena, they may have some needs that extend beyond those in the other areas. One of the challenges faced in moving the bargaining legislative agenda forward is to be very sensitive to producer needs of each side and to find the common ground that allows these to move ahead together.

One of the virtues that exists now is that tobacco people represented by Bill Courts and his fellow burley growers from Kentucky, who spoke at the previous session, are experiencing the big leaf companies directly contracting with growers and turning upside down the system that has existed for years under the federal tobacco program. There are some lessons to be learned from this example of cooperative marketing in terms of strategy. But be that as it may, what happens with the broiler people, largely southern based, and now the tobacco people also largely southern based with interest in cooperative bargaining is that you have some very powerful political interests involved if they can be harnessed to move the agenda forward. It would be tough sledding if that were not the case. There is a lot of work to be done. A very careful analysis and follow up strategy needs to be developed.

Biography

Stephen B. Peck is a partner in the Hanson, Bridgett, Marcus, Vlahos & Rudy law firm in San Francisco, California. He has represented agricultural bargaining cooperatives for over 20 years, offering business advice on and litigating the range of legal issues affecting such organizations. He has worked for the California Tomato Growers Association in conciliations (similar to mediation) conducted pursuant to California Bargaining Legislation. He is currently counsel for the National Council of Bargaining Cooperatives and Chairman of the National Council of Farmer Cooperative's LTA Subcommittee on bargaining cooperatives. He is a graduate of the University of San Francisco of Law (J.D., Magna Cum Laude, 1976).

Speech

It's a pleasure to be here to share my experience about the California bargaining law and unfair trade practices. California has a very rich and diverse agricultural history. California is home to everything from tomatoes to peaches to olives to apricots to pears and the way cooperative bargaining self-help grower organizations have evolved in California has been by commodity. We don't have as in Michigan, umbrella organizations that tie them all together. Basically, there's a tomato growers association, a pear growers association, an apricot growers association. Each of these associations have used the laws that have evolved over time in which they have spent a great deal of sweat and energy to get on the books and that process in California is a little bit different than it was in Michigan. We did

not do what Noel did which was get one comprehensive law passed at one time. Ours was a product of some evolution. And what I'd like to do is describe the California bargaining history.

First a little bit from the perspective of how it evolved and then I'd like to discuss in a little bit more detail some of the California provisions which are different. As we move forward in the process of applying bargaining legislation more broadly to different commodities, there are different models we can follow. We have a lot of choices to make and California has a system that is a little bit different. I'll highlight those differences as we go through. Historically, farmers have turned to bargaining associations in an effort to help themselves achieve an effective voice at the bargaining table. By the 1970's, to the bargaining associations that existed it became pretty apparent that it was essential to have some type of legislation to create a more favorable legal environment in which they could operate. The problem that bargaining associations were facing are no doubt familiar even today. Processors threaten not to deal with producers if they joined the association and offered them inducements to terminate their relationship with associations. Processors further delayed or outright refused to deal with cooperatives. At least in California and at the same time Michigan and Maine it was obvious we needed more legal rights to become effective.

California's first step in this process of evolution and I really see bargaining cooperatives moving forward in pretty much three stages. They usually get formed as service organizations. At some point, phase two, they get the right to be protected from these prohibited unfair trade practices and then third at some point in the evolution when they get stronger they usually get the right to bargain in some form or other. And that's the path at least that underlies California's history.

In 1961, California passed its unfair trade practices act. The essential concept was borrowed from the old Wagner Act sometimes called the Magna Carta for labor unions. Essentially, it provided that it was unfair and against the law for processors to interfere with the rights of producers to join a cooperative, to boycott or discriminate against producers because of their membership in the cooperative and civil penalties were provided for violation. It was that simple. This coverage was pretty much the same as what was enacted in 1967 in federal legislation. It didn't require bargaining. It didn't have a provision for conciliation or arbitration or any other means of resolving a dispute. It did not even require a processor to meet with you. It just required them not to do these prohibited practices. That was a help but certainly not enough of one.

In 1974, legislation was passed amending the state fair practices act, which required processors to bargain but not in good faith. It didn't take long for processors to figure out that they could gain that rule by simply meeting with you without any intent to reach an agreement and sort of go through the motions. That's what they did. In 1983, the bargaining cooperatives, with the assistance of the California Farm Bureau and the Agricultural Council of California and the leadership of the speaker of the assembly, Willie Brown, currently the mayor of San Francisco, succeeded in securing the amendment of the California Act, which substantially corresponded to a 1978 farm bill that the NFO and American Farm Bureau all tried to get passed but were unsuccessful in enacting, which did require good faith bargaining. I use the phrase good faith bargaining, and it has a little different meaning in California because as the bill went through the processors did not like that phrase and resisted that phrase because it is the phrase used in labor legislation. So California's law doesn't use the words good faith bargaining.

California law obligates processes and cooperative bargaining associations to "negotiate or bargain at reasonable times and for reasonable periods of time with a genuine desire to reach agreement and a serious attempt to resolve differences for price, terms of sale, compensation for commodities produced under contract and other contract provisions relative to any commodity which the cooperative bargaining association represents."

The 1983 amendment also contained an administrative procedure before the director of agriculture and provided for increased penalties. While the initial proposal contained provisions for mediation and arbitration they were not enacted in 1983. Instead, the 1983 amendment provided for an advisory committee which was to report to the legislature on the operation of the bargaining act and to make this report annually with the idea that if this legislation didn't do it, then it would provide a basis for moving to conciliation and or arbitration at a later date. I'll describe that advisory committee because that's somewhat unique to California but I think it has been a fairly effective device for creating the basis for further deeper bargaining legislation later. Finally, in 1989, the provision for conciliations was added to bolster the obligations of both the bargaining association and the processor to bargain in good faith. The failure to participate in the conciliation itself was made an unfair trade practice to effectuate the intent of the law.

Let me turn to how the California law works. The California law has a number of components. First, the overriding statement of purpose in the law is important. Public policy is clearly stated. It says "it is the public

policy of the state to establish and support the right of any farmer to join, voluntarily belong to, and freely participate in cooperative bargaining associations. Interference with any producer's right set forth in this chapter including the obligation of processors to negotiate and bargain with cooperative bargaining associations is an unfair trade practice. That's the express, stated public policy of the state of California. While that doesn't prohibit anything or do anything in particular, what it does is if there is an issue as to the construction of the other provisions of the statute or if there is a question before a court or an administrator of who should get the benefit of the doubt if something is unclear, it clearly states that it is to come down on the side of the cooperative bargaining association and its members. So that overrides the whole context.

Now the second aspect of the California law is the unfair trade practices provisions, which I won't spend a lot of time on but basically they prohibit interference with the membership relation, the boycotting of members because of their membership, the discrimination against them, the intentional inducement of a member's breach of his membership agreement and basically provides an administrative remedy, a complaint that can be made to the director of agriculture and they are charged with the duty to investigate. They can hold hearings. They can subpoena witnesses. They can impose civil penalties upon the offender. That process is very important to realize. A couple of speakers have said you need the support of your growers. That's absolutely true in bargaining but it's absolutely crystal clear in this context of unfair trade practices where the charge is made that I as a grower am being discriminated against, being boycotted, having my contract interfered with. In order to bring those complaints, there has to be a complainer. There has to be a grower willing to stand up and say I've been violated and that's not easy. That takes a brave grower, particularly in tomatoes, which I deal with most frequently. It's an annual crop. It's a constant search for a home for your fruit and there will be a consequence that you probably can't do anything about in terms of a retaliation. But without a grower that's willing to take a stand, you'll never be able to bring the complainant in the first instance.

These provisions provide a satisfactory framework for dealing with unfair trade practices but they require a grower that is brave enough to stand up and put his name on a complaint, number one and number two, they require an administrative apparatus and the political will of a secretary of the agency charged with investigating and prosecuting that will see the job through and do their duty. And that recently has become a problem in California because the director of food and agriculture lost a lot of funding

that they had for investigating unfair trade practices complaints. You've got to have both of those things.

The third aspect of the California law and this is really in the situation where you've now gotten an obligation to bargain in good faith with the association and the canner just says, "Screw you. I'm not doing it." There is an expedited procedure under the California law where very quickly you can file a complaint, have a hearing within 14 days and within 5 days have a ruling which ruling would be you have to bargain. Go do it. That provision has only been used once and not used exactly in that context. That's the bad faith bargaining expedited hearing provision. We've used it once since it's been on the books and we used it in a little bit different context and learned some things from it.

We had a case with Hunt-Wesson. It's been bought out by ConAgra. I presume some of you are familiar with them. They had a provision in their contract that we called the secret price index which was a portion of the price they were going to pay the tomato growers was going to be based on a formula which only they and their accountant know and would tell you the results at the end but would never bargain with you over the formula. So their accountant would certify yeah, they followed the formula and this what you're owed but we didn't know how they determined. We didn't think that was terribly consistent with the duty to bargain in good faith as to the price. So we didn't see a point in going to conciliation because this was the way they were contracted. They were not going to agree to abandon it voluntarily. They were trying to jam it down our throats. So we took them on with this expedited hearing that this was just bad faith bargaining. You can't bargain in good faith if you're using a formula that you're not sharing and negotiating the elements of with the bargaining association. The expedited provision in the California law then required us to show that we were bargaining in good faith and that we had gone through and tried to meet with them in reasonable times and places which we did. But their defense was that we were not an accredited bargaining association. Now I use that word accredited because we do not in California, and this is the difference with the Michigan people, an accreditation provision in our bargaining statute.

If you're a cooperative bargaining association and you want to bargain, you are entitled to go to the processor and bargain. And if they bargain with you, that's great. If they don't bargain with you, then you're going to end up where we were with ConAgra and Hunt-Wesson which is in the context of the hearing fighting over whether they have to bargain with you and you're going to get into the issue of whether or not you have the

ability to enforce the right to bargain. In California what they did is they included statutory criteria so that when we put on our case we had to show that we met the statutory criteria for bargaining. There were five of them. They're fairly commonsensical. (1) Under the articles of incorporation or bylaws the association is producer owned and controlled exclusively by producers; (2) the cooperative bargaining association has enforceable contracts with its members; (3) the cooperative bargaining association has financial resources and management reasonably efficient to accomplish the purposes for which it was organized; (4) the cooperative bargaining association represents through its own members a sufficient number of producers or a sufficient quantity of a particular commodity to make an effective agent for its producer members; and (5) one of the functions of the cooperative bargaining association was to set the price and terms of the particular commodity.

Now you'll notice "sufficient" producer. It doesn't connote 40%, 80%, 90%. The statute doesn't prescribe a particular level. Basically, we got into this with Hunt-Wesson and the long and short of the story is for some reason we had a public interest member on our board who wasn't a producer and the administrative officer initially found against us. The director sent us back in and we ended up resolving the case. But the thing I want to emphasize is that in this context it is not necessary that you have an early accreditation provision in order to bargain. California has a model that says if you're a cooperative bargaining association and you have members, you can go bargain. The processor can refuse to bargain in which case you're going to have to show that you meet these criteria. But there's no prior certification. You don't have to go to the director of agriculture to sprinkle the holy oil on you and say, "Yeah, you're good enough to bargain."

The last aspect and probably the most important aspect of California bargaining laws is the bargaining in good faith. The short phrase for it. With that, either side - processor or bargaining association - can request the director to order conciliation should the bargaining between the parties directly not result in an agreement. Typically, in California because we have the statutory framework to work in it's not controversial. Processors don't fight with us about whether they have to bargain. The culture is, whether it's ConAgra, H.J. Heinz, or DelMonte, they know they have to do it. And every year, John here bargains with 20 processors every single year aimed toward getting a master agreement with each of them and then goes through the same process next year. That system has worked. They don't fight over whether they have to bargain. They do. But that doesn't mean we always

reach an agreement and for that we have the conciliation provision in California. The director orders conciliation on petition of either of the parties "if he believes conciliation will materially assist the parties in reaching an agreement." Now the director in California has never refused to order conciliation when one of the parties have requested it. I don't know why they ever would. If the parties think it will help, I don't know why the director would ever second-guess that and they haven't.

The director's order is usually made within about two weeks of the request for conciliation. It's a fairly fast procedure. The request comes in. The statute requires it contain certain information such as what bargaining has taken place up to that point, where the petitioning parties last offer was, and what do they think it will take to get the job done. Then that petition is sent to the other side. They have a few days to respond and then the order of conciliation comes in from the director.

I want to just mention here at this point that it is the director of the California Department of Agriculture that makes the order of conciliation. And our conciliation provision came in 1989. For a good period of time during which we've been effectuating this conciliation provision, the director of food and agriculture was Ann Veneman who is the current secretary of agriculture. Now I don't personally know what her particular slant on national bargaining legislation is. But I do know that she has first hand experience with a system of bargaining and a system of conciliation backing up bargaining that has worked, that hasn't been controversial. If a processor comes in and says it's going to take us to the end of the world, I don't think she'll buy it because her experience is to the contrary. So that's a net plus I think going forward at least to the extent that she has any influence over bargaining legislation.

So the director makes its order and then the matter goes to the American Arbitration Association which is an international organization which provides third party neutrals for resolving disputes and the various associations and particularly through the advisory committee that was set up, it formulated a series of internal rules for the referring of matters to triple A. They get a conciliator assigned very quickly. Basically, as soon as the parties say they can meet and it can be a matter of days or certainly no more than a week or so, you get to the conciliator in your meeting to discuss what the price should be and how do we resolve this dispute. If no settlement is reached, the conciliator is to make a final recommendation to the party as to "what he or she believes will equitably resolve the dispute and result in a negotiated settlement. Each party must respond to the conciliator's final recommendation." With tomatoes we've only reached that point once. And

that's exactly what happened. The processor had one position. We had another. We were a quarter off and in looking at the statutory criteria, neither of these guys would budge anymore. The conciliator said well, I think this will resolve it. At which point, the choice then to the parties is, take it and walk away or move to the next level.

In California because it doesn't have arbitration, the next level was a lawsuit over what the reasonable price of the crop is. That resolved the dispute that year but that's only one instance. If there is still no agreement. If the parties choose not to accept the conciliator's final recommendation, the conciliator is to write a report to the director summarizing the conciliation including a final proposal of the parties and the unresolved issues.

Basically, in summary our experience with conciliations as a means of resolving price in terms of trade has been very, very good. We've had 27 conciliations under our act since it was enacted in 1989 and 17 of those have been initiated by the California tomato growers. Of the 17 the tomato growers have initiated, all of them have been resolved through the conciliation process. Every single one of them. None have escaped. There have been two unsuccessful conciliations. Ron Schuler experienced one but it was pretty clear that that processor didn't intend to resolve that dispute. He was intent on litigation going into the conciliation. He was just going through the motions. But the process has worked very, very well in California even without arbitration as a back stop.

And understand that whether you have arbitration in the statute or not, it serves a deterrent purpose. I think neither side wants to go to arbitration and therefore pushes the party to try and resolve it themselves. But the alternative to arbitration if you don't have it and you finish conciliation and you still don't have an agreement, it's a lawsuit. And I tell you parties don't want to do that either. That's even more expensive whether you're the processor or the cooperative bargaining association. You just don't want to get to that point. So there are deterrents to going forward whether you have arbitration in the statute or not.

The last thing I'd like to mention about the act is the advisory committee, which is somewhat of a unique feature of California law but is very much in the tradition of California agriculture for processors and cooperative bargaining associations to work together on issues of common concern. One of the reasons the tomato growers, that that industry has been so vibrant for many years, is processors and growers alike have gotten together and installed a third party grading system. They have governing bodies. They come up with rules and procedures which all of them agreed

to. So that, for instance, trucks from the field that come through the way station know what the tests are. They know what the standards are. They all agree to them so they don't waste a lot of time arguing about what's been delivered, what its quality is and how the premiums are calculated. It enables them to apply their contract formulas with little controversy. So the focus really is what should the elements of price be. The advisory committee was set up in 1983. It is comprised of six processors and six cooperative bargaining members. They meet semi-annually. Basically, they review issues of common concern including how the bargaining act is effective or not. They used to be required to report to the legislature. They are no longer required to but they track the conciliations that occur every year. There is a record of them. They discuss issues that have come up occasionally that are somewhat afield from the core bargaining issues.

For example, there were a couple of processors who didn't want to take the dues out of what they owed to growers. My partner, Jerry Marcus, decided that a good way to deal with that was to invite them to the committee to let them explain to the committee why they were doing that because it was against state law. They decided they didn't want to come to the committee and just started paying the dues. It's a useful forum and it's a way of trying to reach a conclusion without having to get into a more confrontational mode. So I'll conclude there. But I think California has a model, which has worked at least in California. I think that conciliation has been effective. I think whether we ultimately go to arbitration will depend on our experience. We have a mechanism set up if we start going into conciliation and not getting results then maybe we will seek that kind of remedy.

Biography

Steve Etko is a native of Virginia and Washington State. He owns Etko Consulting, an Alexandria, Virginia, government relations consulting firm specializing in agricultural and environmental policy.

Before he formed his consulting business, Steve spent five and a half years on the staff of U.S. Senator Herb Kohl of Wisconsin, serving as legislative aide and deputy legislative director, specializing in agriculture, environment, transportation and appropriations matters. Previous positions include work with the nonprofit conservation group American Farmland Trust, an analyst position with the National Commission on Dairy Policy, and international development consulting assignments in Latin America.

Steve graduated from Middlebury College in Vermont in 1987, with a degree in Spanish and economic public policy. He is a husband of 13 years and a father of three children.

Speech

In some ways these are hard acts to follow because these folks are all definitely veterans in this industry and in the area of bargaining. I am quite new at it. In other ways, it's an easy act to follow because all of the things that my group is trying to do at the federal level is mirrored off of what you all have accomplished at the state level. I'm not an academic. I'm not a producer. I'm not a co-op guru. I'm not a bargaining specialist. And believe it or not, I'm even lower on the social totem pole than a lawyer. I'm a lobbyist, but I assure you I left my Gucci shoes at home mainly because I don't own any. My job is to try and learn from all of you and learn from these folks here and digest what I've learned and try to relay to Congress and to folks in the federal agencies. In some ways, being a laymen coming into the issue of bargaining is both an impediment and a benefit. It's an impediment in that it's a very steep learning curve. It's a benefit in that I come at in many ways from the same perspective as most members of Congress, which is having known very little. So I have somewhat of a good idea on how to approach members of congress and their staff on the issue.

It was probably in late 1998 when John Morrison who was then the head of the Contract Poultry Growers Association at the national level called me to inquire whether I might be interested in playing a role in what they were trying to do at the national level. Subsequently, John passed away and I think it was Betty Balley from Rural Advancement Foundation International (RAFI) out in North Carolina that took up the ball and followed up John's call. She called me about six months later to ask if I was still interested in working on that issue. Having known very little about it, I was very surprised to learn what was going on in the poultry industry. I had studied probably at the high school level a little bit about what blue-collar workers had gone through in the 1920s & 1930s prior to the enactment of some of the national labor statutes.

It was probably, frankly, embarrassing to me that we were still experiencing some of those same types of things for poultry growers in this country as what blue-collar workers were suffering back at the beginning of the century. Based on what I learned and based on my feeling that it was a good endeavor to participate in, I agreed to work on this issue. It has certainly started out to be looking at how can you provide increased rights and bargaining power for folks that get involved in production, particularly

production contracts. The groups that really spearheaded what has now become the campaign for contract ag reform were the National Contract Poultry Growers group and the Rural Advancement Foundation International. It has been expanded to include other groups such as the National Farmers Union, National Family Farm Coalition, the DelMarva Poultry Justice Alliance, and Consumer Federation of America. We're talking to other groups as well about joining this effort.

Traditionally, when we've talked about production contracts, it has meant poultry by and large. But that is changing quickly. What we've found is that we're seeing what Senator Pat Roberts of Kansas was reported to have called the "chickenification" of agriculture where the poultry model is now not just poultry but expanding to hogs, tobacco, identity preserved products and grains and many others as well. What is the poultry model? Many of you probably know the experience that poultry growers have had and have heard about it. A lot of folks have heard about it but don't know it in its entirety. I'm not planning to tell you it in its entirety but basically, what I've learned is that the contracting model in poultry started in the late 1950s at a time when perhaps for a very short period there was somewhat of a honeymoon period. There were a lot of different chicken companies contracting for growers services. It tended to be smaller and more locally based companies. The management tended to be members of the community.

As a result, I think it was not quite as bad as it has become. What we've seen is that in recent decades with the growing concentration in poultry just like what has gone on in hogs and beef and other ag commodities, the poultry production contract model has become increasingly abusive where the management lives elsewhere and there's not direct connection to the community. Basically, it's a model in which growers are required to put up large amounts of capital that they borrow to the tune of about a half a million dollars or more in order to invest in sole purpose chicken houses, basically. They put them on their own land. Often, it's only after they receive those loans that they see the contract. If they can understand them at all, which is pretty rare because they are very obtuse in many ways and difficult to understand. What they would learn if they did understand them, and they quickly do learn, is that in that contract agreement they are agreeing to basically provide the grow out services for the companies. The companies provide the input such as the chicks, the day old chicks that they deliver to the farms. They also deliver the feed and other inputs. What is particularly difficult is that the contracts depend on what's called a ranking system or some folks call it a "tournament contract."

Basically, what it says is that even though the company provides all of the inputs that are determinative about whether you're going to be successful in putting weight on that bird or not, you are paid based on your ability to put weight on that bird relative to your other grower neighbors in the area.

Or if they don't like what you're saying or if you're challenging them in any way in the contract relationship, if you're even questioning your contract, they can manipulate those different aspects such as the chicks' health, for example. It's not atypical for growers to get bad chicks through no fault of their own. They come from the company but if you get bad chicks and your neighbor doesn't, your pay is significantly lower than your neighbors. Similarly, you could get bad feed through no fault of your own. It makes a significant difference in your ability to put weight on that bird relative to your neighbor.

So what we've seen that it's sort of a big black box, this ranking system, where there's very little, in fact, there's no oversight and there's no ability to really look into that box to see what's going on. It's been used very aggressively and effectively by the companies to penalize those folks that aren't cooperating or in any way trying to organize with other growers to get a better shake out of the deal. What are we trying to do about that?

There are really three things that we're pushing. One is something that came out of efforts that developed here in Iowa by the state attorney general here that developed into a larger effort called the Producer Protection Act, which establishes minimum standards for contracts. Such things as prohibiting confidentiality clauses, prohibiting binding arbitration, recapture for capital investment so that if you go into great debt as part of a contract relationship that you can't be just cancelled while you still have that debt and while you're still paying off those investments. Probably most importantly from a poultry standpoint, is it bans and lists as an unfair trade these ranking systems or tournament contracts that I talked about. That was part of a bill that Senator Harkin introduced last year and has assured me that will be reintroduced this year in the near future we hope. One of the other things we're pushing aggressively is something that I think all of you talked about which is the Ag Fair Practices Act of 1967.

Basically, and Randy talked about this a little bit, there are some loopholes in the Ag Fair Practices act, which was passed really to make sure that processors couldn't retaliate against growers for forming together in associations. But as Randy mentioned, there is this thing called a disclaimer clause in that which really makes it clear. It's a huge loophole that effectively means that processors can discriminate against growers or producers for any other reason. They can just say well, you're not a good

grower. We have this ranking system and you fall at the bottom of that ranking system every month. They can make it so, if they choose to do so, and so they can use that mechanism to say we're not getting rid of you because you're talking about or challenging contracts or meeting with your neighbors and trying to be a rabble-rouser, we're getting rid of you because you're not a good grower.

So basically, and this is legislation that was initially introduced by Representative Marcy Kaptur. What we're pushing is legislation that she has reintroduced this year that would get rid of that disclaimer clause and replace it with a requirement of good faith bargaining and make some other changes as well on enforcement as well as mediation and other aspects of the law. But the central point of it is to get rid of that disclaimer clause and to require good faith bargaining. So no longer do you have the large integrator or company insisting on negotiating or not negotiating as the case may be with one individual producer but you have a more balanced marketplace where you have the company who is required to deal with an association of growers so that the outcome can be a little more balanced and fair. That also was part of the bill that Senator Harkin introduced last year and again will be introducing again this year.

The last part that we're working on, these other two are not specific to poultry at all but the last one is. It's a Packers and Stockyards Act amendment. Basically, poultry is treated very differently under the Packers and Stockyards Act than red meat and livestock. We're not saying that we think that everything is great with the way livestock is being treated by USDA under Packers and Stockyards but at the very least, we would like poultry to be on the same level with other livestock. Basically, what happens now is that USDA can do investigations into unfair and deceptive trade practices in poultry but if they actually find a problem, they just have to send it over to the department of justice. It's similar to what Randy was saying about what happens under the Ag Fair Practices Act where things just languish there and there's either no expertise or interest in the department of justice to do anything about it. So we're trying to amend the Packers and Stockyards Act just to make it clear that USDA would have the full authority to not only investigate these charges but if they find violations that they would be able to follow through on those.

One of the things I think is interesting is that there really is a growing interest in Congress on these issues. In part unfortunately, because of the speed with which the poultry model is spreading to other industries. Hogs have gone very quickly toward contracts. As we heard from Bill, tobacco is going very quickly in that direction. Specialty grains are going in that

direction, and I'm sure we'll see other commodities in the near future. It used to be, and I say used to be because I've only been working on this a year and a half but it's been changing quickly, that people in Congress just thought of this as being a chicken issue and they didn't want to deal with it. The southerners didn't want to deal with it in Congress because the southerners were very afraid of the chicken companies.

Arkansas is a great example. Tyson really controls that state politically. In addition, the poultry growers because they're in such a bad bargaining position and because they're so vulnerable to having their contracts cancelled or to have their pay ruined through the ranking system, they tend to not complain. It's very hard to get poultry growers to, and Larry Holder I think can attest to this, Larry's one of the braver ones, but it's very difficult in that situation to come to congress and speak to their members of congress for fear that the word will get back to their company and they'll be cancelled or have their livelihood ruined. So often you hear from members of congress that there's no problem. They don't hear any complaints. And I try to explain to them that the lack of noise is evidence of how bad it is but it's a tough sell. But what we've seen now that now that it's spreading to hogs and especially grain and tobacco, people are starting to ask the questions, can we let this go on. People in the Midwest, I think, are taking more notice about it than they have in the past. We're not really lepers anymore. I think there's a greater recognition that this is something beyond poultry.

One of the other things I wanted to mention is like what Steve Peck said, I'm a little encouraged by the potential to work with Veneman because what we've seen in the past is that there's been this reluctance at USDA to embrace bargaining because I think there's been this pervasive feel that it's sort of like unionizing. It's somehow nefarious and evil. I'm not saying Randy feels that way. My hope is that Veneman who comes from a California experience where bargaining is just an every day way of doing business in agriculture will have a different perspective on it and see it as being a potentially viable option at the federal level. That's a hope and maybe it's wishful thinking but that is my hope. In closing, I just wanted to say that we are entering a new farm bill season. Whether it happens this year or next year is up in the air at this point but as we've been talking about the contracting issue, we've also been noticing that other people in the ag community are talking about other related issues dealing with competition and concentration in agriculture.

In many ways we're all coming at it from a different perspective mainly because the way that the abuse has been dolled out differs by

commodity. Folks like the Western Organization of Resource Councils focus on beef and therefore talk about a remedy in the context of what they call captive supplies. From the poultry perspective, Larry talks about contracting and bargaining as one of the things he talks about. There are other folks that talk from a perspective of hogs and tobacco has it's own language. But what we're finding is that these are all examples under the larger umbrella of competition and concentration in agriculture. My pitch is that if we can all start talking to our members of Congress about the need to have a competition and concentration title or chapter in the next farm bill. I think that would allow us to be speaking perhaps with a more unified voice before we get into the different remedies that are all part of that umbrella.

Saturday, March 17, 2001
Tips on Bargaining – Panel II

Participants: Tom Butler, Michigan Agricultural Cooperative Marketing Association; John Lugtigheid, Ontario Processing Vegetable Growers; Merle Suntken, National Farmers Organization Livestock Program; Paul Hitch, Consolidated Beef Producers

Biography

Tom Butler is the manager of the Michigan Processing Apple Growers Division of the Michigan Agricultural Cooperative Marketing Association (MACMA), which is an affiliate of Michigan Farm Bureau. Tom has worked for the organization since 1973. Tom received his Bachelor of Science in biology at Grove City College in Western Pennsylvania. He also received his Master's Degree in botany at Syracuse University in Syracuse, New York.

Tom previously worked for UniRoyal Chemical Company as a technical representative in sales and field research and development for ten years. He worked on fruit and vegetable crops in New York, New England, and the Mid-Atlantic States as well as Ohio and Michigan.

Tom has worked with growers across the country on various apple industry issues including successfully obtaining country of origin labeling on concentrated apple juice, research funding for fire blight, and most recently, the Chinese apple juice concentrate anti-dumping case. He has successfully negotiated apple contracts for the 750 apple grower members of the Michigan Processing Apple Growers each year since 1974.

Speech

I manage a 750-producer organization, Michigan Processing Apple Growers. It's a division of a multi-commodity marketing association. It's

an affiliate of Michigan Farm Bureau. Its sort of unique in the farm bureau structure in that everyone who I work with who is in charge of the operations of our program is elected from the grower community. They are not appointed by any farm bureau structure or anything like that. We've successfully negotiated for many years. We're facing tough economic times up there. The same as the rest of you are.

Our group has been involved in bargaining for 25 years, informal bargaining sanctioned by the state of Michigan. We're accredited to represent our membership in negotiations with processors in the state of Michigan. One of my lifelong ambitions is to cause good organizations to form in other areas of the country that compete with us. We've spent a lot of time and I always joke about it when we go out to Washington State. I always say I'm from Michigan and we're here to help you. I take growers with me, and they just laugh. They know I'm not here to help them. I'm here to cause them to do something that is going to help us. We have not been successful in causing other states involved in the apple business to organize into effective bargaining groups. Part of the reason for that is because the industries are different in these states.

Shippers and packers in the state of Washington control the apple industry. The growers have little to say, if nothing to say, about the fate of the processing apples that are generated from those fresh packing lines. They have nothing to say about price or destination of that fruit. Brokers and apple shippers control that whole deal out there and certainly a grower bargaining association is a little tougher to organize because the shippers don't want that to happen.

We've been successful. We didn't chase all the processors out of the state of Michigan because we were able to bargain and other people were not. In fact, there's a whole set of economic conditions that caused processors to locate where they do. The supply of raw product is still very important to these people. They don't want to have to ship raw product all over the country if they can buy it locally. I'll give you an example.

The price for juice apples today is about 5 1/2 cents a pound. Price for juice apples in the state of Washington is 2 cents a pound. There's a lot of disparity there. But it costs more than a nickel to ship Washington apples to Michigan to process so that we're still competitive with our 5 1/2-cent price compared to the 2 cent price out west. Freight does play a big part.

One of the things we talked about earlier was factors to allow an association to bargain. Of course, I'm used to dealing with specialty crops all of my working life. So that's altogether different than your grain business and the livestock business and all that and I recognize that. But the

objective of our processors is to buy as cheaply as they can. The objective of your processors whoever they are is the same. Your objective ought to be to realize and to arrive at what I've called the true market value for what you have for sale. True market value is what somebody is willing to pay. Not what they say they're willing to pay. It's what they're willing to sign on the contract that they're willing to pay for that crop. You can arrive at equitable numbers through negotiations. It's no great avenue to prosperity. You're still dealing in the market place. Supply and demand still play a major part and I use this as an example.

Last year we negotiated the highest price in the U.S. for processing apples in Michigan. It's a complicated pricing structure – by variety, by utilization and so forth. I would say our growers are going broke just a little more slowly than the apple producers in New York State and out in Washington state so we can't be so far ahead of the market that we don't relate to it. The less realistic we are the more problems we'll have in moving/selling our crop. Our processors, at least, are facing the same sort of bad economic times as the grower community is. They're victims of the fewer and fewer buyer syndrome that's happened to everyone where their customers are fewer and more powerful. It's affecting their bottom lines, too.

We try to do a lot of things for our members in addition to bargaining also which is lobbying and looking out for the general economic welfare of our grower community. We have a well-financed organization and I can't emphasize that too much. We derive our income from our members. It is a voluntary membership association and represents a majority of the industry. The processor who receives the apples deducts our funds. Then the processor turns around and sends that money to us. We have a little tiny one liner state law that says that processors must make that deduction. I recall when we were able to get that passed, the processors then knew that we could finance ourselves and they didn't like that very much. They like to refuse to make the deduction and then they wanted us to have to go to our membership and through voluntary contributions try to finance ourselves. That would never work. I knew many, many years ago when we were owed \$100,000 by a group of growers and if I depended on them voluntarily to sit down and write checks, I would have collected about five of them. So as part of the membership requirement, that compulsory deduction on the part of the processor is one secret to financing.

The one area, in our business at least, that we have shied away from to finance the organization is this business of trying to live off brokerage or make enough money brokering your members produce that you'll support

the organization. The reason that I personally have tried to avoid that and our members have agreed with me is that we operate a sales desk for the membership. They're welcome to have us sell their fruit for them. And those members pay a marketing fee for that but it's no different than the marketing fee that the other member who doesn't use the sales desk pays. Everybody pays the same. That way we're not forced to sell at the bottom of the market to create a commission that we need to finance ourselves with. I've seen it happen.

We take title to a lot of fruit in our group, but we're not dealing with the poor credit risks that we might have to deal with if we were dependent on those commissions to run the association. I've seen associations go broke by extending themselves so far with credit that they can never collect from their customers. I guess I think members ought to pay the bill and I always tell people we don't run a Boy Scout operation in our apple deal. I have one member that pays \$16,000 for the privilege of belonging to our association and he thinks it's worth every penny that we make him enough money to justify spending that. We run our organization on approximately a half million dollars a year. That allows us to take trips when we have to do it to cause certain things to happen, mostly having to do with lobbying, going to conferences and that type of thing.

The apple business, of course, is a perennial crop and the crop is going to be there each year. We don't negotiate for quantity. We negotiate a price for all the different categories of what we have to sell and other terms of trade. Nowadays payment terms are about almost as important as the price themselves. You can negotiate the best price in the world, but if you can't get paid on a timely basis, you'd better forget it. Our members are really giving us that message.

I think we're able to stay flexible in our operation even though we have a board of directors that is 32 people strong. You wonder how in the world can 32 people agree on anything. We divide the responsibility of the board up into various committees. We have a bargaining committee, and we have a financial committee that keeps track of the finances. We have several others and they report back to the entire group and recommend to the entire group. That large board does not encumber us when it comes to selling contracts. We don't go to our entire membership. We go to the board and the bargaining committee will make a recommendation to the entire group and they can make a price agreement within a period of a few hours. We usually do it via a telephone conference call. Our group has very little turnover of members. Our processor base has been quite stable.

The one area that I would warn you about is dealing with cooperatives. My recommendation is to deal with them the same way you deal with other processors. If you don't, there's always the potential that they'll undermine the bargaining process. And you will not get any cooperation from the other processors in the group. You can come up with a million reasons including the cooperative lending institution that will tell you that you can't bargain with cooperatives. You can do it and if you don't do it, it'll really hurt.

Biography

John Lugtigheid is immediate past chairman of the Ontario Processing Vegetable Growers and currently serves on the OPVG executive committee. He is a graduate of Ridgetown College and has farmed for 30 years. His family-owned Lugtigheid Farms, Ltd. Raises tomatoes, cucumbers, peppers, green peas, green and wax beans and squash. The farming operation also includes seed and identity-preserved soybeans, corn (commercial and seed), wheat for seed and cattle and hogs. He has been a director of Ontario Processing Vegetable Growers since 1995.

Speech

I'm John Lugtigheid. I represent the processing vegetable growers from southern Ontario Canada. I am a grower. I have just finished being past chairman of that. We negotiate terms and conditions, which I will get into soon. We're fortunate with the legislation we have in Ontario. We run a diversified farm just 60 miles east of Detroit. I'll tell you that so you know what latitude we're on. I feed a few cattle compared to the friend on the end. We have 600 head of cattle on feed, 500 hogs and we grow 300 acres of soybeans and some seed corn and beans and there's about 400 acres of processing vegetables last year.

It's been interesting to me to be here to dialogue with people from the U.S. Our problems, as you will see, are very similar. We've been affected by NAFTA. I've got a contract hanging on my wall at home that my dad signed in 1934 with Libby McNeal and Libby's. Libby's are no longer in business, of course. Through the years, things have evolved to where we are today. I'm immediate past chairman of the processing vegetable growers for Ontario. We've done a lot of legwork to get to where we are today in bargaining. We've brought Randy Lowrey in from Pepperdine University of California. One of his statements in negotiation was that each step takes twice as long for half as much. If you stop and think about that, I think

you'll say, "uh-huh." He talked about that time about buying a car and at 9 o'clock at night they were arguing over who was going to pay for the floor mats in the back seat of the car. By that time, the sales man is so cheesed off he's going to give them to you just to get rid of you. That's a case where you don't have to face that person the next day or the next week or the next year again. A lot of us are bargaining with people that we do have to meet the following year which makes a difference how you want to react to these type of people.

This is going back to the history of how we were informed in Ontario. Farmers marketing boards were introduced to bring stability to the primary sector; to stabilize prices and supplies; to stabilize and improve farmer incomes and to protect the family farm unit. They help to strengthen farmers bargaining power in the face of increasing concentration and other sectors of the food industry. They also provide the means for farmers to market farm products more efficiently and orderly and to improve production planning. This goes all the way back to 1927. Problems haven't changed much. Marketing boards help farmers to develop new markets to monitor or improve the quality of their products. I know to some people the word marketing board is maybe scary. We do have supply management in Ontario of course, and into the dairy sector and the feather industry that I know some U.S. producers have taken a run at times and think that should be deregulated. I'm not a dairy producer. I'm not in the feather industry. By feather industry I mean the broilers, the eggs and the turkey. That is supply managed where it is produced for the market. I guess I would be very concerned if that got deregulated that Canada's production would go up not down so you wouldn't have as much access to that market as some of the U.S. producers may think. That's my opinion.

Enabling legislation in each province exists to help increase productivity, to support research and extension work, and to promote new production and management techniques. It also established marketing boards, which came into being to address problems in the marketplace which voluntary organizations had been unable to resolve. Implicit in that statement is the recognition that a marketing board is first of all, an organization to achieve a common position for all producers of a given product by compulsory means. Regardless of all of the other programs that marketing boards may develop, the need to enforce a common position among their own producers is paramount. We do have the right in our system to sanction growers who are trying to cut separate deals to undermine the value of that contract. If it's to enhance that contract, that's fine. We

have the right to audit the processor's books to see that their payments are on time and the payments are abided by.

The key feature to the establishment of a marketing board system is that you can only work with the tools you have available to you. There is compulsory grower membership when 2/3 of the growers' vote in favor of a marketing board, the marketing board comes in force. It can be voted out the same way. All producers belong to that association or that board. The local boards are accountable to the farm products marketing commission, which is a supervisory body, appointed by the government.

The Supreme Court of Canada has upheld the legislation because this has been challenged of course by consumer groups, by processors and the like. Even in Ontario, Canada, the vertical integrated acres have to pay board dues. The Supreme Court of Canada has upheld the legislation. Both processors and growers are exempt from our anti-trust laws. Pre-planned contracts that include clearly defined prices, terms and conditions of sale, we think, are essential for the vegetable industry.

When NAFTA came into effect, like the tomato industry, there was a 13 1/2 tariff we knew that was going to be gone in ten years time. California was in here selling before and we have good liaison with the California Tomato Growers. We've had growers from our association go to Australia this winter. We try to know what's happened on the global basis. China's coming on stream. Two years ago their product couldn't really be sold in the United States or Canada. Last year they had 1.6 million-ton. We realize with the free trade deal, though, we wouldn't be trading east and west anymore. Western Canada would go to California. We had to look for our markets in the eastern United States and Canada.

We have 100% grower participation. Our grower numbers are ratcheting down because of larger size farms and the evolution process. We have fewer processors. About 20 years ago, we were probably representing 4,000 producers. Last year it was 875 processing vegetable growers in three districts across Ontario. Anybody producing vegetables for processing is in the plan and 13 vegetables are mandated to belong. We have very strong grower support. We still carry well over 90%. I'm not saying it's 100% because there's always someone who will think I could grow all those tomatoes myself.

The District Committee is elected annually at a rate of one committeeman per 20 growers. So I had to be elected to my district. District committeemen elect their people to the provincial board. We have ten provincial board directors. They elect the executive.

The primary function of the Ontario Processing Vegetable growers is annual negotiations of prices, terms and conditions of sale of the 13 processing vegetables. There's far more to the contract than just the price. What's on the back pages of these contracts. There's far more information like just the simple price up front doesn't mean anything. For instance, with peas across North America there are some places where the growers are paying for the seed. There are other places the seed is given to them. There are some places there is no tare on those loads. Other places they're tared. That has a big impact on the net value of that contract. We do not control production. Processors then contract their requirements directly with the individual growers of their choice. However, we do have contract security. A grower who has a track record with that company they might take them on a term basis the first year. This has evolved over the years, too, because of the high cost of equipment for tomatoes or if we're getting into machine harvest cucumbers. They cannot terminate that grower without just cause. He is automatically entitled to his percentage of base acres up to base. What I'm saying is if a processor has 10,000 acres and continues to grow 10,000 acres and you had 200 acres you would continue to be entitled to your base of that 200 acres or whatever the percentage was. If they ratchet it down to only 5,000, you would be entitled to 100 acres. They couldn't cut you off unless they have just cause. Under just cause, they have to notify the grower by December 1st that due to just cause he is being terminated. This gives him the right to appeal, first, to the board to see whether the board upholds it or not. No matter what we do both sides could then appeal that to the Farm Products Marketing Act to see if that's been justified. That seldom happens.

A year ago we had three growers that were terminated because of just cause. We upheld one for the processor and two for the growers. The crops involved were all for processing: tomatoes, cucumbers, sweet corn, green peas, green and waxed beans, carrots, cauliflower, cabbage, beets, peppers, pumpkins, squash and lima beans. There are some other minor crops, like onions and celery that go for processing that growers have not elected to vote to go under the plan.

Growers have committed approximately 1% of their annual gross returns, which generates approximately one million dollars annually, primarily for sourcing market data and industry information. We want to know what's going on. I've been in Sleepy Eye, Minnesota, where we started the North American Pea Bean Corn Conference. We have growers there from British Columbia, Alberta, Quebec, usually from New York, Minnesota, Wisconsin, and sometimes people from Michigan as well. We think it's very important to dialogue because most of these major companies

are multinationals. We have Heinz in southern Ontario. We have Nabisco, which is associated with DelMonte. Campbell soups are also in Toronto. They are also in Ohio. These companies are multinational. They will play one area against another.

It's very important to talk to your processor more than just at negotiation. We have a joint industry conference in London, Ontario. We are attracting people from a wider area all the time. Both the processors and the growers are together. The only thing we stumble over or argue about is price. Research work, health problems, consumer things, imports from Europe; we have the same problem with those as you do. They are a joint problem. So we have far more in common than we do to go our separate ways on. But we argue over whose 50 cents or \$1 that is on the table. . . if it's all theirs, all ours or half-and-half.

We do field research together. In the tomato industry, we spend close to \$75,000 grower money for research per year and \$75,000 processor and it's about the same amount in the other crops that go into research. We try to strive for better pesticide registration. That's a big problem in Canada with some of the volume of acres we have. If it's small, the companies will register the products in the U.S. But sometimes the Canadian market being only 10% of what the U.S. is it's not worth their cost to get them registered.

We strive very hard to have equating value contracts but it depends what the producer wants. For instance, in cucumbers one processor is paying \$200 a ton more for one than the other one but that same one that's paying us for the ones is paying \$50 a ton more for number two cucumbers. By that I don't mean quality, I mean size of cucumbers. It depends whether the tomato processor is doing it for juice, for whole pack or paste. There are different parameters for what can be accepted. For those things the load rejection and everything else is negotiated. That's all. The only way we see processor specific. We think they need equating value contracts. Like I say, they all think it's fine. The big guy, we're doing the most we should have a cheaper price. The new guy on the block or the small guy says we're the smallest one we need a break. How do you do that? That's why I say we strive very hard for equating value.

One of our directors a few years ago said if the processors got what they wanted, they'd want what they had because they do like to know what the competition is paying down the road. We do have final lock for arbitration in Ontario. And in Canada a significant amount of the growers bargaining position is lost once they put the seed in the ground so we want to know early. Our cucumber deadline was February 15th and the pea deadline

was February 14th. If we do not come to an agreement by 4 o'clock that afternoon, we flip over for final offer selection. There is supposedly a cooling off period for five days where you can go to mandatory four-hour mediation process to see if there's a settlement. I will show you what we are into on a few of those crops for arbitration and that's final offer selection. We think it works. It is perfectly reasonable that the grower know the price he will receive before he is committed to investing thousands of dollars in preparation, cultivation and harvesting of his crops. Many growers say that's what they like about the processing vegetables. They don't have to guess what Chicago's doing. The soybean grower, the wheat grower, the corn grower, and I'm there folks, know all about that. What day do you pull that trigger? We can all look back and say we should have priced corn and beans back in December of this year compared to what it has done now.

With NAFTA, we had to look at what was happening in tomatoes. We were going to lose a 13 1/2% tariff in 1989. The Ontario Tomato Processing Industry has changed significantly over the last ten years with the increasing North American competition. Paste is a global commodity just like corn and soybeans. In the late 1980's, one of the biggest challenges the Ontario industry faced in attempting to improve our overall competitiveness position was increase the relatively low yields in Ontario when compared to both the Midwest and California. This is where we were maybe a step ahead of the growers. I wasn't on the board at the time but we had to lead the growers if we were going to have an industry left in Canada. The price rationed it down 12% at the negotiation table that year. We had to do things to get more competitive. We went from 18 ton in 1989, to 37 ton in ten years time.

In 1989, the concept of productivity pricing was developed in an effort to improve the market in tons and per acre across the industry. This, just simply put, was the higher the yield of a processors average, the lower the price they pay. Just to put it in simple terms for you, yield over 25 ton per acre the next ton would go in at 1% cheaper for the whole crop. To put it in perspective, let's say the crop of tomatoes was \$100 a ton. The twenty-sixth ton went in for \$75 a ton. They start to develop better hybrids. They started doing more making sure the fields were cleaned up. There was more trading between processors to clean those fields up and that with the development of better hybrids and that helped and put this industry where it is. In 1998, on measured acres we had the highest yield in the globe. We had to get competitive to stay in business. Otherwise, we wouldn't be there.

We are within a truck's drive, a day truck drive of 140 million people. We knew we were going to lose western Canada. We had to gain something

in the east if we're going to stay when we're losing that tariff. There is more north and south trade than before.

Biography

Merle Suntken was born in 1939 and raised on a dairy, hog and grain farm in Ohio. He managed a feed business for three years and went into farming on his own. He joined the National Farmers Organization and later went to work for them full time.

Merle worked in the eastern states to help organize NFO in those regions. In 1968, he sold his farming operation and moved to the NFO National Headquarters to work as a negotiator for the hog division. After several years of negotiating and contracting with the major packers, Suntken was promoted to director of the hog division in 1980. From 1980 to 1993, Suntken and his staff developed new marketing techniques for producers nationwide. In 1994, Merle left NFO to work with an independent livestock marketing company until returning again in early 1997.

Merle and his wife, Marcy, live in the Ames area and are active in the Lutheran Church. They are the parents of three grown sons.

Speech

We are a nationwide organization, the National Farmers Organization, and I think that's a very important aspect because any time you pull a commodity from one area, the processors have a tendency to go out in another area and bring it in and beat you over the head with it. I am one of the bargainers for the National Farmers Organization at the home office here in Ames, Iowa.

It is my responsibility to get right in the middle of it and do some of the negotiation. We have a lot of negotiators and a lot of sales people, a lot of people working for our organization. But the first thing that the National Farmers Organization found out many years ago was the fact that we had to be a nationwide organization because invariably, especially in corn and soybeans and fat cattle and cull cows and feeder cattle because invariably you will come into Iowa and whatever you do in Iowa they will pour in other commodities from various states. If you're organized under a solid program and producers will stay organized, you can use that in reverse.

For example, last week we moved cattle from St. Cloud, Minnesota to Pennsylvania. Now that's just about as odd as you can get really. First off you don't move live cattle that far. We don't have any processing plants. We work strictly with independent producers. I want to talk about some of

the insides of some of the negotiations and some of the successes that we've had. This is only my 34th year of doing this and I've seen some beautiful successes and I've seen some really ugly stinking failures, too

The biggest problem I have in negotiating contracts and following through and stair stepping the market the next time and the next time and the next time is the producer's participation and follow through with what he says he's going to do. The processor can just blow your brains by doing that. Giving that producer that's not with you just a little bit more and sure as blazes you not only didn't get him but it will tear up that block of people that you don't have or you've got.

Inventory, inventory, inventory. The inventory I'm talking about is cull cows. Everybody that has cattle, mother cattle that produces baby calves has got some cull cows. And every year upon every year I hear that the cow market is going to go to hell in a hand basket in the fall of the year when them boys out west in Montana and Colorado and Idaho bring the cattle down off the range. And you know you're right. Why don't we orderly sell them? Now I understand you may have to change your ways. Instead of doing it in the first week or the second week of October you may have to do it the third week of October, or the first week of November or last week of September. What makes the difference to that cow that lost her calf. Can't we handle her in a little bit different manner than in the way my father did or my grandfather did. We have a dairy operation that we market his cull cows for. He sells 15 cull cows twice a week. Well, 15 cull cows twice a week isn't too bad. All of our producers in Wisconsin produce maybe one, two, three, four cull cows at a time. They're on a fifty cow dairy herd or they have 50 stock cows. You pick those up one, two, three, four or five at a time. We market thousands of cull cows a month. It's not easy. It takes a little coordination. We've got several packing plants that we do business with on a daily basis. If in fact this coming Saturday, a week from today, we had a packer call up this week and you know what he wanted. . .

The moral of the story is that is where you can put money in the producer's pocket. I'm talking about independent producers, and I've always thought it would probably be part of my job and most of my job is to put them on the same level playing field as the big boys. So consequently, we have the biggest and I believe, this is not bragging, I'm just stating fact, I believe our organization handles more cull cows for example as anybody in the United States. It's not easy but I'll tell you one thing we'll take our prices against anybody in the country on those Holstein dairy beef is another one that we are using a lot of.

But you have to coordinate just like number two up there. You have to coordinate and we call them collection points. You can call them buying stations. You can call them weigh stations. You can call them lifting points. You can call them anything you want to call them. It's some place where ten farmers bring in one, two, three, four cows or beef or hogs or anything in and put them in a truck and take them to the processing plant. You and I can't afford to take a hog or ten hogs or two cows fifty miles to a packing plant. It doesn't make sense. But if you can just put them together in what we call blocks. I was talking block sales, no offense to you ladies, to a lady the other day and she thought I was talking about blocks of wood. And I had to actually explain to her the difference in what we're referring to as blocks. So a lot of times I'm sure us four people sitting up here in negotiations some of our terminologies are so much different in negotiations and the way we put things off to market. But the key is and I heard it from our first speaker, Tom, here a while ago, that freight, a load of apples getting them to Washington or getting them from Washington to some place else takes a tremendous amount of money so it's no feasible. So you have to work out different methods of getting that transportation across there.

You heard from Brian Harris, who is my boss and also the director of our livestock department, yesterday that we're going to take the next step for independent producers and see if we can't get a program and we're just about yeah far from it right now is to take that on to the processing plant. Now maybe for the vegetable growers or so forth and I don't know, I have no idea. For the hog industry and for the cattle industry to take that product on and getting part of the dividends back from the grocery chain and getting the monies from the consumer is quite a bit different than ever been noted before. So that's the next step we're taking as an organization. If you talk about conference calls, research markets. We research markets all the time. For example, we sell cows and cattle, veal calves, baby calves, deacon calves, whatever you call them. Well, out here they're veal calves and in Vermont/New York the next telephone call is from California because we move cattle in California. That's one reason it needs to be a nationwide organization. And when you have that you do you research the markets all the time. Most of the time the markets are fairly stable except for the transportation. Outside of that the hog market, cattle market and so forth are somewhat the same.

The premiums and discounts, if nothing else, you can discuss and negotiate and bargain for premiums and discounts in a program as well as you can any price. In fact, premium discount deductions and premiums are as important as the price because basically the cattle market across this

nation it might be within a buck or two or three and the premiums might be four or five or six or eight depending upon what packing plant you're going into and where you're headed with that product.

Premiums and discounts are very, very good but you have to watch out because I'll tell you another simple mistake I made. I thought I was a real good boy. I bring this contract back and you know what it caused me? It caused our organization to be the best, have the best price of the junk cows in the world. But we didn't get any premiums for the good ones. That was my mistake. It didn't last long thank God. What happened over that short period of time, we traded ourselves a little monster because all of a sudden everybody brought us the junk cows and took the good cows off to our neighbors or some other marketing group because they could get a premium for them. So consequently over the year, that's been a few years back, but I don't forget those. You learn by your mistakes. I hope the old saying never fades away "If you don't make a mistake you're not doing anything." Because if it does, I'm a dead man.

At any rate, we've had some tremendous good points and like I said, we've had some bad points. But it depends upon you as a producer whether your program is going to be successful or not. And I agree and I disagree with some of the political and some of the regulations and whether or not you and I as independent producers are going to get a fair price because we have a Democrat or a Republican President. Well, I rather doubt it myself. That's only a personal opinion. That has nothing to do with the NFO but that's my own personal opinion. I don't think we can legislate ourselves a good corn, soybean, beef and hog market through Congress. I don't think that's going to happen. Not probably in my lifetime. It may happen down the road but it won't happen in my lifetime. You see I can't turn a computer but I have a son that makes hundreds of thousands of dollars in salary by helping invent computers and I promised him a long time ago I wasn't ever going to turn one on. I have a five year old granddaughter because that's the life that she is growing up in, that I promise you can run a computer equally to any fifteen year old kid hardly in the country. But that's neither here nor there. It's a different world. But if we want a price for our product in Iowa or across this country through some mechanism whether it is NFO or somebody else's you must work together. I don't think there's anyway out of it.

I will probably go to my grave not understanding why an independent producer no matter what state you live in doesn't want to put a price on his product. Why don't you? That's my question. Negotiate and make sales with packers. Well, I'm not going to cover that. That's what I do. That is

what we do. We are negotiators. We are a collective bargaining organization for independent producers across this nation. It's open to anybody and we can move a product in most every area. Granted this organization does not move a product in all fifty states. It does not. We're probably in 30 to 35, somewhere in that category. But it is possible any place to move product together.

The benefit is block sales and I went pretty well through the block sales. I promise you can get higher prices through block sales. That's all there is to it. It just absolutely happens. Premiums for niche markets. I gave you an example of one. Organic and hormone free cattle are worth about \$6 to \$8 a hundred weight right now more than if they are not. Proven fact last week Omaha, NE, Premium for sorting livestock. Well, here again we as producers have to understand the old days of taking all of our hogs or all of our cattle or all of any commodity into a packer that will kill everything because when I first started marketing things you could send a load of butcher hogs, sows and boars all into Swift and Co. and they would kill them all in the same plant, in the same day. Well, those days are all over with. So you do sort animals. It's a totally different atmosphere out there than there ever has been before. NFO representatives in the plant. Yes, we have NFO representatives right inside that packing plant taking care of the product that is going through there to make sure the identification doesn't get lost in the mail.

For example, did you ever send in a 1000 head of cull cows from three or four hundred different people and they all get killed on the same day and keep it straight. Well, we have our own staff people in those packing plants taking care of our business. That's part of your negotiations in your contract. Very important. Help work on your cost production sheets. Well, a lot of producers, many, many independent producers don't or haven't had the time to sit down and work out their own cost of production. We'll help you do that. Just ask. Sit down and work out their own cost of production. We'll help you do that. Just ask. Risk management program. We have a total risk management program. I 'm not going to go into that this morning but those are some of the things we do as the organization I've been right in the guts of it all the time. It's a tremendous opportunity through the cooperatives and other methods and other formulations and people that have negotiated any processors and so forth, it's tough for an independent producer that produces and raises a commodity to go out here and go into a processor like an IBP, ConAgra, Excel or all those type people of it you're into the grain in the Bungis, Dryfuss and Cargill and to sit down and negotiate contracts. But it's pretty good to have a representative going in

and representing two or three or four or five hundred or a thousand producers at a time. My strength in my bargaining is what the producers allow us to bargain with.

Biography

Paul Hitch is director and president of several custom feedlots in Oklahoma and Kansas. He's also chairman of the board of Hitch Enterprises and Hitch AgriBusiness in Guymon, Oklahoma. He and his wife, Lynda, live in Guymon, where Paul was raised. They have two sons.

He has a Bachelor of Science in animal science from Oklahoma State University in Stillwater, Oklahoma, and a Master of Science in business administration from Stanford University. He is past chairman of the Oklahoma Beef Industry Council, the Texas Cattle Feeders Association (where he is still chairman of Beef PAC), and past live cattle marketing committee chairman for the National Cattlemen's Beef Association. He's served as both the cattle feeders' committee chairman and northwest district vice president for the Oklahoma Cattlemen's Association. He is active on the Chamber of Commerce and on the Board of Member City National Bank in Guymon.

Speech

I'm Paul Hitch. I'm chairman of the consolidated beef producers, a newly formed cattle marketing co-op. Most of the people are in Texas. We also have some members in New Mexico and Oklahoma, Colorado and Kansas. We organized in April 2000. We had our first recruiting meeting in May 2000. We closed the rolls on October 2000 with over 2,100,000 head of cattle enrolled and about 130 members most of whom are feed yards. I made 12 or 15 speeches around the nation in Texas, Colorado, Kansas, and Oklahoma. I tried to convince people of one thing. Two things I firmly believe. I said to them and I'll say to you that you cannot stay where you are. Staying where you are is not an option because what you have now is not going to be what you have five years from now. Cause what you have now isn't what you had five years ago. The markets for cattle are changing. The market for everything is changing.

The second thought that I tried to leave them with was the future is not something that happens. The future is something that is created and people create it with their own interest in mind. And you can either help create a future that's more to your benefit or you can sit back and relax and let someone else create it and hope what they create is beneficial to you. But

you can't have what you have now forever. And you cannot necessarily join together and create exactly what you want but you can join together and have a seat at the table. Collectively we can help create a future that is more beneficial to the sellers of cattle. And enough people believe me that I had 130 of them commit over 2 million cattle to a marketing program. We have hired a manager. We have hired a staff. We've rented office space from Texas Cattle Feeders Association. And as of this week we sold cattle.

It's our first week so I wish I could report how things are going. I'll report how things went for the first week. We got about 16,500 cattle committed. We sold 64% of them. About 60% of those sold on the cash market. About 40% sold on some formula. Our intent and my hope is that we'll go more into formula and have a negotiated base price. The idea of the thing is to sell them on a base price. Sell them on a formula and also as a benefit to the members develop over the years, a millions-of-cattle database into which they can dig and paw around and try and find out more about how their cattle performed in various packing plants. So the database is going to be as valuable I think to our members as the negotiated sales are. The bet that people made and the bet that I asked them to make and the sufficient number of them did was are you willing to bet a \$1 a head that somebody else can negotiate a better price than you can negotiate for yourself. I would say this. This past week it basically cost them \$1 because I think the prices that Consolidated Beef got for the cattle was approximately the same prices that the cattle sellers would have gotten if they hadn't gone through Consolidated Beef. So the first week it was kind of a wash deal but they gave up the buck that they had to pay in marketing fees to pay the bills for Consolidated Beef. But that 's only the first week.

I am satisfied that we can add value and I want to add value not only for the purpose of the cattle owners. Obviously, they're the people I'm most interested in because I am one. I wouldn't mind adding some value to the packers. I think the idea of an adversarial relationship is a poor way to do business. Now as long as everybody else had the same attitude and you had the poultry people, the pork people and the beef people, we're all using the same rather inefficient marketing system and viewed the packer as the enemy then hey, the beef people got along pretty good. After all, what did we have to worry about? We had cowboy boots, belt buckles and Roy Rogers and the pig people had bib overalls. The cat and chicken people didn't have any romance at all.

We got our butt kicked thoroughly by believing that the romance of cattle and the people's love affair with beef was going to be all that we needed. Well, clearly that wasn't all we needed. Pork and poultry have

worked out a much more efficient system and it's incumbent upon beef to do so. I want the beef producers and the packers to work closely together. I want them to work closely together for a mutually beneficial program. I used to say that what I wanted to do was the cattlemen to get together and put Tyson out of business. Now that he owns IBP, I don't know that I necessarily want him to go broke anymore. But I do want cattlemen and packers to work together for a mutually beneficial system to increase the value of and increase the consumption of beef and beef products. I tell people and I tell cattlemen as I go around – you people think of yourselves as cattlemen is killing us. I'm really, really angry that you think of yourselves as cattlemen because you're not cattlemen. You're part of a beef production system. And if you think of your product as cattle, it's screwing us up. We in the cattle industry need to move away from thinking of ourselves as cattlemen. When you think of yourselves as cattlemen, you sell calves or you sell feeder cattle and when you got wheels under them and a check in your hand, and they're down the road, you don't care what they do for the next guy down the line. And the next guy down the line is also important in the system. And the next guy is you - the rancher, the feeder, the packer and the retailer - all of you have got to make a living to survive based on somebody coming in and putting a dollar down and buying a steak or putting down \$5 and buying a steak at the retail counter or going to a restaurant and ordering one. And if those people don't show up and pay it, none of us make a living.

So I want Consolidated Beef to work together with the packers. I'd like to see another \$15 a head and then I'd like to put another \$10 of that back in the cattle owner's pocket and let the packer keep \$5. I'd like for us both to make more money and I'd hope that we could go into the packers with that attitude. And they have been cooperative. They went from either chilly to openly antagonistic to the idea of Consolidated Beef when we first told them what we were going to do back in April. They warmed up a bit in July and last week we sold cattle to all four of the major packers. So they're all willing to play the game with varying degrees of enthusiasm. But we need to sell the cattle and they need to buy them. Next week, we're going to have to do business with the same packer. So we're going to deal with each of them and some of the outlying packers – Sam Cain down in south Texas and there are some outlying packers that aren't part of the major four but they are important to some of our members. And we represent our members.

We have 130 members and over 2 million cattle. I think we will be successful and if we are, we'll try to grow. We'll try to expand our cattle numbers and our members to probably sell 6 million cattle a year. That's a

guess. So the 2 million committed to this program is only about a 1/3 of their sales. I've asked them and had a couple of come to Jesus meetings and said, "Look you guys have said you all hate the current market and here you are keeping 2/3 of your cattle in a market you hate. Why are you doing that?" It didn't make any sense to me then and it still doesn't. I guess they're following the first rule of wing walking. Never let go of what you've got a hold of until you've got a firm hold of something else. Time will tell. I think we can get more cattle into this program. I think the program will be successful. They're only betting a \$1. Now the downside of that is that they've only got a buck involved in it so the commitment is going to be the worry. Are people committed to the program? I'd like to see them be committed to a better way of marketing cattle. I think this is a better way. And when you only charge a buck you have to worry about the depth of commitment. That's my concern. Will they stay hooked to the program? I think they'll stay hooked to the break even. I think they'll pay a buck and get the same price for a while. But they won't do that forever. I can't do that for two or three years but I can do that for four or five months. I think that'll be long enough to see that it's up and running.

Conference on CLOUT

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