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AGRICULTURAL MARKETING AND BARGAINING ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON AGRICULTURAL RESEARCH
AND GENERAL LEGISLATION

OF THE

COMMITTEE ON
AGRICULTURE AND FORESTRY
UNITED STATES SENATE

NINETY-FIRST CONGRESS

FIRST SESSION

ON

S. 2225

A BILL TO STRENGTHEN VOLUNTARY AGRICULTURAL
ORGANIZATIONS, TO PROVIDE FOR THE ORDERLY MAR-
KETING OF AGRICULTURAL PRODUCTS, AND FOR OTHER
PURPOSES

NOVEMBER 20 AND DECEMBER 9, 1969

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COMMITTEE ON AGRICULTURE AND FORESTRY

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NOVEMBER 20 AND DECEMBER 9, 1939



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AGRICULTURAL MARKETING AND BARGAINING ACT

THURSDAY, NOVEMBER 20, 1969

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND
GENERAL LEGISLATION OF THE COMMITTEE ON
AGRICULTURE AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 324, Old Senate Office Building, Senator B. Everett Jordan of North Carolina (chairman of the subcommittee) presiding.

Present: Senators Jordan of North Carolina, Talmadge, Allen, and Young of North Dakota.

Also present: Senator Aiken.

Senator JORDAN. The subcommittee will please come to order.

Good morning, ladies and gentlemen.

The subcommittee is holding hearings today on S. 2225.

This bill would require handlers of agricultural products to negotiate and contract terms with producer bargaining associations. It would not require that such negotiations result in the conclusion of an agreement.

The bill amends the Agricultural Fair Practices Act of 1967, which was approved last year.

A copy of the bill and a staff explanation of it will be inserted in the record at this point.

(The documents are as follows:)

[S. 2225, 91st Cong., first sess.]

A BILL To strengthen voluntary agricultural organizations, to provide for the orderly marketing of agricultural products, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Agricultural Marketing and Bargaining Act of 1969.

LEGISLATIVE FINDINGS AND DECLARATION OF POLICY

SEC. 2. Congress has recognized and has moved to protect the right of farmers and ranchers to market and bargain cooperatively. It has been held that interference with this right is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce. It is essential that handlers of agricultural products recognize this right if we are to avoid the disputes and inefficiencies in agriculture which can cause irreparable harm to farmers and ranchers and to the general economy of the Nation. Proper relationship between handler and agricultural bargaining association should be encouraged in order to promote friendly adjustment of marketing problems and to achieve efficient delivery of reasonably priced, high quality food to the general public.

It is therefore declared to be the policy of Congress and the purpose of this Act to encourage cooperative marketing and bargaining with respect to farm

products by establishing standards of fair practices with respect to the relationship of handlers and agricultural bargaining associations.

Sec. 3. The Agricultural Fair Practices Act of 1967 (82 Stat. 93 et seq.; 7 U.S.C. 2301) is amended—

(a) By adding the following new subsection to section 3.

“(f) The term ‘agricultural bargaining association’ means an association of producers which has as its principal function, as agent of producers, the negotiation with handlers of prices and other terms of contracts with respect to the production, sale, or marketing of agricultural products.”

(b) In section 4 by redesignating subsection “(f)” as subsection “(g)” and inserting the following new subsection:

“(f) To refuse to negotiate prices and other terms of contracts at reasonable times and places with agricultural bargaining associations which represent producers of agricultural products from whom the handler usually obtains agricultural products, or who may reasonably and efficiently supply agricultural products to, or produce agricultural products for, such handler when proof of representation is provided the handler by the agricultural bargaining association in the form of a written authorization signed by the producer.”

(c) By changing section 5 to read as follows:

“Sec. 5. Nothing in this Act shall—

“(a) prevent handlers and producers from selecting their suppliers and customers for any reason other than a producer’s membership in or contract with an association of producers,

“(b) compel producers to join or belong to an association of producers,

“(c) compel handlers and associations of producers to conclude an agreement with respect to any negotiations, or

“(d) be construed to forbid the affiliation of an association of producers, as defined in section 3 of this Act, with other associations having similar objectives, or with bona fide agricultural or horticultural organizations whose primary objectives are to promote, protect, and represent the business and economic interests of farmers and ranchers.”

SENATE COMMITTEE ON AGRICULTURE AND FORESTRY

Staff Explanation of S. 2225 (Subcommittee No. 4)

SHORT EXPLANATION

This bill would amend the Agricultural Fair Practices Act of 1967 to require handlers to bargain with producers’ bargaining associations.

SECTION-BY-SECTION EXPLANATION

Section 1. Short title. “Agricultural Marketing and Bargaining Act of 1969.”

Section 2. Declares it to be the policy of Congress to encourage cooperative marketing and bargaining with respect to farm products.

Section 3. Amends the Agricultural Fair Practices Act of 1967 by—

(a) adding a new definition, “agricultural bargaining association”, to mean an association of producers with the principal function of negotiating contract terms relating to the production, sale, or marketing of agricultural products with handlers;

(b) prohibiting handlers from refusing to negotiate with properly authorized agricultural bargaining associations; and

(c) changing section 5 to substitute disclaimers of any intent to—

(i) compel producers to join or belong to an association of producers;

(ii) compel handlers and associations of producers to conclude agreements; or

(iii) forbid affiliation of associations of producers with certain other associations.

for a disclaimer of any intent to require a handler to deal with an association of producers. The objective of the disclaimer described in (iii) is to make it clear that affiliation with, for example, a general farm organization would not prevent an association which had negotiation with handlers as its principal function from qualifying as an “agricultural bargaining association”.

Senator JORDAN. I want to say at the beginning we are not going to be able to hear all the witnesses who want to be heard. We are going

to run until noon today. That is as long as I can hold this one. Several others have the same problem. Just as soon as we can get the subcommittee back together after Thanksgiving, we will give you ample notice and continue the hearings as long as necessary to hear all of the witnesses.

Senator AIKEN. It was 4 years last time.

Senator JORDAN. We will do it quicker than that this year.

Senator AIKEN. I hope so.

Senator JORDAN. Quite a number of witnesses and a great many associations have asked to be heard. We did not give them very much time to get ready. We want to be fair to everybody. We have always tried to do that.

Senator AIKEN. Yes.

Senator JORDAN. We are glad to have Mr. Angevine, the Administrator of the Farmer Cooperative Service of the U.S. Department of Agriculture, with us. We will be glad to hear from you at this time, sir.

Mr. ANGEVINE. Thank you, Mr. Chairman.

Senator JORDAN. You have a prepared statement, I believe, sir?

Mr. ANGEVINE. Yes, sir.

STATEMENT OF DAVID W. ANGEVINE, ADMINISTRATOR, FARMER COOPERATIVE SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. ANGEVINE. Mr. Chairman, it is a pleasure to be here this morning in compliance with your request and to present the Department's views on S. 2225—a bill "to strengthen voluntary agricultural organizations, to provide for the orderly marketing of agricultural products, and for other purposes."

This legislation as you have said, Mr. Chairman, proposes to amend the Agricultural Fair Practices Act of 1967—Public Law 90-288—so as to strengthen voluntary agricultural marketing. The act itself protects farmers' rights to organize and to join cooperatives by prohibiting handlers from discriminating in any way against members of a producers' association.

This proposed amendment to the act takes an additional step. It makes handlers' refusal to negotiate prices and other terms of contract an unlawful practice.

The Department fully supports the purposes of this act. Farmers need greater bargaining power. Farmers' right to market and bargain cooperatively should be strengthened wherever possible by appropriate means. Those who buy farmers' products should fully recognize farmers' right to market and bargain collectively.

We feel Congress should affirmatively establish the handlers' responsibility to recognize this right and to negotiate with farmers' bargaining cooperatives. Such is the purpose of S. 2225, and I repeat, Mr. Chairman, the Department fully supports this purpose.

We commend this subcommittee for launching the Agricultural Fair Practices Act of 1967. This act, which the President signed April 16, 1968, makes it unlawful for any handler knowingly—

To coerce any agricultural producer in the exercise of his right to join such an association of producers;

To refuse to deal with any producer because he has exercised his right to join such an association;

To discriminate against any producer with respect to price, quality, quantity, or other terms of purchase because of his membership in such an association or his contract with it;

To coerce or intimidate any producer to enter into, maintain, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers or a contract with a handler;

To pay or loan money, give anything of value, or offer any other inducement or reward to a producer for refusing to or ceasing to belong to an association of producers; or

To conspire, combine, agree, or arrange with any other person to do or aid or abet the doing of any of these acts.

This act is a firm, first step in the right direction. Enforcement of this act lies both with the aggrieved party and with the Secretary of Agriculture. A farmer, for example, may ask a Federal district court to restrain a handler who he believes has violated the law, and if he has suffered injury, he may sue to recover damages. Or, the farmer may complain to the Secretary of Agriculture, and if the Secretary finds that a handler has violated the law, he may ask the Attorney General to go into Federal district court in his behalf to stop the handler from such unlawful practices.

In the 19 months since the President signed the act, 80 farmers have complained to the Secretary that handlers of agricultural products have violated their rights under the act. Frequently they complain that handlers have refused even to meet with representatives of producer associations in order to work out price, quantity, quality, or other terms of purchase. And even when handlers have met with such representatives, some of these farmers complain, they have refused to negotiate price, quantity, quality, and other terms of purchase is not now a violation of the act. The Department believes it should be a violation, and such is the purpose of S. 2225.

While fully supporting the purposes of this act, the Department wishes to suggest that S. 2225 may need clarification. Let me share with you some of the points we feel you should consider.

The bill proposes, in amended subsection 4(f), that it shall be unlawful for any handler to refuse to negotiate "with agricultural bargaining associations which represent producers of agricultural products from whom the handler usually obtains agricultural products, or who may reasonably and efficiently supply agricultural products to, or produce agricultural products for, such handler when proof of representation is provided the handler by the agricultural bargaining association in the form of a written authorization signed by the producers."

We feel the association should represent some substantial number of producers. The handler, before entering into negotiation with a farmers' association, has a right to know that the association represents a substantial number of producers or a substantial amount of production within the area of production.

We also feel that Congress should not require a farmer-owned processing cooperative—a handler under the act—to negotiate with a bargaining association that represents farmers who are not members of the processing co-op but "who may reasonably and efficiently supply agricultural products to it."

The Department is also mindful of difficulties that might arise under this provision if a farmer-owned processing cooperative were required to negotiate with a bargaining association that represents some or all of its own members. A farmer would, in effect, have a representative on either side of the negotiating table—his co-op and his bargaining association—and the Department is very eager to avoid such conflict.

The proposed amended subsection 5(d) raises the question of permitting associations of producers to join with "other associations having similar objectives."

As you well know, Mr. Chairman, existing legislation—for example, the Capper-Volstead Act of 1922 (7 U.S.C. 291)—permits associations of producers to join with other associations of producers. It should be clear that S. 2225 does not intend permitting associations of producers to join with nonproducers or their associations and, together, to negotiate prices and other terms of contracts with handlers.

In noting these concerns, Mr. Chairman, let me again emphasize that the Department is in complete agreement with the purposes of S. 2225. Our experience under the Agricultural Fair Practices Act indicates that legislation is needed and that Congress should require handlers to negotiate with farmers' representatives.

The concerns we have expressed can be overcome, and the Department is eager to work with the committee and its staff to draft whatever amendments are necessary to accomplish this purpose.

Time has not permitted the Department to obtain a determination from the Bureau of the Budget concerning the relationship of S. 2225 to the program of the President. The Budget Bureau has advised, however, that it believes the committee will wish to obtain and consider the views of the Departments of Justice and Commerce on the bill.

Thank you, Mr. Chairman.

Senator JORDAN. Thank you very much.

Senator TALMADGE. Do you have any questions?

Senator TALMADGE. Mr. Angevine, I compliment you on your statement. I am in very great sympathy with the objectives of this bill. The farmer is the only individual I know of who cannot determine the price of the product he sells. The buyer always determines that, and it varies from day to day and frequently from section to section.

I am going to try to find out in my own mind how the application of the bill would work.

Suppose a group of farmers in south Georgia want to try to get a fair price for their watermelons, how would they proceed under this bill?

Mr. ANGEVINE. Senator, they would meet with the purchaser or purchasers of watermelons.

Senator TALMADGE. Who is "they" now? How many farmers would it require?

Mr. ANGEVINE. The farmers would organize an association. Under the bill there is as I understand it no required number.

Senator TALMADGE. Say you got 10 farmers in 10 different counties to join the association. You had 500 other farmers that refused to join. What would be the application there?

Mr. ANGEVINE. This association of farmers that included the 10 farmers from each of 10 counties would be a bargaining association

under the bill, and a purchaser of watermelons would be required under the bill to negotiate with them.

Senator TALMADGE. Who would they deal with? We have hundreds and hundreds of different purchasers of watermelons in the area. Some of them come in, pick up the melons on the trucks and haul them to St. Louis or Cleveland or New York or Philadelphia or Jacksonville or elsewhere. Would each of these entrepreneurs be considered a handler?

Mr. ANGEVINE. Yes.

Senator TALMADGE. And they would have to negotiate with anybody in the area who handles watermelons?

Mr. ANGEVINE. Yes.

Senator TALMADGE. And then come to an agreement on the price. Well, suppose the farmers in 20 other counties did not organize any association and kept on selling watermelons? What benefit would that be to the farmers who had organized the association? Their watermelons would be rotting in the fields and the other farmers would be selling them.

Mr. ANGEVINE. Senator, it is quite possible that these farmers could still, even though they faced competition from other farmers who were not organized, through the organization of the bargaining association, get a better price for their watermelons than they would have gotten otherwise.

Senator TALMADGE. Suppose 50 percent of the farmers in Georgia joined and the farmers in Alabama did not join. The watermelons would be harvested at the same time, and of course these people that buy watermelons are going wherever they can get them the quickest. They are highly perishable. They ripen within a matter of 24 hours.

If they are not marketed within a matter of weeks, why, they have lost their edible qualities.

Mr. ANGEVINE. Senator, there is certainly a limit, probably a very low limit, as to the increased price that the farmers could get by organizing under these circumstances, but nevertheless there are some large purchasers of watermelons who would like to deal with an organized group from whom they could get a large quantity.

Senator TALMADGE. Maybe I am giving you an extreme example. Perhaps it might be applicable in a better manner to some other product besides one that is acutely perishable. I was just wondering how the application of the act could be a benefit to producers of commodities like that. They could negotiate as I understand it on any farm commodity.

Mr. ANGEVINE. Yes.

Senator TALMADGE. Pork?

Mr. ANGEVINE. Except those that are exempted in the act, commodities of tobacco and cotton are not included.

Senator TALMADGE. Pork?

Mr. ANGEVINE. Yes.

Senator TALMADGE. Beef?

Mr. ANGEVINE. Yes, sir.

Senator TALMADGE. Poultry?

Mr. ANGEVINE. Yes, sir.

Senator TALMADGE. All perishable vegetables and things of that kind?

Mr. ANGEVINE. Yes.

Senator TALMADGE. So it gets right down in the final issue, I presume, to how effectively the farmers would organize?

Mr. ANGEVINE. That is correct.

Senator TALMADGE. To acquire a fair price for the product?

Mr. ANGEVINE. That is absolutely right.

Senator TALMADGE. It is down in the final analysis to the labor union operation of whether you join the union or not. If you do not you cannot bargain; if you do you can. Is that about the size of it?

Mr. ANGEVINE. It is certainly correct that it depends a great deal on the farmers' willingness to organize. You are absolutely right, Senator.

Senator TALMADGE. As I understand it, in the handling of these products, if this bill is enacted into law, the handler is required to negotiate in good faith but is not required to come to any ultimate conclusion?

Mr. ANGEVINE. That is right.

Senator TALMADGE. Is that correct?

Mr. ANGEVINE. That is correct.

Senator TALMADGE. So he could negotiate until the products rotted in the field and still be negotiating and the farmer would be left with nothing to sell?

Mr. ANGEVINE. That is right.

Senator TALMADGE. Is there any way we could make this thing more effective? I can see here that we have got a bill that might be effective in some ways and wholly ineffective in others, unless all the farmers joined. I can see a great loophole there. You would have a law and it would be ineffective in the results.

Is that a pretty good summary of it?

Mr. ANGEVINE. Yes. Farmers have been able in some commodities to organize very successful bargaining associations. In some of these cases, they have contracts with the principal handlers that are reached long before the crop is harvested, and they come to agreement.

Senator TALMADGE. Agree on the contract price?

Mr. ANGEVINE. Correct.

Senator ALLEN. Is that correct?

Mr. ANGEVINE. That is correct.

Senator ALLEN. It would not in any sense be a watering down of the legislation?

Mr. ANGEVINE. No, sir.

Senator ALLEN. It would make it more effective?

Mr. ANGEVINE. Yes, sir.

Senator ALLEN. We all agree that the only way for the Government to get out of the business of subsidizing the producer is for him to get a better price for his products in the marketplace, and this is a step in that direction, is it not, Mr. Angevine?

Mr. ANGEVINE. Yes, sir.

Senator ALLEN. To enable the farmer to get a better price for his product?

Mr. ANGEVINE. Yes.

Senator ALLEN. And you would feel that possibly, through trial and error, that this procedure could be perfected as time goes on, to make

it more effective, and to cover some of the points raised by Senator Talmadge?

Mr. ANGEVINE. Yes, sir.

Senator ALLEN. And you feel that this bill is in the best interest of the dirt farmer?

Mr. ANGEVINE. To have a bill with this purpose enacted by Congress?

Senator ALLEN. Yes.

Mr. ANGEVINE. Yes, sir.

Senator ALLEN. I believe that is all.

Senator JORDAN. Seantor Young?

Senator YOUNG. In what commodities is most of the bargaining such as this bill would cover being conducted now?

Mr. ANGEVINE. Senator, I think the most successful bargaining that has taken place so far has been in the field of fruit, berries, and perennial vegetables such as asparagus. There has been successful bargaining also in milk, very successful bargaining in milk. There has been successful bargaining in a number of other vegetable crops.

Senator YOUNG. And these are usually in crops where they had to be processed by a processing plant?

Mr. ANGEVINE. Yes.

Senator YOUNG. In the area, I suppose?

Mr. ANGEVINE. Yes, a small number of purchasers and a relatively large number of producers.

Senator YOUNG. Attempts and very strong attempts have been made at bargaining in our area for wheat, livestock, and other commodities, but I could see where it presents more of a problem when you have maybe one or two processors handling all of the commodities in one community. I think your watermelon case is one where it could not be too effective.

Senator TALMADGE. I do not see how it could be.

Senator YOUNG. That is all, thank you.

Senator ALLEN. Just one point there. Actually most of the bargaining now is with contract producers, is it not?

Mr. ANGEVINE. Yes, sir.

Senator ALLEN. Producers of broilers?

Mr. ANGEVINE. Yes.

Senator ALLEN. We have a lot of that down in Alabama.

Mr. ANGEVINE. That is true.

Senator ALLEN. Where they are unwilling to negotiate at all with the producers?

Mr. ANGEVINE. Yes.

Senator ALLEN. So rather than just a farmer out there with a varied crop, this really at the present time would apply more to those who do have contractual relations now?

Mr. ANGEVINE. Yes.

Senator ALLEN. With the processor?

Mr. ANGEVINE. Yes. I would think that certainly the aim of bargaining would be to arrive at terms of a contract, and many of the producers that would be among those who would first arrive at contract terms under a bill with such purpose as this would be those who are already used to contracting with processors or handlers.

Senator ALLEN. Hasn't the citrus industry through the years built up a tremendous cooperative?

Mr. ANGEVINE. Yes.

Senator ALLEN. Which results in a good price for their product?

Mr. ANGEVINE. Yes. Quite frequently, of course, they do the processing themselves. They take the product all the way to the supermarket.

Senator ALLEN. Thank you.

Senator JORDAN. Thank you very much.

Mr. ANGEVINE. Thank you, Mr. Chairman.

Senator JORDAN. Mr. Lauterbach, I believe you are to testify instead of Mr. Shuman.

We are glad to have you. Sorry Mr. Shuman cannot be here, but you can put his statement in the record if you wish.

Mr. LAUTERBACH. Thank you, Mr. Chairman.

Senator JORDAN. We are ready to hear from you, now, sir.

**STATEMENT OF ALLEN A. LAUTERBACH, GENERAL COUNSEL,
AMERICAN FARM BUREAU FEDERATION, CHICAGO, ILL.**

Mr. LAUTERBACH. Mr. Shuman had hoped to be here. He had a prior commitment and could not be here this morning. He asked that I present it with your permission.

Dr. Hood is the manager of the American Agricultural Marketing Association and two or three of the State Marketing Association Farm Bureau managers are here and they would like to present some evidence to the committee if this is your wish.

Senator JORDAN. That is all right.

Mr. LAUTERBACH. So in effect their statement is part of Mr. Shuman's statement. This statement reads as follows:

On behalf of the American Farm Bureau Federation, which represents 1,796,641 member families in 49 States and Puerto Rico, we want to express our appreciation for the opportunity to appear before this committee in support of S. 2225, the Agricultural Marketing and Bargaining Act of 1969.

With the committee's consent, our presentation will consist of my opening statement, followed by individual statements of several persons knowledgeable of the operations of our affiliated Farm Bureau marketing associations.

In recent years, Farm Bureau has had as one of its priorities the development of more effective marketing programs, founded on the belief that the market power of farmers can be strengthened best by the use of the market system. We believe that farmers must develop the capacity to manage their own production and develop voluntary marketing associations if they are to earn and obtain the highest possible net income. For this reason, Farm Bureau actively supported the passage of the Agricultural Fair Practices Act of 1967, commonly referred to as S. 109.

We appreciate very much the support that this subcommittee and the full Senate Agriculture Committee, gave to this legislation. Its basic purpose was to establish "standards of fair practices required of handlers in their dealings in agricultural products." The act declared it to be unlawful for a "handler" to engage in such practices as—

Coercing producers in the exercise of their rights to join—or not to join—an association of producers;

Refusing to deal with producers because of their membership in an association of producers;

Discriminating against producers with respect to terms of purchase because of their membership in an association of producers; or

Coercing or intimidating producers to breach or terminate membership agreements or marketing contracts with an association of producers.

The enforcement provisions of the act permit a producer, or an association of producers, to go directly to the Federal courts and obtain injunctive relief when such prohibited practices occur. The law can also be enforced by the Secretary of Agriculture and the Attorney General through the Federal courts when the Secretary has reasonable cause to believe that the prohibited practices have occurred. In addition, any person aggrieved can sue for damages caused by such prohibited practices.

We have found the Agricultural Fair Practices Act of 1967 to be helpful in enabling farmers and ranchers to organize and operate their own marketing associations. Since its enactment, there has been less evidence of discrimination against producers by handlers, processors, and contractors (hereinafter referred to as "handlers") because of membership in an association of producers.

However, this law does not effectively deal with the problems covered by S. 2225—namely, the refusal by handlers to do business with producers who wish to negotiate for the sale of their products through their marketing associations. Our other witnesses will bring to the committee's attention examples of how handlers have refused to negotiate with the duly authorized marketing agents of farmers in the sale of their products.

The proposed Agricultural Marketing and Bargaining Act of 1969 would take an additional step in protecting the rights of agricultural producers to bargain through their associations. It is an amendment to the Agricultural Fair Practices Act of 1967, with the purpose of encouraging "cooperative marketing and bargaining with respect to farm products by establishing standards of fair practices with respect to the relationship of handlers and agricultural bargaining associations."

S. 2225 would strengthen the present law by adding a new subsection to section 4, "Prohibited Acts." Under this amendment it would be unlawful for any handler knowingly to engage in the following practice:

To refuse to negotiate prices and other terms of contracts at reasonable times and places with agricultural bargaining associations which represent producers of agricultural products from whom the handler usually obtains agricultural products, or who may reasonably and efficiently supply agricultural products to, or produce agricultural products for, such handler when proof of representation is provided the handler by the agricultural bargaining association in the form of a written authorization signed by the producer.

Section 3(a) of S. 2225 defines an "agricultural bargaining association" as follows:

The term "agricultural bargaining association" means an association of producers which has as its principal function, as agent of producers, the negotiation with handlers of prices and other terms of contracts with respect to the production, sale, or marketing of agricultural products.

The protection provided by this proposed legislation would cover all such bargaining associations and would not be limited to those "certified" by a Government agency.

Section 3(c) of S. 2225 would revise section 5 of the present law by making it clear that nothing in the act shall—

Compel producers to join or belong to an association of producers;

Compel handlers and associations of producers to conclude an agreement with respect to any negotiations; or

Forbid the affiliation of an association of producers with other associations having similar objectives or with bona fide agricultural or horticultural organizations whose primary objectives are to promote, protect, and represent the business and economic interests of farmers and ranchers.

The Farm Bureau continues to believe that the development of more effective marketing programs is the key to farm prosperity. The enactment of the Agricultural Marketing and Bargaining Act of 1969, by requiring handlers to negotiate with agricultural bargaining associations as agents of their producer members, would be another major tool in helping farmers and ranchers to earn and obtain the highest possible net farm income.

We appreciate the opportunity to present our views on this legislation.

(End of Mr. Charles B. Shuman's prepared statement.)

MR. LAUTERBACH. At this time we would like to ask Dr. Hood, Kenneth Hood, who is general manager of the American Agricultural Marketing Association, to present a statement.

Senator JORDAN. Thank you very much. We will be glad to hear from Dr. Hood.

STATEMENT OF DR. KENNETH HOOD, GENERAL MANAGER, AMERICAN AGRICULTURAL MARKETING ASSOCIATION, CHICAGO, ILL.

Dr. HOOD. Thank you, Senator.

Senator JORDAN. Give your full title and name for the record, please, sir.

Dr. HOOD. I am Kenneth Hood, the general manager of the American Agricultural Marketing Association. This is a cooperative affiliate of the American Farm Bureau Federation.

My testimony, Senator, will include this statement plus statements by four of our State managers of our marketing association.

As I stated in my introduction, the American Agricultural Marketing Association is a marketing affiliate of the American Farm Bureau Federation, organized under the cooperative laws of the State of Illinois.

I will refer to the American Agricultural Marketing Association from now on as AAMA.

The AAMA is employed by its member State Farm Bureau marketing associations to act as their common agent in negotiating contracts, making price recommendations, analyzing marketing conditions, and providing market and economic information. We also assist in organizational activities, membership relations, training schools, preparation and dissemination of newsletters, and making sales contacts.

Our AAMA staff and the staffs of many of our member State associations have had difficulty in many instances when attempts were made to get the processors, handlers, contractors, and other buyers, with whom our members have had contracts in prior years, to meet with representatives of our associations to discuss contracts and contract terms.

I do not want to leave the impression that all buyers fail to recognize our associations and engage in meaningful negotiations. Many have been cooperating with us for many years in our efforts to negotiate contracts on an association basis.

The refusal of some handlers to agree to meet with our marketing association representatives to discuss contracts creates problems for those buyers who wish to cooperate and makes it difficult for us to be fully effective in contract negotiations for the affected commodities in many areas.

We have asked representatives of four of our State Farm Bureau marketing associations to spell out in detail some of the most flagrant cases of failure to recognize and negotiate. One of these representatives is from the broiler area and three are from associations involved in efforts to negotiate contracts for fruits and vegetables for processing.

Before calling on these State representatives, I would like to elaborate on a few cases in the broiler field, and then one comment on fruits and vegetables.

SOUTHEASTERN HATCHERIES, INC.

One of the most persistent cases where a contractor has repeatedly refused to meet with representatives of the AAMA and the Georgia Farm Bureau Marketing Association involves the Southeastern Hatcheries, Inc., Atlanta, Ga.

In August 1966, William Jasper, manager, poultry division, AAMA, wrote to Mr. Ray Fechtel, president, Southeastern Hatcheries and asked for an appointment for the purpose of discussing the "Farm Bureau 12-point broiler program" and other matters of mutual interest. No reply was received; thereafter, several attempts were made to contact Mr. Fechtel by phone, but the calls could not be completed.

On September 16, another letter was written asking specifically for an appointment on October 11, 1966. No reply was received, and repeated efforts to reach Mr. Fechtel by phone failed.

On Monday, October 24, 1966, Ned Hamil of the Georgia Farm Bureau Marketing Association, and William Jasper, AAMA, called, unannounced, at the main office of Southeastern Hatcheries in Atlanta, Ga. Hamil and Jasper met with Mr. Ed Fechtel, Ray Fechtel's brother.

It appeared that Ed Fechtel was not the key decisionmaker in Southeastern; therefore, after discussing the Farm Bureau broiler program and broiler industry matters generally, it was agreed that efforts would be made again to visit with Ray Fechtel.

All succeeding efforts to meet with Ray Fechtel have proved fruitless. He has refused all phone calls, will not acknowledge correspondence, and has refused to meet William Jasper when Jasper has called at the firm's headquarters offices.

August 15, 1968, was the last date on which Jasper personally called at the Southeastern headquarters, after first having tried to make an

appointment by phone and through correspondence. The results were negative.

This entire matter of Ray Fechtel's refusals to talk or meet was recapped in a letter to Mr. Fechtel dated August 21, 1968.

On April 15, 1969, Fechtel and Jasper were in the same USDA committee meeting in Washington, D.C. Jasper told Fechtel that he wanted to meet with him, at Fechtel's convenience. Fechtel said, "I'm going to be hard to find." Whereupon Jasper said that he would continue to call him whenever he—Jasper—was in Atlanta and had time for a meeting. Fechtel replied, "Well, you can keep trying."

AAMA and the South Carolina Farm Bureau Marketing Association have had similar problems with Southeastern Hatcheries in Batesburg, S.C. Meetings were held with Mr. Clyde Rauch and Mr. Tom Addy of the Batesburg office. However, both of these men walked out of a meeting with William Jasper of AAMA in Atlanta, Ga., on January 29, 1969, on the pretext that AAMA and the South Carolina Farm Bureau Marketing Association were out to "break" their firm. It has been impossible to get a satisfactory response from the company since that walkout.

HOLLY FARMS INDUSTRIES, INC.

Officials of Holly Farms, Wilkesboro, N.C., have been difficult to meet, and, for all practical purposes, refuse to meet with representatives of AAMA or the North Carolina Farm Bureau Marketing Association.

On May 23, 1968, Jim Wilder, North Carolina Farm Bureau Marketing Association, and William Jasper, AAMA, called on the Holly Farms headquarters in Wilkesboro. After waiting 5 hours, Wilder and Jasper were granted an interview with Mr. Rex Lovette for approximately 8 minutes. Lovette is in charge of field operations for Holly Farms.

Jasper told Lovette that a number of Holly employees had interfered with early broiler organizing efforts. It was noted in particular that one employee stood up in a Farm Bureau grower meeting and said that his company was unalterably opposed to having Farm Bureau organize broiler growers.

Lovette said a couple of times that it is the firm intention of his company to continue to deal directly with growers, and at one point he said that his company's policy is to continue to oppose Farm Bureau marketing associations in any way possible to keep staff members and the Farm Bureau program out of their area.

Lovette did not deny that some of the company's employees had interfered with Farm Bureau organizational activities. We simply said that most of them also were growers.

It is clear that Holly intends to fight broiler organizing efforts to the last ditch and will continue its refusal to meet for the purpose of legitimate contract grower negotiations.

RAMSEY FEED CO.

On January 22, 1969, Jim Wilder, North Carolina Farm Bureau Marketing Association, and William Jasper, AAMA, met with Dennis Ramsey, general manager, and Keith Hinson, production manager, Ramsey Feed Co., Rose Hill, N.C. During the meeting, Mr. Ramsey

was handed a list of grower recommendations. He refused to accept the list or discuss its contents.

He demanded that the list be taken off his desk because he believed that if he were to pick it up that such action would imply recognition of AAMA and its North Carolina marketing affiliate.

Ramsey said that Wilder and Jasper were never to come back to his office in an effort to represent broiler growers.

CENTRAL SOYA

On August 30, 1966, Charles B. Shuman, president, American Farm Bureau Federation, and William Jasper, AAMA, met with officials of the Central Soya Co. in Fort Wayne, Ind., for the purpose of acquainting these men with the Farm Bureau broiler program. It was agreed at that time that there would continue to be an open line of communication between Mr. Russell Clarke, general manager of field operations for Central Soya, and Jasper.

Subsequent to this meeting, Clarke and Jasper have talked, in person and over the phone, on several occasions. One very serious matter was resolved through personal contact. However, Mr. Clarke on several occasions prefaced his comments with the remarks, "You know, we don't recognize your association."

Thus far, it has not been possible to meet with Central Soya for the purpose of discussing grower recommendations. However, such recommendations were discussed individually by phone, one time. On that occasion, Mr. Clarke said, "You notice I didn't start my conversation with the usual commercial * * * I'm trying to cooperate with you."

It is extremely difficult to negotiate properly unless it is done in person in the proper setting. Central Soya's official refusal to meet with AAMA and its affiliated marketing associations to discuss individual recommendations, causes the associations to be relatively ineffective in representing growers who have contracts with this company, and growers are denied the right to adequately express themselves as a group.

LIPMAN BROS.

On June 12, 1969, Horace Drummond, Maine Agricultural Marketing Association, and William Jasper, AAMA, called on Frank J. Lipman, one of three owners, Lipman Bros., Inc., Augusta, Maine. This was a cordial meeting, and the primary purpose was to get acquainted and familiarize Lipman Bros. with the Farm Bureau broiler program. At the conclusion of that meeting, Mr. Lipman said that they—the Lipman brothers—would be willing to negotiate with a Maine Agricultural Marketing Association contractor committee.

More recently, efforts have been made to schedule a meeting of such a committee with Lipman Bros. However, the company has steadfastly refused to meet with the marketing association committee.

I will call on the next witness and finish the broiler testimony.

I would like now to call on Mr. Dan Hall, manager, broiler division, Agricultural Marketing Association of Alabama, to discuss Alabama cases involving broilers.

We have other witnesses later.

Senator JORDAN. Give your name and your title and so forth for the record, please, sir.

STATEMENT OF DAN HALL, MANAGER, BROILER DIVISION, AGRICULTURAL MARKETING ASSOCIATION OF ALABAMA, MONTGOMERY, ALA.

Mr. HALL. As the manager of the Agricultural Marketing Association of Alabama, Inc., broiler division, I come before you today to give testimony in behalf of the thousands of broiler growers in Alabama.

Let me say at the outset that the broiler-growing farmers in Alabama are in a desperate situation. They must have relief soon, or they will be forced to close down their broiler growout operations. On the whole, broiler growers are receiving less real net income today than they were 10 years ago. Costs on the other hand have skyrocketed over this same period.

Alabama broiler growers produce nearly all of their chickens under company written contracts. Hardly any chickens are produced by independent growers for a free auction market. Poultry companies which own and control their own hatcheries, feed mills, and processing plants have a virtual monopoly on the marketing of broilers.

The poultry farmer in Alabama is faced with the Hobson's choice of either growing broilers on the contractor's terms or not receiving any broilers. In some areas of Alabama the grower has no choice as to the contractor he will grow broilers for. The grower, regardless of where he lives, usually must grow broilers because of the fact he is in debt for his investment in housing buildings and equipment.

As the technology of broiler production changes growers are required by their contractors to change their housing and equipment. These changes require the investment of large sums necessitating the borrowing of still more funds.

Thus a vicious cycle of growing broilers on nearly any terms in order to repay indebtedness is continued. The broiler grower then finds himself in a serious dilemma. Because of this dilemma, broiler growers through their Farm Bureau are seeking your help in guaranteeing them the right to sit down and negotiate growout contract terms with their contractors.

In order that you might better understand the necessity for this legislation let me give you some background information on broiler production under contract in Alabama.

Broilers or friers, as they were once called, are placed by contractors as baby chicks and grown by Alabama farmers for approximately 8 weeks to a weight of around 3.5 pounds. They are then picked up by the contractor and processed; approximately 75 percent of this weight is salable after processing. The return for labor, investment, and management are extremely disproportionate.

The broiler farmers have as much or more invested in the broiler industry as do their contractors. A study was recently completed by Auburn University on the profitability of a typical broiler growout operation.

The study shows that a broiler farmer who in 1969 borrowed \$20,000 to build and equip a broiler house in Alabama will actually have a negative annual spendable income of \$2,110.50. These figures are based on a 5-year loan on buildings of \$14,000 and a 3-year loan on equipment of \$6,000.

Why, you may well wonder, do farmers continue to grow broilers at a loss? One reason—that regarding indebtedness—has already been pointed out. But this is not the causal reason. The basic causal reason is that broiler farmers are denied a voice by their contractors in the determination of broiler growout contract pay, terms, and conditions.

I will now proceed to give you some specific instances where Alabama broiler growers have been denied a voice by their contractors.

On October 4, 1968, a letter was sent to Mr. George Haefner, State manager of Alabama's broiler operations for the Pillsbury Co., his office being located in Cullman, Ala.

In this letter a meeting was requested between Pillsbury and a committee representing the Alabama Broiler Grower Market Service. The purpose of this meeting was clearly stated, that being to discuss Pillsbury's Alabama broiler production operations. Dates for a possible meeting were also suggested.

On October 10 we received a letter from George Haefner which was postmarked Minneapolis, Minn., national headquarters of the Pillsbury Co. We took this letter to be a statement of Pillsbury national policy. In this letter, Pillsbury stated they could see "no advantage to our growers or to our company in a meeting with your association."

They stated their position continued to be that they would meet with their growers on an individual basis "to discuss problems, complaints, or questions which he may have concerning our operations."

At this point I would like to read to you gentlemen a letter from Minneapolis, Minn., from the Pillsbury Co. I would like to submit it along with my testimony.

(The letter referred to follows:)

THE PILLSBURY CO.,
Minneapolis, Minn., October 10, 1968.

Mr. RALPH MEADOWS,

Director, Market Information and Development Department, Broiler Grower Market Service, the Poultry Producers Association, Montgomery, Ala.

DEAR MR. MEADOWS: This is in reply to your letter of October 4 proposing a meeting with your Alabama Broiler Grower Market Service Committee.

At this time, Pillsbury sees no advantage to our growers or to our company in a meeting with your association. Our position continues to be that we will gladly meet with any grower on an individual basis to discuss problems, complaints, or questions which he may have concerning our operations. In our judgment this is the best way to maintain a fair and mutually profitable relationship between the Poultry Processor and the Poultry Grower.

Yours truly,

GEORGE HAEFNER,
Operations Manager.

Mr. HALL. It is addressed to the marketing association, and to my predecessor as manager of the association, Mr. Ralph Meadows, as you see, Mr. Chairman.

I remind you this came from the Minneapolis headquarters.

Senator JORDAN. Let the reporter have that, please, Mr. Hall.

Mr. HALL. Yes, sir.

In response to this letter a second letter was sent October 17, requesting Pillsbury to reconsider their position and grant the growers' representatives a hearing. On October 25 we received a letter from Pillsbury's Cullman office again denying the growers' committee a hearing. Pillsbury stated they would only discuss growers' problems on an individual basis.

Given this second rebuff the committee decided to pay the Pillsbury management a surprise visit. On October 29, the committee went to the Cullman office of Pillsbury but George Haefner refused to take time to discuss our grievances with him. Thus having been rebuked, the association decided to work through Dr. Bill Jasper, who is the poultry division manager of the American Farm Bureau Federation's American Agricultural Marketing Association.

Dr. Jasper arranged to meet with Mr. Jim Shadler who was Pillsbury's protein division general manager and who is responsible for broiler operations. Mr. Shadler made it quite clear to Dr. Jasper that Pillsbury did not want to meet with growers in Minneapolis or Cullman.

Mr. Shadler did meet with Dr. Jasper but Pillsbury continued to refuse to meet with myself as manager of the association or with a committee of Growers. By Pillsbury's refusal to even sit down and discuss grower problems with a representative committee of the association's growers, they have thus far effectively blocked the association's efforts.

The net result has been that the association's Pillsbury grower membership has fallen off because growers realize the association has been ineffective in gaining improvements in their contracts through negotiation.

I believe personally that this was the precise effect Pillsbury was hoping the association would encounter. Pillsbury realized if the growers' association was ineffective in dealing with them that the association's membership would suffer as a result.

It is my belief that this is just as an effective means of discrimination as the other less sophisticated techniques used prior to the enactment of S. 109. It was because of our association experience in dealing with these and other contractors that an amendment to S. 109 was sought by Farm Bureau. This amendment would stop this type of discrimination by requiring contractors or handlers to recognize and negotiate with legitimate bargaining associations.

This, gentlemen, is the crux of the need for this legislation. It will not be enough for the contractor to be required to recognize the association if he is not at the same time required to negotiate with the association in a true across-the-table, give-and-take-type situation.

Gentlemen, you may be wondering if Pillsbury is the only contractor to refuse to deal with our association of broiler growers. I selected Pillsbury because they are the second largest broiler contractor in the United States. Our association has, I regret to say, suffered at the hands of other smaller regional and independent contractors this year.

I see no reason why we should not "tell it like it is" and put the whole truth before you. Therefore, let me give you the details on some other similar cases.

Our association held meetings in several areas of Alabama during the winter and spring of 1969. These meetings were held for our membership who grew broilers for a particular contracting company. These meetings resulted in lists of items to be used in discussions with the individual growers' contractor. Grower contractor committees were then appointed by the president of the association to represent their association at meetings with individual contractors.

One such meeting with the Dixie Grain Co., now a division of Ocoma Foods, was scheduled for March 12, 1969, in Shelbyville, Tenn., with Mr. H. C. Tilford, Jr., secretary-treasurer of the company. A letter was sent by the association to the company asking for this meeting, and arrangements were made for the trip.

An immense amount of preparation was involved and an excellent group of growers were prepared for the Wednesday meeting. Two days before the agreed-upon meeting was to take place, a letter from Mr. H. C. Tilford, Jr., arrived saying he could not meet with the growers due to some unforeseen circumstances which had come up. Several times during the month, I tried to get up another appointment by phone, but to no avail.

Finally, in a phone conversation with Mr. Tilford April 4, 1969, he informed me he would not meet with us during April. Mr. Tilford suggested we meet with his Alabama manager, Mr. Mays Montgomery. At Tilford's suggestion I wrote Mr. Mays Montgomery April 14 and suggested that our association met with him in Mr. Tilford's stead. No answer was forthcoming to this correspondence. After allowing time for a written reply, I called and Mr. Montgomery said he did not know about our association's attempted meetings with the Shelbyville management.

He said he did not have anything to talk about to the Alabama growers. Thus, with these many refusals and rebuffs, the association was stymied in its attempts to represent its membership. I personally believe that the Dixie Grain Co. never intended to meet with our association.

I suspect they wanted us to get our membership "up" concerning the meeting so they could dash our hopes and discredit the association in the eyes of its membership. Whether this was their intent or not, this was the result of their actions.

We have mentioned now a national company—Pillsbury—and a regional company, Dixie Grain, which refused us recognition. Now, I shall briefly tell you of some local companies in Alabama which have refused us meetings.

One of these companies is that belonging to Mr. Forest Ingram. Ingram's Golden Rod Farms, Inc., places birds in north central Alabama. On July 16 our association wrote Mr. Ingram for a meeting but received no written reply. We then called him and he stated he had nothing to talk to our association about. He said, if, however, we could convince him of the need for such a meeting he would consider it. On August 20, a letter was sent suggesting some particular areas where there could be mutual discussion of problems which would benefit both parties to the discussions. No reply to this letter has yet been received.

Another local Alabama contractor—Marshall Durbin, Sr.—has also refused to meet with our association's grower committee. This is the position Durbin has held for the past 4 years. Marshall Durbin, Sr., did agree by phone to talk with me personally but said he would not talk with his growers. Gentlemen, Mr. Durbin had a message for you.

He said he would not meet with his growers unless—to use Durbin's words—"that bill Farm Bureau is backing passes cause then I'll have to meet with you."

I will conclude my remarks by relaying one final "putdown," our association has received from Alabama contractor John Bagwell and

his Spring Valley Farms, Inc. Mr. Bagwell will neither answer correspondence from our association nor talk to us by phone.

Gentlemen, I leave you with Mr. Marshall Durbin, Sr.'s challenge. The broiler growers in Alabama need the passage of S. 2225, just as Senator Aiken introduced it. A "watered down" version of S. 2225 will not suffice. We need a tough bill to deal with a tough problem. Please do not let the broiler growers down for they are depending on you.

Thank you, Senator.

Senator JORDAN. Thank you, sir.

Do you have other witnesses?

Mr. HOOD. Yes, I do, Senator; witnesses from three different State Farm Bureau Marketing Associations.

Senator ALLEN. Mr. Chairman, I wonder if we could question these witnesses as we go along?

Senator JORDAN. Yes, certainly; go ahead.

Senator ALLEN. Rather than having to call them back.

Senator TALMADGE. One thing I would like to ask, Mr. Hall, I am quite sympathetic to your problem and I know a little something about this poultry operation because I almost went broke trying to raise eggs.

You know, it is a highly competitive business. Broilers are grown throughout the United States. Suppose one of these groups meets with you and agrees to increase the price to such a degree that their birds would not then be competitive in the marketplace. They would not be able to sell the birds. The processor will go broke and all those doing business with him would go broke.

Don't you have to bargain on a nationwide basis on a proposition of this type rather than with individual producers and processors?

Mr. HALL. Senator, I believe you have a good question. However, in the first place we feel like we are a reasonable group of men in this association, and I do not think any growers on our committee would recommend to their contractor, payment of a fee higher than he could afford to pay them, which would price him out of the marketplace.

Senator TALMADGE. As you know, these birds fluctuate daily and sometimes hourly on a fractional basis. A. & P. is going to call up a bunch of suppliers and say, "What can you supply birds for?"

The supplier is going to give him his answer, the cost of production, what he pays the farmers, taxes, and I presume a reasonable profit. Georgia, you know, is the largest broiler-producing State in the Union. We have had a lot of our poultry people who have done very well, and even more of them have gone bankrupt. There have been quite a number of mergers there. Some of them who thought they were rich a few years ago are in bankruptcy today.

I can see how adversely it would affect all of them. He would be in a position where his birds would not be competitive in the marketplace because I know what these changes are going to do. They are going to buy the birds where they can get them the cheapest, and if your people are not in a position to compete in the marketplace, it is going to mean your farmers as well as the processor hauling those birds are out of business.

Shouldn't a situation of that kind be bargained nationwide rather than with individual groups?

Dr. HOOD. I wonder, Senator, if I could answer that question?

Senator TALMADGE. I would like to have some comment on it because I think that is the crux of the situation.

Dr. HOOD. Precisely this is the purpose of the American Agricultural Marketing Association. We have in this association 39 State farm bureau marketing associations, and many of these are from the broiler areas. We have represented in the total AAMA membership broiler growers in the South, broiler growers in Delmarva and about 6 months ago the broiler growers came into our organization from Maine. Our effort is to work across the board wherever broilers are grown, and this is particularly the case where you have got large national processors and contractors that are operating in many areas. We recognize that there is a relationship between what goes on among the contractors in any one area and what goes on in the different broiler areas. We do make this attempt through our national organization and through our system of bringing these folks together in our association.

Senator TALMADGE. Do you have any contracts in existence now with the poultry producers?

Dr. HOOD. Our contracts—

Senator TALMADGE. That you have bargained for, I am talking about now. I know all of your producers, that I know anything about, and also your processors, have contracts that are based on what they call a feed conversion basis?

Dr. HOOD. Yes. The contracts that we have with the producers in our various State marketing associations are contracts which provide the authority for the State marketing association to do certain things for the members, the information, contract analysis.

Some of them go far enough to authorize the marketing association to actually negotiate for them.

Now, as a part of our operation, we work with the contractors themselves, with their contracts. In fact we introduced a model contract that has been pretty widely discussed and accepted in quite a few areas that brings more uniformity across the broiler belt.

Senator TALMADGE. Have you negotiated any contracts with the group of producers and handlers of the birds as to the fees involved, payment for birds and so on?

Dr. HOOD. Actually every time we have met with a contractor, as a representative of a marketing association, it has been for the purpose of discussing maybe the whole contract itself or maybe phases of it. Sometimes it may have reference to the payments schedule.

Sometimes it may have reference to condemnation. It might have reference to feed quality, hatching operations, who pays for the litter and all those things, but frequently we have met to discuss the whole contract. We are working with one contractor now to actually revise considerably the contract that they have had.

Senator TALMADGE. You still did not answer my question as to whether or not you had successfully negotiated contracts with your producers and handlers of the product in this area. Have you or not?

Dr. HOOD. We have.

Senator TALMADGE. You have?

Dr. HOOD. We have been successful in getting increases in payments.

Senator TALMADGE. Thank you, Mr. Chariman. I have no further questions.

Senator JORDAN. Senator Allen?

Senator ALLEN. Thank you.

I want to thank Mr. Hall for coming up from Alabama and explaining to us the plight of the broiler grower in Alabama. Several weeks ago Mr. Hall visited the committee with some of the broiler producers from Alabama, and the chairman of the full committee allowed them to come in and sit in the back of the room while an executive session was going on and I appreciated that courtesy.

I know that the broiler producers in Alabama and throughout the country need some relief, and I am hopeful that this legislation can help provide that relief.

Mr. Hood and Mr. Hall, you are both of the opinion that this will be a forward step for the farmers, for the broiler producers?

Dr. HOOD. Yes, Senator.

Senator ALLEN. In getting a better price for their product?

Dr. HOOD. We think it would be helpful, and of course we are going to go on with our testimony and indicate how it will be beneficial to other groups.

Senator ALLEN. Yes.

Senator JORDAN. Are there any further questions at this time?

Senator ALLEN. In answer to one of Senator Talmadge's questions you said that you had negotiated, that the association had negotiated contracts for some producers. To what extent is the amount paid the producers—we will take the broiler industry—to what extent is that payment uniform throughout the country?

Dr. HOOD. The broiler payments are far from uniform. They generally are considerably higher in Delmarva and Maine than they are in the South. One activity we had this year in our national program was to bring delegations from several of the Southern States to the Delmarve Peninsula to view the broiler industry and to get a picture of how they operate up there, and to get some indication of the larger payments in the North. We have used the higher payment, the better contract situation that exists in Delmarva, as an incentive for the folks in the southern broiler belt to organize and to do a better job.

Senator ALLEN. In other words, with this bill, and with the handler required at least to negotiate, there is a better chance of having comparability of payment in the South than there is now?

Dr. HOOD. That is true.

Senator ALLEN. Is that correct?

Dr. HOOD. And the very fact that we got organized and got the word around, we found in some States that the same handler or contractor as we call him is paying more in one section of the State than in another.

Senator TALMADGE. May I interrupt at this point?

Senator ALLEN. Yes.

Senator TALMADGE. Is there any reflection of freight rates involved in the differential that is paid, say, in Georgia and Delmarva?

Dr. HOOD. Yes.

Senator TALMADGE. How much?

Dr. HOOD. I am not familiar with the precise freight rate figures. We have made that analysis, and we recognize that a lot of the broilers do go North into the highly populated areas, and you have to take that into consideration, I am sure.

Senator TALMADGE. Is the differential paid to farmers greater than the differential in the freight rates?

Dr. HOOD. Oh, yes. Of course, Delmarve is an older area, and I think they have got some of the better premium markets in the North. There are some reasons for the differential, but we feel it is too wide.

Senator TALMADGE. Let us take the situation in my own State. I would assume that the birds which are marketed locally would be marketed largely in principal cities. I would imagine that Atlanta would be a great demand area for broilers, whereas if the farmer produced the birds on the Florida line, about 300 miles out of Atlanta, he would have to ship those birds to Atlanta and maybe sell them there and maybe in other parts of the country.

How much does the differential within my State of Georgia vary, do you know?

Dr. HOOD. You are asking me to be a little more precise than I can be.

Senator TALMADGE. You have not studied it in detail?

Dr. HOOD. We know the payments in the different areas in all sections of Georgia and by the different processors, and different handlers. We have this information, but I do not have it at the tip of my tongue, but there are other differences.

Senator TALMADGE. Thank you. I appreciate your yielding, Senator Allen.

Senator ALLEN. Thank you.

That is all.

Senator JORDAN. Thank you very much.

Who is the next witness?

Dr. HOOD. Senator, before I call these next witnesses who are all going to talk about some of the problems we have, and they are not all on broilers, in processing of fruits and vegetables. Before I call on these men I would like to read into the record one letter with reference to this question of recognition.

Senator JORDAN. We will be glad to have it.

May I ask you one question at this point?

Have your association and the associations you represent largely done the bargaining for the Delmarva people?

Dr. HOOD. Well, we have done quite a bit of work there. Bill Jasper, who is our chairman of our poultry division, and has done most of this work with the manager we have in Maryland, who is also helping us out in these three other States, have been very active there.

Senator JORDAN. You all have actually made the contract from the producer to the handler of the products in Delmarva?

Dr. HOOD. No, actually what we do, we influence the contractor in the contract that he writes with these individual growers. We influence what goes in it, and we have been working with one contractor up there now to improve the contract that he has.

Senator JORDAN. Thank you, Dr. Hood.

Go ahead.

Senator ALLEN. Right at that point may I ask, Dr. Hood, what percentage roughly would you say of total broiler production is negotiated by the various agricultural marketing associations throughout the country? What is now being negotiated? Do you have any idea?

Dr. HOOD. If we use the term "negotiated" in its broadest sense, when we meet to discuss the full contract or parts of the contract— Senator ALLEN. That will give you a courteous hearing then, let us put it that way.

Dr. HOOD. We run in the neighborhood, and again it depends on the area and the contractor, we have got some States that are not yet organized, so you have to take that into consideration. We are not in Texas, or Tennessee or Louisiana. In the areas where we have had an organization, we run anywhere from 20 to 70 percent of the broilers produced by those separate contractors. It varies by contractors.

Senator ALLEN. In a way it could be a convenience to the handlers, could it not, to negotiate a price, negotiate positions with the association speaking for all of the producers and settle it right at one time, one negotiation?

Dr. HOOD. It is helpful to the better contractors to have more effort to get the low-paying contractors up. That is a tremendous service to the entire industry, and a special service to the man who is paying well and trying to do a good job.

Senator ALLEN. Thank you.

Dr. HOOD. This letter is from a division manager of Campbell Soup Co.

(The letter referred to follows:)

JANUARY 8, 1969.

MR. MELVIN HAYENGA,
Manager, Quality Producers Association,
De Kalb, Ill.

DEAR MR. HAYENGA: In reply to your letter of January 3, 1969, as you undoubtedly know, we have always dealt direct with growers. This year's series of luncheon meetings to discuss matters of mutual interest with tomato growers has been planned. Invitations to the meetings are being extended by our agricultural representatives to all of those growers who contracted tomatoes with us in 1968. These invitations are extended to growers regardless of their affiliation with any organization.

In order to operate successfully it is necessary to continue dealing on a direct basis with growers who contract to supply us with fresh vegetables. We do not think it is in the best interest for the growers or ourselves to attempt to deal through a third party.

Very truly yours,

CAMPBELL SOUP Co.,
W. C. HANDWERK,

Divisional Manager, Agricultural Department.

Dr. HOOD. I would like to call on Ralph Gillmor, chairman of the tomato advisory committee of the Agricultural Marketing Association. Senator JORDAN. Give your name and title, Mr. Gillmor, please.

**STATEMENT OF RALPH GILLMOR, CHAIRMAN, TOMATO DIVISION,
OHIO AGRICULTURAL MARKETING ASSOCIATION, COLUMBUS,
OHIO**

Mr. GILLMOR. Thank you, Mr. Chairman.

My name is Ralph Gillmor. I farm approximately 400 acres in Sandusky and Seneca Counties in Ohio. I raise sugar beets, tomatoes, cabbages, pickles, and some grain crops.

I am speaking as a proponent of S. 2225, sponsored by Senator Aiken of Vermont and several other Members of the Senate. I remember Senator Aiken quite well and respect his understanding of

the farmers' problems and his willingness to help support legislation that is constructive.

I recall that in June of 1966 I testified before a subcommittee such as this, which also was headed by Senator Everett Jordan. That testimony was on S. 109 which has been beneficial to farmers but which needs to be improved upon as S. 2225 recognizes.

Organized bargaining in agriculture is not only a growing demand of farmers, but the economics of farm production and marketing are making it essential. Today, we engage in programs of contract production, including a high-risk enterprise of forward pricing, and with specifications for quality, size, and quantity becoming more and more important. As these factors are spelled out in practical production/marketing situations, the farmer and his association must be recognized on more of an equal partner relationship with processors and other handlers of his products.

I am pleased to note that this concept of fair play and equal partnership in bargaining is beginning to be recognized by the Congress. This was true under the previous administration, and we believe is no less true under the present administration.

We believe that Congress can help farmers secure the kind of economic tools that will make them less dependent upon Government and the U.S. Treasury, and better able to earn a profit through such procedures as S. 2225 provides.

I have been interested in farm marketing for some time, serving on the board of directors of the Fremont Beet Growers Association for 20 years and secretary for the last 10 years. I have been on the board of the tomato division of the OAMA for the last 7 years, and chairman for the last 4 years.

In negotiating with the companies and talking with many growers, I have learned the many tactics of the companies and the ideas and fears of many of the growers. Even with our bill S. 109 to protect the farmer, it has not taken the fear from these growers.

Many companies do not bargain in good faith. Let me explain:

Two years ago, we met with our company several times discussing improvements in the contract, including \$1.50 per ton increase for tomatoes. The last meeting, the company said "No" to every point the growers asked for, including price increase. The growers left the meeting again. That afternoon, the company called our manager and said, "We are going out and contract."

After a day in the field, two nonmembers of our association called our manager and said, "We were given many of your members' acres."

Then we were informed by the company, "If you want to raise tomatoes, you will have to take a 15-percent acreage cut per grower and the contract price we offered."

The bargaining committee met, and with the split vote agreed to take the contract.

I don't think I have to explain growers' rising costs to you for you know our equipment, labor, and supplies are higher. Last year, the growers knew of the large tomato pack in the West and we were willing to hold prices.

In meeting with our company, they were very belligerent. The company proposed that we would take another 15-percent acreage cut and we would have to spray our crop several more times with

an average cost to us of about \$10 per acre, and we would take an average of \$1.50 per ton decrease in price.

I asked the company if they understood our cost sheet that we presented to them, and until we reached an 18-ton crop at present prices there was no profit to the grower. Yes, he understood it, and he knew that if a grower did not get over an 18- to 20-ton yield, he would not make a profit but would be operating on his depreciation of equipment. If we wanted to raise tomatoes, that was our problem.

In the last 2 years, the price of glass to these processors has gone up at least 15 percent, and they have paid it. Did you know that the containers that you, as consumers, throw away cost the companies and you much more than the product you used from it?

Now, to get back to the farmer. A farmer has been a loner for so long that some cannot quite get the idea of organizing. But he is catching on. The large growers for one company hesitate to lose special privileges given to them for not belonging to our association.

The growers admit this to us. What we cannot seem to get across to them is the fact that they are looking at 1 year and not over a period of years. What we had hoped S. 109 would accomplish for us did not come up to our expectations. Once our association doesn't accept a company contract, the company is free to give our acreage to other growers who are not members.

Farmers have seen this happen the last 2 years. The nonmember growers receive more acreage and, many times, better delivery schedules, therefore, getting more tonnage delivered per acre.

I must add, the prices all growers are receiving along with the other benefits the association has gained, are enjoyed by all growers. The companies seem to keep up with or do a little better for a nonmember than what the association members get from a company they bargain with. This is done to try to keep the farmers from organizing in different locations or companies.

The company where the association has very few members growing for them will offer in their contract the same things or maybe just a little more than what we have negotiated for the previous year for our association members.

S. 2225 provides what S. 109 lacked, and that is, it would guarantee farmers the right to bargain as to the price and conditions of sale of their products. It also requires that the processors and other handlers of our products must act in good faith and come to the bargaining table prepared to negotiate.

We believe this is the necessary next step which your committee should recognize and the Congress should approve. Our bargaining associations are still too much at the mercy of the handler, some of the largest of whom will not permit us to place a foot in their door to discuss the terms of the contract.

This impediment must be removed, and we believe S. 2225 will help to remove it and create a healthier climate for bargaining. It is the right next step in providing farmers the tools for bargaining.

Senator, may I make a statement after hearing Mr. Hood's letter? Senator JORDAN. Certainly you may.

Mr. GILLMOR. Mr. Hood's letter from a processor about the third party, in Ohio I do not feel there is really a third party negotiating with a processor. I am chairman of our board of directors, and our manager, who is sitting in the meeting, works for us. As far as I and

my board is concerned, he had better not make any final decision without my board's approval before he makes a final decision. I feel that in Ohio with our tomatoes actually there is not a third party but they are dealing with the farmers and they make the final decision.

Senator JORDAN. Why do you have a man there then if he does not have authority to do anything?

Mr. GILLMOR. He has authority. He represents us at the meeting, discusses and carries out our wishes that we have held at a previous meeting, but to make the final decision whether we accept or reject a contract must be approved by the full board.

Senator JORDAN. I see.

Mr. GILLMOR. He can make decisions, but not a final decision of a contract without our approval.

Senator JORDAN. Senator Talmadge, any questions?

Senator TALMADGE. No questions.

Senator JORDAN. Senator Allen?

Senator ALLEN. No questions, Mr. Chairman. I have a conflict and I am going to have to ask to be excused. I do have a statement that is being prepared and I would like permission to insert that statement in the record.

Senator JORDAN. After it is presented it may be inserted in the record.

Senator ALLEN. In behalf of the bill.

Senator JORDAN. Yes, Senator; it will be included in the record at this point.

Senator ALLEN. Thank you, Mr. Chairman.

(The statement referred to follows:)

STATEMENT OF HON. JAMES B. ALLEN, A U.S. SENATOR FROM THE STATE OF ALABAMA

I am delighted to be a co-sponsor of S. 2225. In my opinion, this legislation is another milestone in the endeavors of those of us who are concerned about the well-being of our farmers of America and the continued decline in net farm income.

While parity is presently at 74 for all farm products, it is even less for certain commodities. Government programs do provide some measure of relief, but this is limited. Some production of farmers today is controlled by others outside the governmental sphere and yet away from the farm. A new era has advanced in agriculture.

Contract production is a here and now proposition, and the individual farmer finds it almost impossible to cope with the power structure that has resulted from contract production. This power structure may, and in many instances does span practically all of the United States and yet headquartered far away from the farmer in Alabama.

With this background and set of circumstances, the producers were fearful and apprehensive about the future. Many had seen large companies come and go. They found themselves in debt and the possibility of losing their homes and farms loomed large in the background. They sought help from agricultural organizations. Some responded and found it almost impossible to enroll growers for the purpose of improving their destitute and distraught situation.

Some of these organizations and one in particular sought legislation which would make it unlawful for a handler or processor to discriminate against a producer because of his joining an association of producers. This legislation was known as S. 109 or the Agricultural Fair Practices Act. It was introduced in the Senate by the distinguished Senior Senator from Vermont, George Aiken, and enacted into law last year (PL 90-288). This was truly a legislative cornerstone in establishing a framework for bargaining, and also established a new era in agricultural bargaining.

Producers have learned that as an individual they have little bargaining power. A single producer contributes only a small fraction of the production of the huge

conglomerates in today's modern agriculture. Let there be no doubt about it—there has been a corporate invasion of American agriculture. With this new economics, many farmers have recognized that they must band together and restrain the power of the conglomerates, as well as bargain to gain concessions. Economics for the individual also dictate that he must join forces and bargain to gain concessions. Group action approaches to problem solving have shown many successes.

Soon we will be celebrating Thanksgiving Day, and we each have much for which we are thankful. The Pilgrims understood group action. They helped one another when one of the group suffered a catastrophe. Today producers of agricultural commodities see the need for group action to bargain for price and other terms, particularly in contract production.

The contract system itself tends to separate top level management from the producer and production. This management finds little time left after all the decisions of day to day operations have been made.

Historically, companies have started small in contract production and have grown into large conglomerate organizations. During the early stages of this growth period top level management did visit producers and generally kept informed of the problems and maintained an awareness of the producer needs and wants. Later in the development most high level management officials of contracting firms found little or no time for on the farm visits. They relied on information obtained through their employee(s) from the farm forward. Many times this method proved satisfactory from the production standpoint but not from the contractor-contractee relationship point of view. The contractee being an entrepreneur himself did not feel that an employee of his contractor was properly representing him insofar as bargaining for better prices and terms of contracts were concerned.

Contractees found that after they organized for group action they might not find an attentive ear on the part of the contractor. Moreover, contractees found that even after the passage of the Agricultural Fair Practices Act they still could not gain an audience with top level management of their contracting firm. They began to look at the various alternatives to get audience with the decision makers of their firm. Alternatives were boiled down to (1) a hard core union type approach with threats of reprisals, (2) form their own business through purchase of existing or new facilities, or (3) a group action approach which would be reasonable; with a live and let live approach to problem solving. Most farmers preferred the third approach if the problems could be solved this way. After bona fide, sincere, and honest efforts were made producers found that in some cases this was satisfactory but in other cases they were told that their particular contracting firm would not meet with their association. Contracting firms, in some cases, made it a company policy to meet with individual producers at any time but to refuse to meet with a group of producers at all times.

Producers feeling much disappointment and despair with this decision directed their association to seek legislation which would insure them, as a group, of a hearing with their contracting officials. Producers individually and through their association contacted me about co-sponsoring the already introduced S. 2225. After thorough study of the bill as it related to these problems, I heartily endorsed S. 2225 and added my name as a co-sponsor.

This is a simple bill. All the measure does is prohibit a handler of agricultural products from refusing to negotiate prices and other terms of contracts with agricultural bargaining associations. The request to negotiate would have to be at reasonable times and places. In addition, the bargaining association would be required to show written proof that it represented producers of agricultural products from whom the handler usually obtained agricultural products. The bill *does not* require handlers or bargaining associations to conclude an agreement.

S. 2225 gives further clarification to Public Law 90-288 while at the same time insures producers that their collective voice will be heard. Producers will be insured of the right to bargain. It does not guarantee that the bargaining will be successful. I feel that producers deserve this right to be heard as a group through their association.

I am reminded of a letter I received recently from a turkey producer in Shelby County, Alabama. The producer was asking me for help in and through my office in dealing with a problem involving a large conglomerate business structure. The company had been represented in Alabama by an employee several several hundred miles removed from headquarters. Headquarters pre-

sumably had made the decision to cease production of turkeys in this locality. The producer was left with the equipment which had been purchased for highly specialized production. This purchase of equipment had been made after representatives of the company had promised at least some tenure in this type of production and in this production area. The producer knew the company's reputation as to size and other matters but did not know the company's reputation as to mobility. The producer was left holding the equipment.

This type of problem could have been dealt with more satisfactorily through group action. Why wasn't it dealt with through group action in an association? Recent experience with the same company had proved that without help from Washington probably group action efforts were futile. Fruitful bargaining as a group had recently taken place in the same area with the same company solely because the group was aided in their efforts by their representatives in the United States Congress.

I believe there is no doubt as to the need of Senate Bill 2225. Reasonable men in management and reasonable men in production should be able to sit down and bargain. Reasonable men in production believe this can best be done by group action of an association of producers. Senate Bill 2225 will insure them of the right to be heard as an association of producers. More important, however, the bill will be another big step toward strengthening the family farm and will help to improve and maintain farm income. I urge speedy and favorable action on the bill.

Senator JORDAN. I want to ask a question to clarify something. I am not quite certain of the testimony I have heard. Is it your contention that broilers, processors, producers, et cetera, should join your association and let you bargain for them?

Dr. HOOD. In practically all of these cases where bargaining associations have arisen, you already have a contract that runs from a farmer to his canner or his contractor. What we attempt to do in a bargaining association is get these various farmers with individual contracts together in an association. Instead of each farmer going individually to his canner or his contractor, he is now represented by the bargaining association, so it is a group negotiation rather than individual.

Senator JORDAN. In other words, you are trying to organize the farmers yourself and do for them what they are now doing for themselves?

Mr. GILLMOR. What they cannot do for themselves.

Senator JORDAN. Well, what they are doing anyway?

Mr. GILLMOR. Yes.

Mr. LAUTERBACH. Mr. Chairman, could I add here that this relationship between the broiler grower and, say, the North Carolina Marketing Association, this is authority that the grower has given in a contract. He has authorized the State association to be his representative in carrying on discussions with a contractor or whatever you may call the purchaser. In effect, I want to make the record clear that our association does not necessarily at State level negotiate for all broiler growers in an area. It is only for those growers that have given written consent to the association being his agent, so in effect he is like an attorney who may be representing somebody.

The grower, instead of going directly and representing himself, he has asked somebody else to go and call on the contractor.

Senator JORDAN. In other words, he is not negotiating his own contract with the handler. He is letting you do it?

Mr. LAUTERBACH. This is correct.

Senator JORDAN. Thank you very much.

Mr. GILLMOR. Could I add something here too, sir?

Senator JORDAN. Yes, indeed; certainly.

Mr. GILLMOR. I think it is very pertinent to our organization—that is, with the broilers—that the final decision is based on a group of growers around each processor for us and they make the decision what they ask for in a contract, not the company, not the management. The growers themselves are democratic and have a secret ballot for any change or anything that is brought up before the management.

Senator JORDAN. In other words, you mentioned Campbell Soup a while ago?

Mr. GILLMOR. He did.

Dr. HOOD. I did.

Senator JORDAN. In other words, if your association is dealing with Campbell Soup, for instance, you negotiate the contract and you say this is what we are going to have to have for our produce.

Mr. GILLMOR. I cannot use Campbell Soup because they will not let us in the door.

Senator JORDAN. Well, some firm.

Mr. GILLMOR. Yes. Actually if I can take a few minutes here, we actually have a bargaining group from each processor that we deal with. They get together after a national meeting of the AAMA Tomato Advisory Committee representing all the tomato growers in the United States and discuss what the whole territory needs. Then we sit down in this bargaining group of what Ohio should have, and then we go in our individual bargaining groups back to all our growers, and discuss with them what they think we should have. Then that recommendation goes to the processor, a very democratic method.

Senator JORDAN. Suppose a processor says "I cannot pay that and I will not pay it" and that ends that meeting.

Mr. GILLMOR. That is about right. That is what it is now.

Senator JORDAN. I think he has that right to do that.

Mr. GILLMOR. Yes, Mr. Chairman.

Mr. LAUTERBACH. We do not argue with that.

Senator JORDAN. I think he has a right because he has to merchandise that product you know.

Mr. GILLMOR. I agree. We feel he should deal in good faith, and when the product is heavy, he has his bargaining power. A few years ago we had the whip and we felt we dealt with them very gentlemanly and wanted to keep the processor in business. We could have had a very exorbitant price. We held our grower demands, in order to be decent, and then it is very saddening when you go in the next year when it is turned and they slam it down and this is it. "If you do not like it, go." This is what we would like to see changed.

Senator JORDAN. Fine.

Mr. GILLMOR. Thank you, sir.

Senator JORDAN. Mr. Webster, we will be glad to hear from you, sir. I note that you have a prepared statement. Will you proceed, sir.

Mr. WEBSTER. Thank you, Mr. Chairman.

Senator JORDAN. You may proceed with your statement as you wish.

Mr. WEBSTER. It is a brief statement, and I will read it if I may.

**STATEMENT OF GEORGE WEBSTER, MANAGER, NEW JERSEY
AGRICULTURAL MARKETING ASSOCIATION COOPERATIVE,
GLASSBORO, N.J.**

Mr. WEBSTER. I am George Webster, manager of the New Jersey Agricultural Marketing Association Cooperative in Glassboro, N.J. It is an affiliate of the New Jersey Farm Bureau.

Our organization was formed 6 years ago to represent growers and assist them in bargaining for reasonable prices under contract with vegetable processors in advance of the crop season.

We presently deal with seven vegetables including asparagus, tomatoes, peas, pickles, and beans including snap, Fordhook, and baby limas.

In addition we serve as exclusive sales agent for members who are poultry egg producers in the marketing of their fowl.

In the vegetable area, pressures on growers in New Jersey during 1969 came from many directions. Unfavorable weather conditions, the critical shortage and high cost of migrant labor from Puerto Rico, increasing expenditures required by State law for improved housing, escalated costs for mechanization, a rapid rise in interest rates on borrowed money, and worst of all a reduction in price at the processing plants have resulted in a disastrous year on New Jersey vegetable farms.

I would like to cite specific examples during 1969 which highlights the refusal of most processors to negotiate with our New Jersey Agricultural Marketing Association Cooperative.

Only Heinz, among the major processors, met with myself as manager and grower designated representative to discuss price in advance of the growing season.

Specifically, at Seabrook Farms, a freezer processor, negotiations were attempted through our commodity chairman for:

- (1) Peas, and
- (2) Beans, including snap, Fordhook, and baby limas.

The company would meet for these commodities only with growers in a mass meeting to outline their offers. The following night our association members met with me to analyze and discuss the contract conditions. These contracts were then finalized only with the committee chairman present along with company representatives.

The asparagus contract price in New Jersey was established at Seabrook by a nonmember and three or four other New Jersey AMA members who had asked to resign their membership. This nonmember then contracted me as manager of the New Jersey AMA to indicate a one-quarter cent per pound cut in price this year— $18\frac{3}{4}$ cents—compared to the 1968 figure—19 cents. This was $1\frac{1}{2}$ cents less than the $20\frac{1}{4}$ cents we had asked for in 1969.

All indications were that we should have had an increase this year. Every single item in the expense items involved except possibly fertilizer were escalated factors. The resulting 1969 price cut has almost totally wrecked the asparagus industry in New Jersey.

The 1969 tomato asking price was \$42 per ton in New Jersey based on our cost of production studies, and all the factors involved.

Del Monte offered \$36 per ton, a 10-percent reduction from what they paid the previous year. Hunt offered \$37, down \$3 per ton; Heinz

met in a negotiation session and offered \$38, down \$2 per ton. Campbell offered a \$42 average: \$46 for No. 1—70 percent—and \$33.50 per ton for No. 2, representing about 30 percent of an average pack.

Senator JORDAN. May I ask is that for canning or fresh tomatoes for the market?

Mr. WEBSTER. That was for processing, canning.

Senator JORDAN. Processing and canning.

Mr. WEBSTER. Following acceptance of the Campbell contract, Del Monte refused to negotiate except on their terms with one grower at a time. They finally settled the contract at a \$2 rise in their offer at \$38 per ton. Heinz remained at \$38 per ton and Hunt equaled that price.

Here again near chaos has resulted in the tomato industry in New Jersey due to processors refusing to negotiate with the New Jersey Agricultural Marketing Association Cooperation.

In summary then, Mr. Chairman, may I say that our goals are first of all more orderly marketing of vegetables for, (a), the fresh market, (b), for the process market and, (c), for the freezer packers.

Secondly, our other goal is a reasonable price that is also realistic based on all the factors involved. We firmly believe in a live-and-let-live policy.

New Jersey needs its fresh markets. It needs its processing companies and it needs its freezer plants. Our marketing association members are interested in staying in business also. Asparagus and tomato growers in 1970 are in fact on the threshold of a new era which will lead to full mechanization comparable to that already achieved by the five other commodities we deal with.

Passage of S. 2225 would be very helpful in bringing about the badly needed revisions of S. 109. We urge the passage of S. 2225. In fact, we would like to stress that the future of agriculture not only in New Jersey but in other areas rests in refining our marketing techniques, and this will go a long way in that direction.

Thank you, Mr. Chairman, and members of the committee, for this opportunity to appear.

If you have any questions, we will be happy to try to answer them.

Senator JORDAN. Thank you very much.

Are the New Jersey tomato growers now equipped with harvesting machines rather than hand labor?

Mr. WEBSTER. We are on the verge of moving from mainly hand-picking at the present time with Puerto Rican migrant labor over to mechanical harvesting. This year we were not able to get migrant labor early in the season for asparagus because they were needed at home for their own crops.

We finally did get part of what we needed, but there was a terrific shortage of this kind of help so we are being forced to mechanize whether we want to or not.

Senator JORDAN. That has been done largely in California and some of the west coast areas has it not?

Mr. WEBSTER. Yes, Mr. Chairman.

Senator JORDAN. And there must be a vast difference in labor cost as against mechanical harvesting, as against hand harvesting?

Mr. WEBSTER. That is right. One of the difficult problems that results, and did result this year in the case of asparagus, is that when you are partially mechanized, your grading system has not yet

caught up with this change. We found that many of our grower members had asparagus rejected by the companies as unequal to the No. 1 grade. In other words, it might be partly damaged by mechanical harvesting. It then became a cull, and they refused to pay for it.

We find when the pack comes out that what was a cull that the farmer was not paid for comes out as a tip and butt, and may in some cases even be sold at a premium price, even though the farmer was not paid for it.

Senator JORDAN. That is like selling split peas for the soup. The split raises the price on them.

Thank you very much.

Mr. Brenneman, we will be glad to hear from you now, sir.

STATEMENT OF ROBERT L. BRENNEMAN, DIRECTOR OF MARKETING, INDIANA AGRICULTURAL MARKETING ASSOCIATION, INDIANAPOLIS, IND.

Mr. BRENNEMAN. Thank you, sir. It is a pleasure to be here.

My name is Robert L. Brenneman. I am director of marketing for the Indiana Agricultural Marketing Association which is a marketing and bargaining cooperative affiliated with the Indiana Farm Bureau.

The IAMA is a member of the American Agricultural Marketing Association and was incorporated under Indiana cooperative laws in January of 1961.

Our experiences since, indicate very strongly that further legislation to prevent discrimination against Bargaining Association members is needed. The type of discrimination I refer to is exemplified by the statement made to me by processors and other buyers of processing crops.

"We will meet with growers anytime but not with a growers' committee."

This or some variation of this has been made to me by almost every tomato processor in the State of Indiana.

Some processors have changed their attitude and have been meeting regularly with our committee members. I refer here specifically to the Stokely-Van Camp, and Libby, McNeill & Libby companies in Indiana.

Other companies where we have had varying degrees of negotiations include Del Monte Corp., H. L. Hunt Foods, NAAS Foods, Campbell Soup Co., and several smaller independent companies.

Some of the experiences that our organization has had that demonstrate the need for legislation such as the Agricultural Marketing and Bargaining Act of 1969 are listed below.

In the years 1962 through 1965 the growers organization attempted to meet and discuss contract terms with P. J. Ritter Co., now sold to Curtis-Burns, and their processing co-op, Pro-Fact; NAAS Foods; and Del Monte Corp.

Even though from 65 to 75 percent of the processors' acreage was represented by the association, none of the processors would meet and negotiate with the grower representatives. In these three cases almost 100 percent of the association members stopped growing tomatoes and most of them still do not grow. These growers were experienced and in most cases longtime tomato growers.

NAAS Foods and P. J. Ritter have been growing a large percentage of their own acreage since that time. The NAAS Foods plants referred to above are located at Portland and Geneva, Ind.

In 1966 I was informed by the Del Monte plant manager in Frankford, Ind., that it was against company policy to meet with the organization representatives. I had to request Dr. Hood of the AAMA to contact the Rochelle, Ill., regional office before they would meet with us. Each year since then we have met with Del Monte at the local plant. They have listened to us but at no time have they given us an answer to any of our points on the contract. We have asked for meetings in January each year before the contracts are written but the company representatives will not meet at that time. After the contract is presented to the growers the local manager and fieldman will meet and listen but we get no response.

In the fall of 1967 snap bean growers in the Vincennes, Ind., area, who had grown approximately 1,700 acres of beans for the Beaver Dam, Wisconsin plant of the Green Giant Co. in 1967, joined our association. This was all of the acres grown for Green Giant in Indiana.

In January of 1968 three letters were sent to the management of the Green Giant Co. at Beaver Dam asking for a meeting date. None of these letters were answered. Finally the chairman of our growers committee called Mr. Golden and was told that it was against company policy to meet with an organization.

He was also told that Green Giant probably would not contract in Indiana in 1968. They finally did contract for 700 acres. In 1969 following further attempts by myself to contact different company personnel in which I was informed that it was against company policy to meet with an organization of growers. The growers were informed that Green Giant would not contract in Indiana in 1969 and they did not.

Sweet corn growers in Indiana called me in 1967 and asked to have a meeting to discuss becoming members of our organization. Plans were made for a meeting but before I could get the letters sent I received a call from one of the growers stating that the meeting was off. He stated that a Morgan Packing Co. fieldman had told him that if they did not have the meeting the contract would be improved by \$2 per ton. If they did have the meeting no increase would be given. The growers got the \$2 raise but there has been no increase since 1967.

In March of 1969, 12 tomato growers in the Sunman area of Indiana, who produced about 500 acres of tomatoes for the NAAS Foods Co. at the Sunman plant, became members of our association. The plant in 1968 contracted with growers for about 700 to 800 acres.

During the next few days company representatives visited each of the growers and increased their contract offer \$1.50 per ton. Our grower members accepted this contract at a meeting and instructed the committee and myself to visit the plant to inform the manager.

This we did, but after being informed that their contract was approved the manager turned to me and stated, "This in no way means we recognize you or your association, and don't you ever come through those gates again to talk to me about grower problems." With this he left. As yet, I have not met with the company to see if that will continue to be their attitude.

There are other cases that I could point to, but these indicate attitudes of some. We cannot serve our purpose of improving the marketing of agricultural products without being able to meet and discuss mutual problems with the buyers. Those companies that meet with us have found us to be reasonable and reliable. We have been able to reach agreement on contracts in every case where we have been able to meet in an attitude of mutual respect. This is the major objective we seek in this legislation.

Thank you, Mr. Chairman. That completes my prepared statement. Senator JORDAN. Thank you very much.

Do you have any further testimony, Dr. Hood?

Dr. HOOD. No, I have not, except I do want to add that in addition to the commodities we have been discussing today, we do have a new and a very extensive livestock marketing program, where we are seeking contracts with feedlots and processors and others. We have not had the same problems here as we have had in others, so we have not brought any testimony on that particular area.

Mr. LAUTERBACH. Mr. Chairman, we hope that the information that these various people here that have appeared before the committee presents is the kind of information that will be useful to you and your members, because they are knowledgeable in the area, and bring direction, practical information to you.

We believe that this information supports our position that there is a need for S. 2225. We believe that meaningful negotiations between agriculture bargaining associations and handlers will encourage orderly marketing, that it will lessen possible disputes, strikes, and withholdings from the market of farm products, and will enable farmers and ranchers to do business with handlers, processors, and contractors in a climate which will be conducive to economic opportunity for all concerned.

Again, we want to thank you for this opportunity to meet with you.

Senator JORDAN. Thank you very much. We appreciate all the testimony that has been given to us.

I have one more witness, my old friend Harry Graham, who came in at a late hour.

We will be glad to hear from you, too.

I thank all of you for the testimony you have given. I assure you it will be given proper consideration, and the record will be read most carefully by the members of this committee.

Mr. Graham, I am glad to see you always. You may proceed with your statement, sir.

STATEMENT OF HARRY L. GRAHAM, LEGISLATIVE REPRESENTATIVE, NATIONAL FARMERS ORGANIZATION

Mr. GRAHAM. You do have a 12 o'clock quitting time?

Senator JORDAN. Yes, I have.

Mr. GRAHAM. Mr. Chairman, I did not prepare a written statement. I just wanted to come in and make some comments on the bill before you, and to announce our position on it to the committee.

You will remember a year ago we insisted that S. 109 was not going to do very much good in the form that it was written, but the proponents of it were sure that it was the answer to all the problems that faced the groups that were trying to negotiate with processors.

There was something really lacking in it that is not solved by this bill. There was no provision nor is there a provision for referendum, to indicate where the strength is. There are no penalties for the failure to obey the law. There is no requirement for bargaining in good faith, nor is it in this language. It says that they must negotiate but not in good faith. They could negotiate like the economists are doing in Paris, from now until doomsday, and be within the law, but not be within the intent of what we were talking about in the beginning.

What we found out, we do not have the story of repeated failures in this area that you have just been hearing, nor of an inability to talk to processors. We have found that where any bargaining organization, or at least our own, when it controls enough of the production of a commodity in an area that the processor cannot do business without some of that production. If he cannot get it from alternate sources, then he will talk, and this is about the only time he will talk, and he will talk in good faith at that point.

In the early years of the NFO—National Farmers Organization—we had some problems of this kind, until they knew that we represented enough production that we could do something with the efficient operation of those plants.

This is the the only language they really understand, and all of this attempt to solve this legislatively is not going to solve the problem of inadequate organization and inadequate bargaining power, because the power must be there before you can bargain.

Part of the problem is it seems to me the natural result of the proposal that we can always bargain before we produce, never after the production is made. We have found that you can do a heck of a lot of bargaining after the production is grown. It is at that time that they need it. They do not have alternative ways of getting their supplies. It is too late in the year many times for them to get them, and there can be no real effective bargaining until the bargaining association is willing to do one thing, and that is to withhold enough of their products from that processor that he cannot efficiently operate. It is just that simple, and that is true in almost any other business.

Just using ordinary common hard business sense gets this job done. We are doing some bargaining. We are doing it in perishables. About half the potatoes in the country last year, which was a pretty good slug of potatoes, and we got more money than they thought they were going to get before. One of our members in Idaho said that he made \$135,000 from joining NFO last year.

Well, this is what gives you bargaining power. This is when enough of your people make money in belonging to your association and when you have demonstrated that you can talk to the processors and get the results and not just talk to them.

Another thing that we found out is that when you negotiate a good contract, you never have any argument with any of your membership. We never had membership turn down a contract when it comes to membership votes and we do not go to a board of directors either.

It is a membership vote and they always have approved the contracts because the contracts did something for their income that they were not getting done otherwise.

In the field of livestock, we are moving a tremendous amount of livestock through NFO. There are days that come very frequently now

when we sell more livestock through the NFO sales program than is sold through the terminal markets, all the terminal markets combined, and much of that is going for premiums, especially for grade and yield premiums. We have no problems talking to the packers any more. We did for a while. They did not want to talk to anybody but they will talk now.

When they get the assurance of a good supply, of a high-quality product that is dependable, then they will pay for it, and they will talk to the people that have that product.

What we are saying, Mr. Chairman, is this bill does not do anything, in addition to what has been done. There is nothing to require bargaining in good faith, and in section 51 consists almost entirely of disclaimers of the very power that farmers need to do the negotiating.

The fact of the matter is that we think this would be a retrogression in terms of negotiating, because it could be interpreted, some parts of it, as limitations on the power of bargaining that we have at the present time that we have used successfully.

This bill has only been in effect a year. The answer when we were saying last year that this was not an effective bill was given that this could be taken into the courts, it could be solved in the courts. Well, let us take it for a while, let us see what we can solve in the courts. If the courts was the answer last year the courts could be the answer this year, but have any cases been tried in the courts? Have we any reason to believe that there are no court answers? I do not believe that was the answer last year. I do not think it is the answer this year. But this is what the legislation called for last year, and that is what the legislation still calls for this year, and the changing of the language in this bill this far does not really change that part of the legislation at all.

This is a civil suit type of thing, and the noncriminal penalties in the original draft of the bill being taken out meant that the only way they can go is through the courts or through an effective organization. We just do not see any point in spending a lot of time of the committee and of the Senate in doing very much with this bill that is before you at the present time.

Senator JORDAN. Thank you very much.

Mr. GRAHAM. Thank you, Mr. Chairman.

Senator JORDAN. We appreciate your being with us today, Mr. Graham.

Gentlemen, there are a number of witnesses who were not on the list for today. I realize from the number of letters I have received and contacts with different people over the country that the notice for this meeting was too close, and ample notice will be sent out for all witnesses to be heard at the continuation of this hearing.

STATEMENT OF A. D. OSGOOD, ERIE, MICH.

Mr. OSGOOD. Mr. Chairman, as a retired farmer would you allow me just a minute to make just a short statement, please?

Senator JORDAN. Yes, indeed.

Give your name so that the reporter may have it for the record.

Mr. OSGOOD. Addison Osgood from Erie, Mich.

Twenty-five years ago my wife used to raise chickens as a sideline, and I well remember we used to sell them just before the holidays and we used to get 37 cents a pound alive for them. This morning I picked up your Washington paper and I saw friers advertised for 27 cents a pound.

In 1939 I built a beautiful big barn and the carpenters were paid 55 cents an hour, and just the other day I had some repair work done, and I paid the carpenter \$6.50 an hour. Two years ago my taxes on 190 acres were \$126. Last year my taxes were \$238. I think that speaks for itself.

Senator JORDAN. Thank you, sir.

The meeting will recess subject to the call of the Chair.

(Whereupon, at 11:55 a.m. the subcommittee adjourned, to reconvene subject to the call of the Chair.)

The first thing I did was to go to the bank and get some money. I had to go to the bank because I had no money. I had to go to the bank because I had no money. I had to go to the bank because I had no money.

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AGRICULTURAL MARKETING AND BARGAINING ACT

TUESDAY, DECEMBER 9, 1969

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL RESEARCH
AND GENERAL LEGISLATION
OF THE COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 324, Old Senate Office Building, Senator B. Everett Jordan, of North Carolina (chairman of the subcommittee) presiding.

Present: Senators Jordan of North Carolina and Allen.

Senator JORDAN. This a continuation of the hearing we had some-time back. I can run until 1 o'clock today. I don't know if we are going to get through or not. If we don't, I will hold an additional hearing on Thursday morning. I have a Rules Committee meeting tomorrow morning. I have to be there because I am chairman of that committee. I want to hear everybody who is going to testify before this hearing, and if we don't get through Thursday we will try to finish up some other time.

Mr. Hampton, we are glad to have you, sir. If you have a long statement we will put it in in its entirety, or you can summarize it or do whatever you please with it.

Mr. HAMPTON. Thank you, Mr. Chairman. My statement is brief. I will read it.

Senator JORDAN. Fine.

You may proceed.

STATEMENT OF ROBERT N. HAMPTON, DIRECTOR OF MARKETING AND INTERNATIONAL TRADE, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. HAMPTON. I am Robert N. Hampton, director of marketing and international trade of the National Council of Farmer Cooperatives. The national council is a nationwide federation of farmer-owned businesses engaged in the marketing of agricultural commodities or the purchasing of farm production supplies, and of 34 State cooperative councils. The cooperatives making up the council are owned and controlled by farmers as their off-farm business operations.

The national council has strongly supported efforts for broadening opportunities for farmers to work together in order to overcome their basic market weaknesses resulting from erratic and unpredictable farm output compounded by the "hat-in-hand, take-whatever-price-is-offered" posture forced upon individual farmers in their dealings with far larger buyers and sellers.

Although farm income improvements have long been sought through Government programs which have included supply restraint and price-support features, these have generally not been satisfactory either in terms of reaching economic goals or in their full acceptability by farmers, consumers, and political leaders.

Cooperative ventures, which have had a long record of proven performance in the United States, Europe, and throughout the world—in finance and credit, housing, food buying and retailing, communications, student activities, and many other fields—have for many years also been the best means available for American farmers to work together in self-help programs.

In agriculture, cooperatives can serve many functions for farmers: joint purchasing agency, a source of accounting or management services, a price bargaining agent, or provider of a broad range of further marketing programs which improve farmers' opportunities to achieve an equitable degree of market strength which can enable them to buy and sell as economic equals.

Early cooperative efforts by farmers sometimes were hampered by not only antitrust restraints and by lack of due regard for sound business principles, but also at times because of farmers' own inabilities to work together effectively within an environment of "individualism." The ability to reconcile the merits of individual enterprise with those of joint activity has been one of the amazing accomplishments of American cooperatives, which are organized and operate in the best traditions of democratic control and individual enterprise which our American system of capitalism has given to the world.

Longstanding congressional endorsement and encouragement of farmers' cooperative efforts was highlighted by passage of the Capper-Volstead Act, the "Magna Carta" of American farm cooperatives, in 1922. Following this and many other indications that U.S. governmental policy has consistently viewed cooperatives to be in the interest of the public as well as of farmers, many strong cooperative organizations have developed in the years since.

The most successful farmer cooperatives have generally been those which offered a broad range of supply, service or marketing alternatives to serve their members' needs. Groups formed initially only to purchase seed, feed, or fertilizer have traditionally broadened operations to provide chemicals, petroleum products, and many other items including management or related services which farmers require to make their producing operations economical and effective. Cooperatives originally formed only for price bargaining have frequently found it desirable to acquire and store commodities, to develop other facilities for handling and disposing of products when supplies are unduly heavy, or in some cases to gain additional marketing strength and flexibility by full-scale involvement in food marketing functions of processing, distributing, and brand merchandising. Indeed, some proposals have been made that farmers must protect their marketing channels by integrating forward to the food retailing point to counteract backward integration by food retailers and manufacturers into farming and to insure that farmers maintain enough alternatives to protect their economic position as the initial source of supplies for the vast American food marketing complex.

Cooperatives have been successful at all levels of marketing activity, however, and the membership of the national council includes a wide spectrum of bargaining, marketing, and supply cooperatives. Our policy has favored all those forms of cooperative marketing efforts which offer stability, sound economic and business planning, and promise of improvement of farmers' incomes through greater market strength. Accordingly we have supported the expressed objective of the Agricultural Fair Practices Act of 1967, to "establish fair practices required of handlers in their dealings in agricultural products" and its intent to protect farmer bargaining cooperatives from coercion or discrimination which hamper its ability to be organized or operated successfully.

We favor, also, the principle that these duly constituted bargaining cooperatives should, once they have demonstrated that they speak as a responsible agent for a substantial number of producers, be recognized for purposes of price and contract terms negotiations. We agree with the aim of S. 2225 that an appropriate relationship between handlers and agricultural bargaining cooperatives should be encouraged, to the benefit of both farmers and handlers in achieving efficient distribution of food products.

We are concerned, however, that the agricultural bargaining association which deserves recognition is truly well organized which will responsibly represent the interests not only of its farmer members but of all farmers and of the public. We believe that some means are needed for assuring that the organization is producer controlled, has sufficient capabilities to carry out its purposes and is sufficiently large to be an effective economic unit.

We endorse the position of the U.S. Department of Agriculture as stated before this committee on November 20, 1969, warning of the difficulties that might arise "if a farmer-owned processing cooperative were required to negotiate with a bargaining association that represents some or all of its own members." As the USDA spokesman pointed out, it would be undesirable in many respects if a farmer would find his representatives on both sides of the bargaining table, and the council also believes that some means should be found to avoid this kind of conflict.

To summarize our position, the national council will support all practical and constructive means of cooperative action by farmers to attain more orderly marketing of farm products and to improve farm income. Cooperative bargaining actions can be desirable if they are responsibly conceived and executed to benefit rather than to stimulate dissensions among farmers.

S. 2225 as offered does not provide this assurance, but its objective of requiring handler recognition of "responsible" bargaining associations is a commendable one.

We appreciate the opportunity of appearing and presenting our views here today.

Senator JORDAN. Thank you. You have a very fine statement.

Mr. Johnson, director of legislative services, and Angus McDonald, director of research, the National Farmers Union. It is nice to have you back with us.

Mr. JOHNSON. Senator, our statement is in two parts. The first part of it will relate to some general observations with regard to how to

get effective bargaining power for farmers. And Mr. McDonald will comment specifically on the provisions of S. 2225.

Senator JORDAN. All right.

STATEMENTS OF REUBEN L. JOHNSON, DIRECTOR OF LEGISLATIVE SERVICES, AND ANGUS McDONALD, DIRECTOR OF RESEARCH, NATIONAL FARMERS UNION

Mr. JOHNSON. Bargaining power is not a new subject in agriculture nor in farm legislation. In our organization, the effort to improve the economic position of the farmer in the market goes back more than 60 years and it took a variety of forms—establishment of farm cooperatives at both the local and regional levels, obtaining of a place of co-ops on the terminal markets and commodity exchanges, development of commodity loan programs, provisions for acreage allotment and marketing quotas, encouragement of on-the-farm storage, provisions for acreage diversion and conservation programs, authority for producer payments, creation of Federal marketing orders and agreements—all these have been part of the campaign for a farm economic stability—all of these programs and tools have been and are elements of market power for farmers.

When a producer does not have to sell in a distressed market—because the loan and storage programs give him a ready alternative—then he has the beginning of bargaining power. Or when either surplus capacity or farm surpluses themselves are diverted by Government programs, this also is bargaining power for producers. Or when minimum prices to be paid by handlers are prescribed under a marketing order, this, too, is an element in bargaining power. Or when farm storage or extended resale opportunities enable producers to hold grain under their control, this also is bargaining power.

However, the development of enabling legislation for effective and direct bargaining with handlers on prices has never been successfully achieved on a broad base. Some limited bargaining takes place under the Federal marketing orders, but the establishment of a broader and more effective mechanism has been a frustrating process and an elusive goal.

The effort for such legislation can be traced back to veto of a forerunner of the Capper-Volstead law by President Taft in 1913, by the watering down of the Capper-Volstead law itself before passage in 1922, by the refusal of Congress in the mid-1920's to approve a law for a comprehensive farm cooperative marketing system, by the refusal again 10 years later to approve a system of licenses and marketing agreements and the approval of only a limited system of specified commodities and restricted geographical areas under the Marketing Agreement Act of 1937, the failure to give serious consideration to the National Agricultural Relations Act in 1945, the Family Farm Program Development Act of 1959 and the Agricultural Enabling Amendments Act of 1961, and finally in 1967 and 1968 to seeing the Agricultural Fair Practices Act, S. 109, almost turned against farmers and farm co-ops before final revision and approval.

Certainly, the record of this history proves that it is difficult to obtain this very important "missing link" in the programs needed by farmers.

Farmers Union strongly supports titles I and II of the National Agricultural Bargaining Act, S. 812 and H.R. 6774, introduced in the U.S. Senate by Senator Walter F. Mondale and many other Members of the Senate and by Representative Arnold Olsen, and other Members of the House, respectively.

We believe the long-range problems of agriculture demand a system of bargaining. The National Agricultural Bargaining Act would give farmers a choice of bargaining methods. They could bargain directly with the help of a National Agricultural Relations Board in much the same way as labor bargains. Or they could bargain under Government direction and supervision within the framework of the Federal Market Order System created by the Marketing Agreement Act of 1947.

The flow sheets attached to this statement describes in specific details the procedure for bargaining under the authority of titles I and II of S. 812 and H.R. 6774. We invite your careful review of these procedures. We are convinced that legislation to authorize farmer bargaining power such as is described in the attached flow sheets is essential if farmers are ever to be accorded an effective bargaining mechanism.

Mr. Chairman, I didn't intend to get you into any detail with respect to the flow sheets, but I would respectfully ask your permission to have them included in the record.

Senator JORDAN. They will be included in the record in their entirety.

Mr. JOHNSON. Thank you.

(Attachments follow:)



FARMERS UNION

THE NATIONAL AGRICULTURAL BARGAINING ACT

S-812 AND HR-6774*

HOW WOULD IT WORK?

The accompanying flow sheets—Titles I and II—
with explanations will enable YOU to
become an effective spokesman for

FARMER BARGAINING POWER

* **SPONSORS:** S. 812, Mondale (D-Minn.), Burdick (D-N.Dak.), Harris (D-Okla.), Hart (D-Mich.), McCarthy (D-Minn.), McGee (D-Wyo.), McGovern (D-So.Dak.), Magnuson (D-Wash.), Mansfield (D-Mont.), Metcalf (D-Mont.), Montoya (D.N.M.), Moss (D-Utah), Muskie (D-Maine), Nelson (D-Wis.) Proxmire (D-Wis.), Tydings (D-Md.), Yarborough (D-Texas), Young (R-N.D.)

H.R. 6774, Olsen (D-Mont.).

Narrative to Accompany Flow Sheet
on the
National Agricultural Bargaining Act, S. 812 and H.R. 6774
Title I

(This is designed to be an aid to Farmers Union leaders for use in explaining the National Agricultural Bargaining Act. Numbered paragraphs correspond to numbered boxes on attached Flow Sheet. Flow Sheet can be enlarged to poster size or duplicated and each participant provided with a copy.)

1. Any group of commodity producers may petition the National Agricultural Relations Board for the opportunity to bargain for adequate prices for their production.

2. Producers would petition at any time that prices were low because of a weak bargaining position and would call for a producer referendum to be held.

3. The National Agricultural Relations Board referred to hereinafter as NARB will be composed of 5 members, appointed by the President with the advice and consent of the Senate.

At the outset one of the members would be appointed for a term of one year, 2 members for a term of 3 years, and 2 members for a term of 5 years. Successors to the original members would be appointed for 5-year terms.

The NARB will provide administrative, technical and supporting assistance to the Farmer-Elected Marketing and Purchasers Committees. It is an independent board. It does not represent either farmers or buyers. It would (1) administer farmers referendums, (2) decide upon qualifications for voting, (3) set up dates and places of bargaining meetings and (4) mediate disputes between the Producer Marketing and Purchasers Committees.

4. The NARB is provided with an executive secretary and staff.

5. NARB is authorized to call upon the USDA for information and technical assistance, including the services of USDA employees.

6. On receiving a petition from the producers of a particular agricultural commodity which indicates that market prices are below adequate levels, the NARB shall conduct a referendum among producers, the result of which shall determine whether (1) bargaining will take

place and (2) a Marketing Committee will be established. In other words, in the same referendum producers vote on whether to bargain and will elect a Producer Marketing Committee. NARB supervises and administers all phases of the referendum. The expenses of conducting the referendum may be paid for out of funds appropriated to carry out the work of the NARB.

7. Candidates whose names appear on the ballot will be named by ASCS County Committees, who will submit twice the number of candidates as will be elected by producers voting in the referendum.

7-A. No person shall be eligible to represent producers on any marketing committee unless he receives more than 60 percent of annual gross income from farming or ranching during each of the three preceding calendar years. And the commodity for which he bargains must constitute a "significant portion" of his farming or ranching operations.

If a majority of the producers voting in the referendum does not favor bargaining NARB will not take further action to establish a marketing committee for the commodity during the current marketing year or season. However, NARB is authorized to hold another referendum of producers of the commodity the next marketing year. If producers fail to vote to bargain the second year, NARB may hold a referendum the third marketing year. However, if producers fail to vote in favor of bargaining three successive years, NARB will take no further action in regard to the commodity unless 20 percent of the producers petition the NARB in a subsequent year to hold another referendum.

Let us assume that in a referendum on "X" commodity, producers voted to bargain and elected a Producer Marketing Committee.

8. The NARB will then notify buyers of "X" commodity to establish a Purchasers Committee. The buyers are notified that such a committee is needed for the purpose of negotiating a minimum price for the commodity and other nonprice terms of sale.

9. If the buyers do not select a Purchasers Committee within 30 days after being notified by NARB such a Committee will be appointed by NARB.

10. The NARB is authorized to call a meeting of the Producers Marketing and Purchasers Committees at whatever time and place

it decides. Good faith bargaining is called for. Additional meetings may be called at the discretion of NARB.

11. Producers Marketing Committee will invite the Chairman of the President's Advisory Council on Consumer Problems to represent the interest of consumers in the bargaining meeting of two Committees.

12. Agreement could conceivably be reached at this point.

13. If no agreement is reached after a reasonable period of negotiations in good faith, NARB shall offer to mediate.

14. Agreement could possibly be reached at this point.

15. However, if no agreement is reached within 30 days after NARB offers its conciliatory and mediation services, the issues in dispute will be submitted to a Joint Settlement Committee. This Committee will consist of one member selected by the Producer Marketing Committee; one member selected by the Purchasers Committee; and one member selected by the members representing the Producers Marketing and Purchasers Committees. If the third member cannot be agreed upon by the producer and purchaser members, the NARB will make the selection. The Joint Settlement Committee shall attempt to resolve points of disagreement.

16. If no agreement is reached, the NARB is authorized to seek appropriate action of the Federal District Court which could result in daily fines or other penalties. The decision of the Joint Settlement Committee will be judicially reviewable by Federal District Court.

17. To provide for full compliance with agreements in connection with which there is no supply-adjustment program, the Producers Marketing Committee is empowered to recommend to NARB that injunctive or related action of the appropriate court be instituted -- such action to prevent buyers from purchasing or producers from selling the commodity at less than the minimum price established in the agreement or any violation of nonprice terms of sale established in the agreement.

18. Once an agreement is reached if over-supply threatens the terms of the agreement, the Producer Marketing Committee in consultation with the NARB and the Secretary of Agriculture will

develop a supply-control program. The supply-control program will be submitted to producers in a referendum.

20. If a majority of the producers voting in the referendum approve the program, it will immediately be put into effect. The United States Department of Agriculture will administer the supply-control program including fixing reasonable penalties for violation of the producer-approved program.

All Producers Marketing Committees will be dissolved by NARB three years after the date of the first meeting, unless during the third year of the life of the Committee a majority of the producers voting in the referendum favor its continuation.

Prepared by -
Reuben L. Johnson
Director of Legislative Services
National Farmers Union
1012 - 14th Street, N. W.
Washington, D. C.

NARRATIVE TO ACCOMPANY FLOW SHEET
ON THE
NATIONAL AGRICULTURAL BARGAINING ACT, S. 812 and H.R. 6774 - TITLE II

Numbered paragraphs correspond to numbered boxes on attached flow sheet.

1. Any group of commodity producers may petition the Department of Agriculture for the opportunity to decide by referendum whether or not that particular commodity should be eligible for a marketing order. A special Advisory Producer Committee may be established by the Secretary of Agriculture to help focus producers' efforts in this direction.
2. A producers referendum would then be held to decide if a particular commodity shall become eligible for a marketing order (majority of producers voting decide). Commodities already covered under the Marketing Agreement Act of 1937 do not require this initial referendum.
3. Producers devise the various terms of the marketing order. The Advisory Producer Committee may assist in this. A marketing order may contain terms implementing:
 - a. Bargaining between elected producer committees, and handlers and groups of handlers, for minimum prices and other terms of sale. The producer bargaining committee would be elected at the time of the referendum on whether or not to accept the order.
 - b. Various market supply control programs ranging from grading standards to marketing allotments, binding on all producers and handlers of the particular commodity.
 - c. Pooling of sale proceeds where the commodity is sold on a use-classification basis.

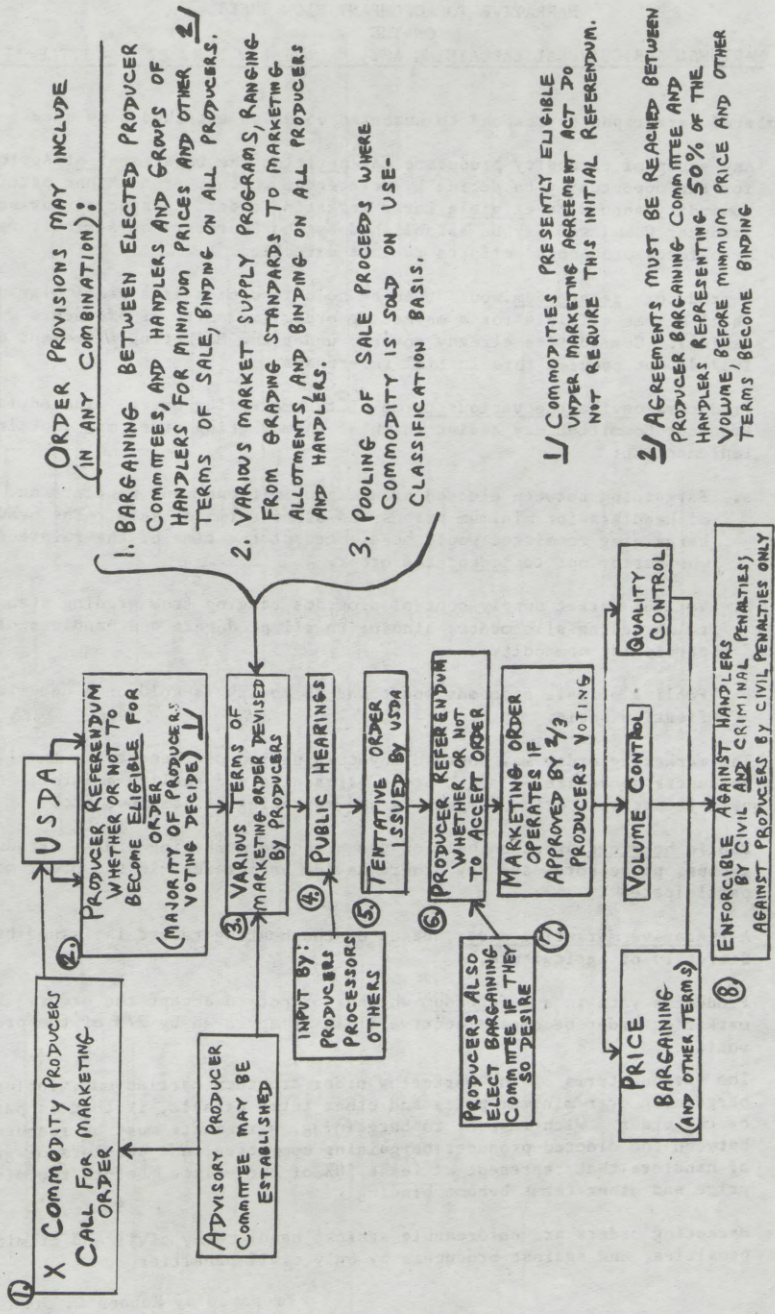
The marketing order may contain any combination of these terms that the producers so desire -- e.g., price bargaining and quality control; only quality control; price bargaining and marketing allotments, etc.
4. Public hearings are then held on the proposed marketing order. Producer groups, processors, and any others having an interest in the order may participate.
5. A tentative marketing order, based on the hearing record, is issued by the Secretary of Agriculture.
6. Producers vote in a referendum whether or not to accept the order. The marketing order becomes effective if it is approved by 2/3 of the producers voting.
7. The various terms of the marketing order are then carried out, including bargaining over minimum price and other terms of sale, if that is part of the order. With respect to bargaining, agreements must be reached between the elected producer bargaining committee, and handlers or groups of handlers that represent at least 50% of the volume, before the minimum price and other terms become binding.
8. Marketing orders are enforceable against handlers by civil and criminal penalties, and against producers by only civil penalties.

Prepared by Reuben L. Johnson

NATIONAL AGRICULTURAL BARGAINING ACT: TITLE II

HR-6774

S-812



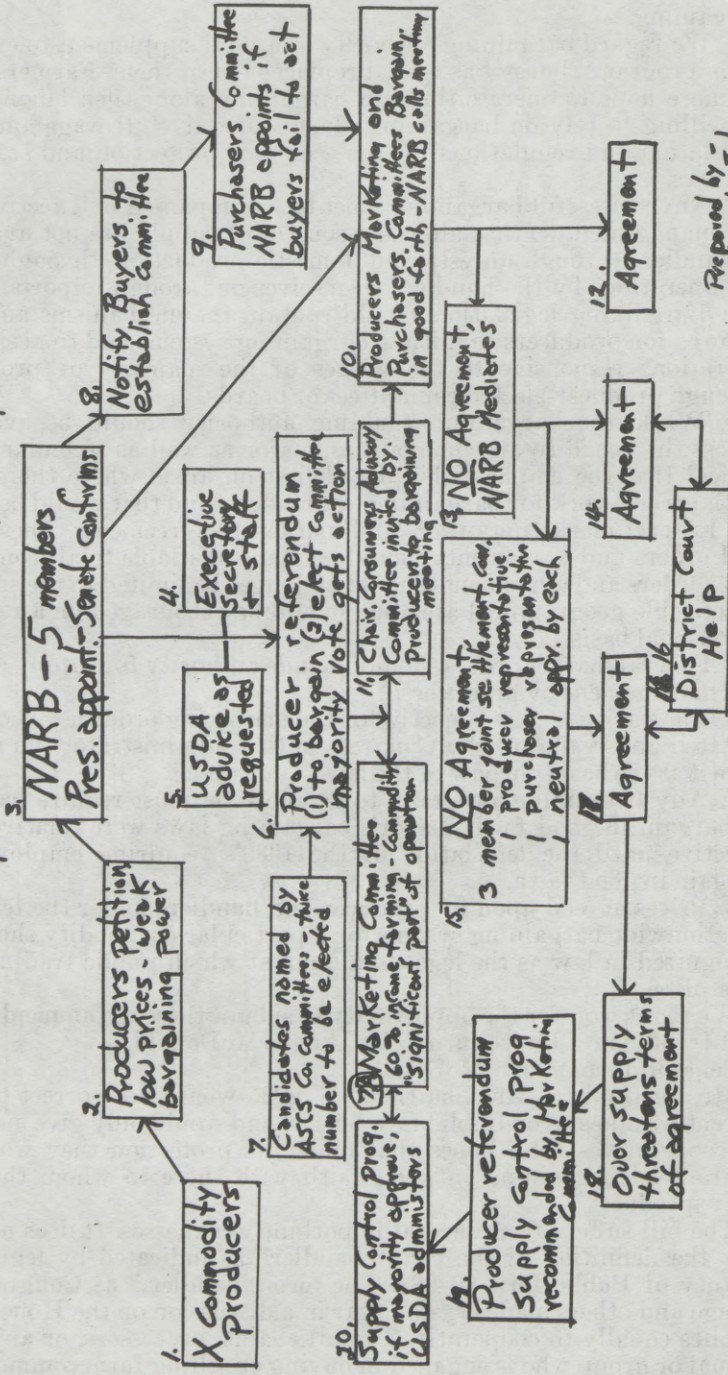
ORDER PROVISIONS MAY INCLUDE (IN ANY COMBINATION):

1. BARGAINING BETWEEN ELECTED PRODUCER COMMITTEES, AND HANDLERS AND GROUPS OF HANDLERS FOR MINIMUM PRICES AND OTHER TERMS OF SALE, BINDING ON ALL PRODUCERS.
2. VARIOUS MARKET SUPPLY PROGRAMS, RANGING FROM GRADING STANDARDS TO MARKETING ALLOTMENTS, AND BINDING ON ALL PRODUCERS AND HANDLERS.
3. POOLING OF SALE PROCEEDS WHERE COMMODITY IS SOLD ON USE-CLASSIFICATION BASIS.

- 1) COMMODITIES PRESENTLY ELIGIBLE UNDER MARKETING AGREEMENT ACT DO NOT REQUIRE THIS INITIAL REFERENDUM.
- 2) AGREEMENTS MUST BE REACHED BETWEEN PRODUCER BARGAINING COMMITTEE AND HANDLERS REPRESENTING 50% OF THE VOLUME BEFORE MINIMUM PRICE AND OTHER TERMS BECOME BINDING

Flow Sheet - Title I National Agricultural Bargaining Act - 5-812

HR-6774



Prepared by - Johnson
Reuben L. Johnson
Director, Legislative Service
Agriculture
National Farmers Union

Mr. JOHNSON. We wish to make these general observations on farm bargaining.

1. We regard bargaining authority as a vital supplement to existing farm programs, but not as a total replacement of them. Farmers could no more hope to operate through bargaining alone than labor would be willing to rely on bargaining alone and waive all wage and hour legislation and regulations for the economic protection and safety of workers.

2. Any successful bargaining must be accompanied by effective supply management so that alternate sources of supply are not available to handlers through unrestricted domestic production, through farming operations by the handlers themselves or through imports.

3. Bargaining legislation should contain the mechanisms and procedures for producers to initiate bargaining systems and to keep these operations responsive to the wishes of the majority of producers through producer-elected committees or boards.

4. While the bargaining enabling authority should be available across the board to all commodities, major as well as secondary, it is logical that the emphasis be placed first on areas where there is an initial framework for bargaining techniques—and that would be under the Federal marketing orders and marketing agreements. These Federal orders and agreements should be made available to all commodities. Orders and agreements should no longer be limited to the smallest practicable geographical area but should be encouraged on a regional or national basis.

5. Federal market orders should include authority for supply control and management by producers.

6. The parity income objective of the marketing order law should be restated and reaffirmed by Congress so that administrators do not ignore it as the basic purpose of the law.

7. Any bargaining program, to be effective, must require handlers to bargain in good faith. Labor's bargaining laws were relatively ineffective until the legislation of the 1930's requiring employers to bargain in good faith.

8. Prices agreed upon by producer and handlers under the terms of a nationwide bargaining system for a particular commodity should be recognized in law as the legal minimum at which public trading may take place.

We thank you for the opportunity to submit these recommendations, and I would now like to turn to Mr. Angus McDonald.

Senator JORDAN. Mr. McDonald.

Mr. McDONALD. Mr. Chairman, S. 2225 would not correct the apparent weaknesses of Public Law 90-288 and would only give members of cooperatives false hopes that under its protection they would be guaranteed bargaining in good faith with those to whom they sell their products.

The bill suffers from several important weaknesses. It does not correct the definition of the term "handler" as indicated by legislative history of Public Law 90-288. The term "handler," as Congressman Poage and others made crystal clear in a discussion on the House floor, applies equally to cooperatives, retail chains, processors, or any individual or group who is engaged in buying or selling farm commodities. We do not believe the purposes of the law are served by such a definition.

The administrator of the Farmer Cooperative Service has pointed out to this committee that the result of this bill might be that two men would sit across the table from each other engaged in bargaining and both represent the same group of farmers. National Farmers Union opposes this legislation particularly because of the definition referred to. We also oppose it because it seems to lean over backward to protect those who deal with farmer cooperatives.

The law, as finally enacted, after being drastically amended, we felt was little better than nothing. Apparently our predictions have come true. Nothing is in S. 2225 about bargaining in good faith or sanctions against those who will go through the motions of bargaining but have no intention of bargaining which would actually benefit the farmer. If perchance the bargaining as envisioned by this bill were successful, the parties would be liable to prosecution under the antitrust laws. Nothing is in the bill about the prohibitions which are explicitly defined in the Sherman Act in regard to price-fixing conspiracies. Neither is there anything about the effect on competition which is outlined in the Sherman Act, the Clayton Act, the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act. The bill gives lip-service to the advantages of bargaining with little possibility that farmers could attain any advantages by means of the bargaining process.

It seems to us that the formers of this legislation and its supporters should consider the realities of the marketplace. No processor or retail chain is going to bargain if it can be avoided. No real bargaining will take place without the threat of sanctions.

We agree that discrimination against cooperatives should be made illegal, but the law, on the other hand, negates this language by emphasizing that those supposed to bargain with farmer cooperatives need not do so if they can think of a way to avoid it. Opponents of the law point out that, in certain instances, bargaining with a cooperative might be made illegal if some inducement or enticement offered by the cooperative was forthcoming.

Farmers Union supports S. 812 which would set up a realistic mechanism resulting in equity of bargaining power between cooperatives and processors and other purchasers of farm products. Attention is called to section 110 of this legislation which provides, and I quote:

No bargaining or negotiating activities by a marketing committee pursuant to this title and no price agreement reached as a result of such negotiations and bargaining shall be deemed to be in violation of any of the antitrust laws of the United States.

It of course has been argued by representatives of cooperatives for many years that the Capper-Volstead Act exempted cooperatives from the antitrust laws. Courts have disapproved this contention on several occasions, the most notable of which were the issues involved in *United States v. Borden Co.*, 308 U.S. 188 (1939); *North Texas Producers Association v. Metzger Dairies, Inc.*, No. 20,956 U.S. Court of Appeals, Fifth Circuit Court, June 21, 1965 (rehearing denied July 16, 1965); *Maryland and Virginia Milk Producers Association v. United States*, 362 U.S. 458 (1960); *Sunkist Growers, Inc., et al. v. Winckler & Smith Citrus Products Company*, 370 U.S. 19; *Cape Cod Food Products, Inc., v. National Cranberry Association, et al.*, U.S. district court, district of Massachusetts, February 11, 1954.

Partly as a result of this and other litigation, proposals have been made to give cooperatives exemption from the antitrust laws subject to the authority of the Secretary of Agriculture. Capper-Volstead, of course, was a landmark in obtaining for cooperatives their rights under our laws. It provided specifically that farmers could get together in a cooperative and collectively agree on a price which would not be subject to the prohibition set forth in section 1 of the Sherman Act. It gave authority to the Secretary of Agriculture to act if prices cooperatively arrived at were unduly high.

Following the decision of the Supreme Court in the *Maryland-Virginia* case, legislation was drafted to give cooperatives blanket exemption from section VII of the Clayton Act. Jurisdiction would have been transferred from the Department of Justice to the Secretary of Agriculture. This proposal got nowhere since it was adamantly opposed by the Department of Justice and by many U.S. Senators. It was felt that certain practices, including coercion, boycotting, and various forms of discrimination should continue to be illegal under our laws. This witness happens to agree with that position. I see no reason why a cooperative should be free to lawlessly destroy its competitors.

There is a great deal of misunderstanding in regard to the application of the antitrust laws to cooperatives. For example, it was alleged when the junior Senator from Louisiana introduced a bill that exempts cooperatives from section 7, that any acquisition whatsoever that had an effect on competition would be illegal. In the *Maryland-Virginia* case, Justice Black found the cooperative in violation of section 7 but only because it had used illegal means to acquire Embassy Dairy. Under our interpretation, if the cooperative had followed its "legitimate objectives" as set forth in the Capper-Volstead Act, it would not have been in violation of this statute.

Mr. Chairman, there is one final point that I discuss. I would like the last pages of this statement, beginning where I left off, to be included in the record.

Senator JORDAN. They will be included in their entirety.

Mr. McDONALD. I will not discuss this, because it is not directly pertinent to this bill. But since there was such confusion as to whether or not a cooperative could control 100 percent of the market, I thought I would include an extract from Judge Wyzanski's opinion in the *Cape Cod Food Products* case. In that instance, Mr. Chairman, this cooperative had 100-percent control of the market. But it had arrived at that position by legal and legitimate means as set forth in the Capper-Volstead Act. So the judge found it was entirely legal for the cooperative to obtain 100-percent control. And many of our associates have been confused on this point. And as I have said, I would like to have this included in the record.

Senator JORDAN. It will be included in its entirety.

(The pages referred to follow :)

There is also a great deal of confusion about the term "monopolize." It has been contended that one hundred percent control of a market by a cooperative would be a prima facie violation of Section 2 of the Sherman Act. Justice Wyzanski in *Cope Cod Food Products, Inc., v. National Cranberry Ass'n. et al*, clarified the definition of this term as follows:

"I am going to begin by talking about the word "monopolize" which appears in the statute. And you will note that the word 'monopolize' is a verb and not a

noun. That is, the statute is directed at one or several people who monopolize; it is not directed in terms of a monopoly, and certainly it isn't directed at what laymen ordinarily talk about as a monopoly.

"You may start with the notion that anybody who has 100 percent of the business is a monopoly, but that would be the wrong approach in connection with this statute. As here used, the verb 'monopolize' means to acquire through means which are not specifically approved a dominant position in the market so as to exclude actual or potential competition, and to follow such a course of conduct with the intent of monopolizing * * *.

"To monopolize means to take steps toward acquiring a dominant position in the market, and to take such steps when you are not encouraged by the law. *There is nothing unlawful under the Sherman Act or any other Antitrust Act in trying to get even 100 percent of the market through skill, efficiency, superiority of product, or like entirely laudable steps. It is not unlawful under the antitrust acts for a Capper-Volstead cooperative, such as the National Cranberry Association admittedly is, to try to acquire even 100 percent of the market if it does it exclusively through marketing agreements approved under the Capper-Volstead Act, 7 U.S.C.A. #291, 292.* [Emphasis supplied.]

"Now under the Act, it is permissible for a cooperative to purchase through one hand, that is, through the cooperative, and to sell through one hand, and to fix the prices at which it purchased uniformly, and to sell at uniform prices or uniformly changing rates of price.

"Other companies not under the Capper-Volstead Act would perhaps violate the antitrust laws if they combined people to fix the prices at which goods were bought and sold, but a cooperative which is formed under the Capper-Volstead Act is specifically authorized by law to use this unified form of purchasing and unified form of selling.

"Hence, *it is not a violation of the Sherman Act or any other antitrust act for a Capper-Volstead cooperative to acquire a large, even a 100 percent position in a market if it does it solely through those steps which involve cooperative purchasing and selling.*

"*On the other hand, it would be a violation of the law, and it would be a prohibited monopolization for a person or a group of persons to seek to secure a dominant share of the market through a restraint of trade which was prohibited, or through a predatory practice, or through the bad faith use of otherwise legitimate devices.*" [Emphasis supplied.]

I realize that this particular point is not directly related to the subject matter of this bill. However, if a cooperative or a group of cooperatives obtained one hundred percent control of a market there would no doubt be a great many questions raised in regard to its monopoly position which, as I understand, it would not be illegal if in acquiring such control it had merely pursued the legitimate objectives of a cooperative.

Mr. McDONALD. In conclusion, we emphasize that the bill under consideration here would not correct any of the erroneous language in the existing statute, would not give farmer cooperatives any real bargaining power and would involve them in violation of antitrust laws if by some chance they were able to arrive at a price-fixing arrangement with an individual or group outside of the cooperative community.

Senator JORDAN. Thank you very much for your fine statement.

Senator ALLEN, do you have any questions?

Senator ALLEN. I believe no.

Senator JORDAN. Mr. Dunkelberger for the National Cannery Association.

We are glad to have you with us today, sir. You have been here before. You are no stranger.

**STATEMENT OF EDWARD DUNKELBERGER, ON BEHALF OF THE
NATIONAL CANNERS ASSOCIATION**

MR. DUNKELBERGER. Thank you. My name is Edward Dunkelberger. I am a member of the firm of Covington & Burling, which is counsel for the National Canners Association, a nonprofit trade association of almost 600 members who have canning operations in 44 States and the territories. Members of the association pack approximately 85 to 90 percent of the entire national production of canned fruits, vegetables, juices, specialties, meat, and fish.

We very much appreciate the decision of the subcommittee to hold this second day of hearings on S. 2225 and to give the canning industry and other opponents an opportunity to explain why we believe the bill raises extremely important questions of economic policy. In our view this bill could well be the most significant and far-reaching agricultural legislation to be considered in this Congress.

S. 2225 would, of course, amend the Agricultural Fair Practices Act, still commonly referred to as S. 109, which was enacted by Congress only a year and a half ago in April of 1968. The members of the subcommittee will recall that the National Canners Association and other handler and processor interests strongly opposed S. 109 as originally introduced, but that on the basis of amendments to the bill developed by this subcommittee, we joined with the leading proponents of the legislation in supporting its passage on the Senate floor and in the House.

Although the association believed that there was no truth to the charges that fruit and vegetable canners had engaged in discriminatory or oppressive practices with respect to members or potential members of bargaining associations, we had no objection to legislation that prohibited such practices. One of our principal concerns with the earlier versions of the bill, however, was that it might be interpreted to compel processors to negotiate with bargaining associations. We were concerned that the canning industry would be deprived of the basic right of all businessmen to select their suppliers and customers and to decide with whom they wish to deal.

Your committee obviously agreed that this was a legitimate concern, for it wrote into the bill a new section 5, which it explained as follows:

Section 5 disclaims any intent to prevent handlers and producers from selecting their customers and suppliers for any reason other than a producer's membership in an association of producers, or to prevent handlers and producers from dealing with one another individually on a direct basis, or to require a handler to deal with an association of producers. The Bill does not prevent or require these actions and is not intended to do so * * *

There are many good, sound economic reasons for handlers and producers to select customers and suppliers.

I would like to emphasize that point, if I might, which is directly from the Senate Agricultural Economic Report, that there are many sound reasons for handlers to select customers and suppliers.

The bill does not attempt to prevent these sound reasons from operating.

This statement in the Senate report reflected the repeated assurance of the proponents of the legislation, principally the American Farm Bureau Federation, that it was not their intent to compel negotiations between processors and producers. For example, Mr. Charles B. Shu-

man, president of the Farm Bureau, stated in testimony before this subcommittee in June of 1966:

We want to emphasize that the Farm Bureau does not seek and will not support, legislation to force processors to negotiate with marketing associations. We seek only legislation which sets forth rules of fair-play on the part of processors and others in their business relationships with farmers and ranchers.

In addition, the Justice Department had objected to an earlier version of S. 109, in part on the ground that "since the section might be interpreted in a manner to subject a purchaser to criminal penalties for seeking to choose his suppliers, the Department of Justice is opposed to the section." The Department felt it was important to retain for processors the right exercised by all businessmen to choose their customers and suppliers. In the Department's words, "a purchaser can generally choose to deal with whomever he wishes."

It is thus clear that this subcommittee, as well as the principal proponents of the bill, the Department of Justice, and the Congress shared the view of the canning industry that it would be inadvisable, and in fact objectionable, to compel processors to deal with any individual or with bargaining associations.

Against this background, we are now faced with a proposal of the American Farm Bureau Federation to amend S. 109, directly and specifically reversing this fundamental policy decision reflected in the 1968 act. Mr. Shuman's repeated statements that the Farm Bureau did not seek, and indeed would not even support, legislation compelling negotiations has now been flatly contradicted in testimony before the subcommittee delivered in the name of Mr. Shuman.

No attempt was made in the extensive testimony of the Farm Bureau witnesses before this subcommittee last month to justify or explain this summary reversal of position. There can be no doubt that S. 109 was enacted because of the understanding that was reached between the proponents and opponents of the earlier versions—and the assurances that were given that compulsory negotiations were not contemplated. And yet 19 months later these assurances have been totally ignored or discarded.

What is particularly puzzling is the fact that the asserted justification for compulsory bargaining is the refusal of some processors to deal with bargaining associations. This is not even arguably a recent development, for evidence as to such refusals was relied upon by the proponents in their support of the earlier versions of S. 109. Indeed, much of the testimony that was presented before this subcommittee last month by the Farm Bureau witnesses in support of S. 2225 concerned incidents that occurred prior to the enactment of S. 109. Under any circumstances, the refusal of some processing companies to negotiate with bargaining associations was as evident before April 1968 as after, and there is no evidence that such refusals have increased in number since that time.

In light of these circumstances, we feel it is fair to ask what further amendments will be proposed to the 1968 act next year or the year after if Congress adopts the amendments contained in S. 2225. Is this bill, like S. 109, considered merely another stepping stone in the development of more comprehensive Federal legislation regulating the purchase and sale of agricultural commodities? We believe these are entirely legitimate questions for this subcommittee to raise during its consideration of S. 2225.

Turning to the bill itself, I would like to read a paragraph from our 1967 testimony before this subcommittee on S. 109, making clear the canning industry's position with respect to bargaining associations. We stated:

The National Canners Association does not question the right of producers to establish and join bargaining associations. A great many of our members have dealt for many years with members of bargaining associations, to the mutual benefit of grower and canner. Any number of canning company contracts have been approved by bargaining associations. We recognize, as we must, the rights granted to agriculture under the Capper-Volstead Act, and we do not countenance the use of coercive or predatory practices to interfere with those rights.

In an earlier hearing we emphasized that "the question of whether a company chooses to purchase its raw products by means of negotiations with individual growers, or by means of collective bargaining with an agricultural association, has been—and will remain—a question of individual company policy on which this association takes no position."

It should thus be entirely clear to this subcommittee that the canning industry's opposition to S. 2225 is most definitely not grounded in a rejection of the right of producers to band together in an effort to market their production through a common bargaining agent. That is a right that has been explicitly recognized in Federal law for more than 50 years. To be sure, it is a right peculiar to agriculture in that no other segment of the business community may act collectively in the sale or purchase of products of commerce. But the antitrust exemption granted by the Capper-Volstead Act is based on the overriding policy conclusion that farmers should have the capability, if they choose, to increase their bargaining power by collective action.

There can be no doubt that bargaining associations have made significant strides over the years, and that for some products in some areas of the country they are considered by a number of farmers to be an effective selling technique. But other farmers apparently disagree. A bargaining association is thus a form of business organization, peculiarly available to agricultural producers, that has found favor with some farmers and not with others.

When met with a request by a bargaining association to negotiate for the sale of an agricultural commodity, a processor obviously must evaluate the request in the light of a number of factors. Many processors feel that whenever possible they must deal with individual growers in order to assure themselves of obtaining quality products meeting the processor's specifications. They apparently believe that the introduction of an intermediary between the canner and the grower decreases the likelihood that the raw product will meet the needs of the canner.

An important consideration is the necessity of evaluating the efficiency of each grower and of deciding whether his past performance, and anticipated future performance, are consistent with the needs of the company. Most processors consider such factors as yield, agricultural practices, handling of pesticides, quality and grade of product, availability of labor or mechanized harvesting equipment, reliability, and promptness of delivery in determining whether a grower should be offered acreage for the coming season.

As in any other segment of our economy, there are good businessmen and not so good businessmen, reliable suppliers and unreliable suppliers, efficient farmers and inefficient farmers.

Against this background, let us look at what S. 2225 would require. Simply stated, the bill would compel processors to negotiate with any bargaining association representing one or more growers who has supplied, or might supply agricultural products to the processor. No longer would the processor have the legal capability of determining from what growers he would like to purchase his raw product. His sources of supply would be determined by the operation of law rather than by his exercise of experienced and informed business judgment.

The point has been made that the amendments to the Agricultural Fair Practices Act contained in S. 2225 would not compel processors to reach agreement with bargaining associations, and indeed this intention is made explicit in a proposed new subsection 5(c) of the act. But the proponents have made it clear in their testimony and elsewhere that they have more in mind than merely an opportunity to state their demands. They believe the processor should be compelled to bargain in good faith and to work toward reaching agreement.

No attempt is made in the bill to define what would be required by the compulsion to "negotiate prices and other terms of contracts," but if the legions of cases decided under the National Labor Relations Act give any indication whatever, there can be no doubt that a Federal statutory requirement to "negotiate" means to negotiate in good faith—with the intent and purpose of reaching agreement. The Supreme Court has held that even before the National Labor Relations Act was amended to require "good faith" negotiations, its requirement of collective bargaining in fact included this concept. In *National Labor Relations Board v. American National Insurance Company*, the Court stated:

(A)s has long been recognized, performance of the duty to bargain requires more than a willingness to enter upon a sterile discussion of union-management differences. Before the enactment of the National Labor Relations Act, it was held that the duty of an employer to bargain collectively required the employer "to negotiate in good faith with his employees' representatives; to match their proposals, if unacceptable, with counter-proposals; and to make every reasonable effort to reach an agreement."

In the same way, it can be anticipated that a compulsion upon processors to negotiate with bargaining associations would be interpreted by the courts to require that the processor negotiate with the intent and purpose of reaching an agreement. Like the NLRB, the amended act would not compel agreement, but it would compel an attempt to reach an agreement.

What this means is that no matter how many or how few producers are represented by a bargaining association, and without regard to the varying individual capabilities of the producers represented, a processor would be compelled to sit down with the bargaining association with the good faith intention of reaching agreement on price and other terms of contract for the purchase of the raw products from all of the represented producers.

The difficulties of determining good faith intent in labor negotiations has resulted in tens of thousands of pages of decisions in administrative and court reports, and there is no reason to believe that this same proliferation of time-consuming and costly adjudication

will not become a major factor in the purchase and sale of agricultural products, if S. 2225 is enacted. Quite frankly, we cannot conceive of how any responsible segment of the agricultural community could regard union-management relations as a suitable, appropriate, or desirable model for the purchase and sale of agricultural commodities. The employer-employee or master-servant relationship has always been regarded as a special one under the law, requiring and justifying the application of differing legal principles and policies. Congress should think long and hard before it decides to impose these principles and policies on the buyer-seller relationship between farmers and processors.

What the proponents of S. 2225 have been saying in these hearings is that their particular form of business organization—the bargaining association—is not universally accepted as ideal by all producers, that many producers prefer to deal individually with processors, and that if bargaining associations must be judged on the basis of their economic validity and performance, they cannot do the job that is promised for them. In short, the exercise of Government power is necessary to augment the economic capabilities of these associations if they are to achieve the claims of their sponsors.

Perhaps the best way to state our position is to emphasize that the canning industry accepts the principles of competition and supply and demand that are fundamental to our economic system. Unfortunately, literally hundreds of canners have been forced to go out of business in recent years, but we continue to believe that there is no substitute for competition, for in this way and in this way alone, can resources be effectively and reasonably allocated, efficiency rewarded, and consumers be supplied with what they need in terms of a wholesome food supply.

A major exception to this rule of competition has been made for individual farmers, in that they are permitted to act collectively in bargaining for the sale of their production. Those farmers who are convinced that it is to their benefit to act together through bargaining were in fact the panacea that its proponents claim, then we cannot imagine why they should be asking Congress for the unprecedented support of the Government in compelling processors and other purchasers to deal with these bargaining associations. If they cannot make it economically—particularly under the rules of fair play contained in our antitrust laws and S. 109—then we see no conceivable justification for the adoption of further special statutory privileges to benefit this one type of business organization.

Turning briefly to another aspect of S. 2225 that has so far received little attention, we would like to comment on the proposed amendment to section 5 providing that nothing in the act shall—

be construed to forbid the affiliation of an association of producers, as defined in section 3 of this act, with other associations having similar objectives, or with bona fide agricultural or horticultural organizations whose primary objectives are to promote, protect, and represent the business and economic interests of farmers and ranchers.

We have no idea what is intended by the provision. The proponents of the bill have not deemed it appropriate either to explain or justify it. Similar language in earlier legislative proposals has been objected to by the Department of Justice on the ground that it might be interpreted to grant special immunity from the antitrust laws.

The Federal courts have of course interpreted the Capper-Volstead antitrust exemption to permit producers of agricultural commodities to act collectively in processing or marketing their products, but they have specifically held that the exemption does not extend to dealings between an agricultural association and others, such as arrangements relating to price or the acquisition of the stock or assets of others. This proposed amendment to section 5 is possibly intended to reverse, or at least to render uncertain, these important decisions. In view of the failure of the proponents of the legislation to explain or support this provision of the bill, it would seem wholly inappropriate for Congress even to consider this provision without a full inquiry into its intended and possible effect.

For these reasons we urge this subcommittee to recommend against enactment of S. 2225.

Thank you.

Senator JORDAN. Thank you very much, Mr. Dunkelberger.

Senator Allen, do you have any questions?

Senator ALLEN. No questions.

Senator JORDAN. Thank you, sir.

Mr. DUNKELBERGER. Thank you.

Senator JORDAN. Mr. Frazier, we are glad to have you back with us again today.

Do you have anyone else you want to bring along with you?

Mr. FRAZIER. Yes, sir, Mr. Rill.

Senator JORDAN. You may proceed as you wish, sir.

**STATEMENT OF R. FRANK FRAZIER, EXECUTIVE VICE PRESIDENT,
AND JAMES F. RILL, LEGAL COUNSEL, NATIONAL BROILER
COUNCIL**

Mr. FRAZIER. Senator, my name is Frank Frazier, and I am executive vice president of the National Broiler Council. Accompanying me today is James F. Rill, from the law firm of Collier, Shannon, Rill & Edmonds.

We appreciate this opportunity to present the views of the National Broiler Council, 1155 15th Street NW., Washington, D.C., in opposition to S. 2225, the Agricultural Marketing and Bargaining Act of 1969. Supporting these views are 14 other poultry associations: Alabama Poultry Industry Association, Arkansas Poultry Federation, DelMarVa Poultry Industry, Inc., Florida Poultry Federation, Georgia Poultry Federation, Georgia Poultry Processors Association, Kentucky Poultry Federation, Mississippi Poultry Improvement Association, North Carolina Poultry Federation, South Carolina Poultry Improvement Association, South Carolina Processors Association, Southeastern Poultry & Egg Association, Texas Poultry Federation, and the Virginia State Poultry Federation.

The National Broiler Council is a nonprofit trade association representing all segments of the vertically integrated U.S. broiler industry. Its membership is comprised of firms producing and marketing approximately 65 percent of the broilers sold in the Nation.

Mr. Chairman, S. 2225 is one of the most far-reaching measures ever to be considered by this committee. It is not, as some have described it, merely a slight modification of the Agricultural Fair Practices Act

of 1968, Public Law 90-288, popularly referred to as S. 109; rather, it would stand S. 109 on its head for the first time, to our knowledge, establish a requirement of compulsory bargaining between business enterprises.

Unlike the labor-management situation, the artificial framework for compulsory bargaining which would be created by this legislation would involve entrepreneurs each of whom has capital invested in his business.

Because of the sweep of this proposal, some background as to positions and development of the underlying act—S. 109—is warranted. As the subcommittee is well aware, the Fair Practices Act underwent a number of important changes from the bill which was first introduced by Senator Aiken in 1965. We know of no quarrel with the basic objectives of any version of S. 109; to protect producers of agricultural commodities from blacklisting, coercion, discrimination and similar unfair practices which might interfere with their free choice to join or not to join agricultural bargaining associations. The Broiler Council states its position during the 1967 hearings before this subcommittee, and has not since seen any basis for modifying it. This position was and is:

First, it is the policy of the broiler council that growers, like all other farmers, have a right to join any association or organization of their choice. We do not condone any unfair or coercive interference with this right.

Second, the council has no position on whether integrators should or should not deal with associations of producers, directly with individual growers or both. In our opinion, these are commercial questions which are appropriately matters of individual choice guided by the exigencies of the marketplace.

The council and other affected parties were concerned that the legislation as drafted and pending before this subcommittee in 1967 would reach well beyond the stated objectives of its sponsors and produce unintended results. This concern persisted despite the assurances of certain of the bill's proponents such as the American Farm Bureau Federation. In his 1967 testimony before this subcommittee, Farm Bureau President Charles B. Shuman said,

The legislation does not:

(1) Force purchasers of agricultural products to deal with a marketing association of producers. Contrary to the contention of some, there is no such requirement in the legislation.

(2) Prevent a purchaser from choosing the producers with whom he wants to deal. The bill only prohibits a purchaser from refusing to deal with a producer because of a producer's decision to join a marketing association.

This subcommittee nevertheless saw fit to effect substantial changes in S. 109 and produce a bill which represents a compromise which eliminated the basis for much of the opposition. In supporting this compromise measure before the House Committee on Agriculture in September 1967, Farm Bureau General Counsel Allen A. Lauterbach testified.

We want to emphasize that farm Bureau does not see, and will not support, legislation to force processors to negotiate with marketing associations. We seek only legislation which sets forth "rules of fair play" on the part of processors and others in their business relation-

ships with farmers and ranchers. We strongly urge the enactment of legislation which will prohibit unfair practices designed to discourage voluntary farmer participation in marketing associations.

While the bill which in 1968 became the Agricultural Fair Practices Act was a compromise appropriately prohibiting unfair conduct in interference with farmers' right to join and participate in bargaining associations, it did enact one substantial departure from preexisting legal principles. Since at least the 1919 *Colgate* decision of the U.S. Supreme Court, businessmen have been free to choose their own suppliers and customers unless a monopoly were to exist. S. 109, insofar as we are aware, represents the first occasion in which Congress has departed from the *Colgate* principle and prohibited refusals to deal, in this instance on the basis of a grower's membership in a bargaining association.

It was believed that with the elimination of coercive and similar practices and with the above-mentioned modification of long-standing legal principles, bargaining associations would be free to organize and undertake to enlist the support of a sufficient number of growers so as to achieve the recognition which they desired. However, only a few months after S. 109 was enacted, its chief proponent the American Farm Bureau Federation, was complaining that S. 109 provided inadequate protection and was espousing the legislation now before the subcommittee.

S. 2225 would, in our opinion, be unique legislation not only for American agriculture but for the economy as a whole. We emphasize that although the broiler industry has been among those prominently mentioned in the testimony of proponents, the legislation itself would reach across all of agriculture and cover all agricultural products except cotton and tobacco. The proposal would for the first time impose the requirement of collective bargaining with a third-party agency on the relationship between two business entities. With the Government-imposed duty to bargain, business interests with a capital investment would be confronting one another through an intermediary association. The nature of the relationship between grower capital and contractor capital in the broiler industry militates against the interposition of a third party. Both grower and contractor seek to insure a profitable enterprise and one cannot be successful without the other. For his part the contractor not only supplies the feed and chicks in which he has a substantial investment but makes available the latest information in technology and know-how so that the entire enterprise can operate at maximum efficiency. This necessitates a close relationship between the parties and maximum direct communication such that each particular operation will achieve optimum levels of productivity and minimization of risk to each.

This situation contrasts sharply with the circumstances prevalent in labor-management relations. There, only one side, management, is an entrepreneur in the sense that risk capital is involved. In the farm bargaining situation both grower and handler have capital committed.

The natural tendency of producer capital is, as is amply demonstrated by proponent witnesses on S. 2225, the protection of an acquired position. Thus it is likely that farm bargaining associations would seek not only higher contract returns but control over the entry and exit of production capacity.

In other words, we believe that the natural result of effective compulsory farm bargaining is supply control. Farm bargaining could strongly impede reaction to economic developments through the natural tendency to barricade entry and exit. Without supply control, higher returns if set above a competitive level would inevitably create a magnet for new productive capacity which would generate such overproduction as not to sustain the higher returns. As suggested on the first day of hearings, nationwide control is implicit in the concept of collective farm bargaining in the broiler industry, since to the extent that higher returns result in high product prices in one area, its markets will be successfully invaded by production from other areas where costs and prices are competitively set.

This predictive analysis of the interrelationship between farm bargaining and supply control is not the council's alone. Writing in 1964, Dr. Don C. Paarlberg, presently Director of Agricultural Economics for USDA, concluded:

The record is clear: If really strong bargaining power is wanted, really strong control of supply is essential. The only way that strong supply control can be effectuated, if at all, is with the police power of the state. (Paarlberg, *American Farm Policy*, p. 88.)

The approach of supply control through government has been repeatedly rejected by most sectors of agriculture, including the Farm Bureau.

Of course, all the foregoing economic consequences could result from voluntary bargaining produced by economic circumstances even if S. 2225 were not enacted. Thus, if the Farm Bureau or any other bargaining association were to sign up a sufficient number of growers under exclusive agency contracts, handlers would have very little choice but to bargain. The unique aspect of the legislation is the intrusion of the Government to make bargaining mandatory, regardless of the association's substantial representative capacity, so that the ability of the association to convince growers of its merits is no longer a factor. Such Government intervention, which paves the way for more pervasive controls, is something which a number of proponents of the current bill have heretofore consistently opposed. Thus, in expressing Farm Bureau's position on S. 2973 last year, Charles B. Shuman wrote:

There is an even more fundamental reason why Farm Bureau members reject compulsory bargaining. The Congress, as well as the executive branch of our Government, must be concerned with justice and equity for all citizens—not farmers alone. The Constitution spells this out. Furthermore, since 94 percent of the voters are consumers, any Federal Government encouragement of enforcement of farmer bargaining would necessarily include devices to protect consumers against what bureaucrats refer to as the "undue enhancement of prices."

The fact remains that if there were sufficient growers interested in and committed to a bargaining association, a mandatory bargaining bill would be superfluous.

The charge is repeatedly made that in our industry mandatory bargaining is necessary to offset the high level of concentration among broiler contractors. While it would seem from prior testimony that this market structure would be particularly conducive to voluntary organizing efforts, available facts simply do not support the allegation. The National Commission on Food Marketing in its extensive

analysis of all of the food processing and distributing markets found concentration in the broiler industry to be relatively low. More recent data, published by the U.S. Department of Agriculture, discloses that there was no increase in concentration in broiler processing between 1964 (the year before the NCFM study) and 1968.

Similarly, charges that there is no competition for competent growers cannot be validated as a characteristic of the industry. To the contrary, competition among broiler integrators for efficient growers is intense. A study conducted in 1966 by Eastern Market Research Service discloses that a broiler grower could select, on the average, from 8.7 contractors in Georgia and 8 contractors in Arkansas in choosing his business partner. Nor is this figure merely based on opinion, since the same survey shows that 49 percent of the growers interviewed in Georgia and 39 percent of those interviewed in Arkansas had changed contractors within the 5 years preceding the study. This condition has produced competitive grower contracts which provide in most instances for guaranteed minimum payments for grower services and facilities during the grow-out period and which, also in most instances, provide incentive payments for efficient performance. It is also particularly noteworthy that growers were insulated from a major part of the effect of the price recession that prevailed in the industry during much of 1967 and 1968.

Even if the concept of compulsory collective bargaining were to be accepted, the proposed legislation is fraught with shortcomings and ambiguities which would cause handlers to act at their peril in attempting to comply.

The analysis which follows considers the amendments to S. 109 in the order of their appearance in S. 2225, not necessarily in order of their significance.

Section 3(a) of the proposal would add a new subsection (f) to section 3 of the Fair Practices Act and create thereby a special class of "association of producers" entitled "Agricultural bargaining associations." We are unclear as to the need for the establishment of such a class, and, certainly the November 20 testimony of proponents did not illuminate this matter. Congress and those affected by the legislation are entitled to know what sort of organization engaged in farmer bargaining would be an association of producers but not an agricultural bargaining association.

Similarly, there is uncertainty as to what degree of activity in bargaining would be such as to qualify as the "principal function." Would the activities of organization affiliated through common ownership or control be considered in establishing principal function? These questions are not frivolous: should the legislation be enacted, legal liability could turn on the answers.

The major operative provision of the proposed legislation is section 3(b) which would add a new subsection (f) to section 4 of S. 109, which would make it unlawful for handlers:

(f) To refuse to negotiate prices and other terms of contracts at reasonable times and places with agricultural bargaining associations which represent producers of agricultural products for whom the handler usually obtains agricultural products, or who may be reasonably and efficiently supply agricultural products to, or produce agricultural products for, such handler when proof of representation is provided the handler by the agricultural bargaining association in the form of a written authorization signed by the producer.

It is plain that this language contravenes the express provision of the Fair Practices Act that handlers are not compelled to deal with associations of producers. Beyond this obvious feature, the language is unclear both as to the nature and the extent of the duty to bargain.

Several questions arise as to the limits of a handler's duty to "negotiate prices and other terms of contracts," even with the qualification in proposed section 5(c) that nothing in the act compels conclusion of an agreement. For example, would a handler be under a duty to discuss a proposed contract with an association pursuant to which the handler might do business only with the association's members? If such a duty were imposed, it could lead to dissolution of the freedom of both growers and contractors in the broiler industry to select their suppliers and customers on the basis of mutual trust and confidence which we believe has served the interest of both segments of the industry and the consumer. The power of a bargaining association to assign growers to handlers and vice versa would result in the creation of an involuntary business partnership between persons where there may be complete lack of mutual respect.

The present qualification in section 5 which would be preserved by proposed section 5(a), to the effect that free selection of suppliers and customers shall not be interfered with unless such selection is a consequence of membership in or contract with a producer association does not necessarily eliminate the possibility of exclusivity contracts or the duty to negotiate with respect to them. It may be contended that the proviso "for any reason other than a producer's membership in or contract with an association of producers * * *" would make refusals to deal under an exclusive contract a violation of law.

By the same token, there is nothing in the proposed legislation which would insulate a handler who may have signed an exclusivity contract with one association from a duty to bargain with another association representing growers who might reasonably and efficiently supply him.

Finally, with regard to the duty to negotiate, the proposal appears in certain respects to conflict with the underlying Fair Practices Act. Thus, proposed section 5(c) provides that nothing in the act would compel handlers and associations to conclude an agreement. If an agreement is not concluded, however, the handler is faced with a dilemma. Should the handler proceed to negotiate contracts with the grower members of the association, it might be argued that he would violate section 4(d) of the Fair Practices Act which in part prohibits handlers from offering producers any inducement or reward for refusing or ceasing to belong to an association of producers. On the other hand, if a handler were not to negotiate individual contracts with these growers it might be argued that he would violate section 4(a) of the underlying statute for refusing to deal with producers because of their membership in a bargaining association. We seriously question whether requiring handlers to make such a choice is in the interest of producers or the public.

The term "at reasonable times and places" is likewise not defined. No doubt, what may be reasonable for one industry, one area, or one handler might be unreasonable in other circumstances. In the broiler industry, a handler will ordinarily have different contract termination dates with various growers in each area where he operates.

Perhaps most perplexing as to the ambiguities of proposed section 4(f) is the probability that one association representing one producer who might "reasonably and efficiently" supply one handler could impose a duty of negotiation on that handler. Such a condition would inevitably be disruptive of satisfactory business arrangements and economic developments for all segments of the industry. Should the bill be enacted, we are certain that substantial litigation will be necessary to illuminate the meaning of "reasonably and efficiently." Would it be a function of distance? Of past efficiency records? Of a subjective analysis of facilities and skill? We have no way of knowing. Perhaps more remote, but at least legally open under the proposal, is the possibility that a handler who owns his own productive capacity could compel his competitors to negotiate with him.

Moreover, there is nothing in the proposal which would prevent more than one bargaining association from representing the same grower. Consider the dilemma facing a handler who has negotiated a contract with an association representing a number of growers when he is approached with a request to negotiate by another association representing some or all of the same producers. There is, in sum, no protection under the bill for the handler who has negotiated with an association that he will not be continuously compelled to negotiate with the same or a different association, even if an agreement has been concluded.

Section 3(c) of S. 2225 would wholly revise section 5 of the agricultural fair practices act. Most important, it would eliminate that compromise provision of S. 109 which was most conducive to its enactment: The qualification that nothing in the act compels handlers to deal with associations of producers. This deletion coupled with the proposed new section 4(f) would reverse the concept of voluntary association and recognition of producer associations.

Proposed section 5(a) would apparently preserve the right of handlers and producers to select their suppliers and customers for reasons other than a producer's association membership. As already pointed out, however, the insertion of section 4(f) in the law and its interrelationship with other subsections of section 4 might make this assurance more illusory than real.

Proposed section 5(b) would provide that nothing in the Fair Practices Act compels producers to join an association of producers. Nothing presently in the Fair Practices Act creates such compulsion. To the contrary, producers are protected under section 4 from coercion, intimidation and certain other unfair acts or practices from interfering with their free choice not to join a bargaining association. We do not believe that these protections against improper association activity should be diminished in any way.

Section 5(c) would provide that the amended act does not compel the conclusion of an agreement. We are unfamiliar with any bargaining law which does compel conclusion of an agreement; but the provision does not shed much light on the nature of the duty to negotiate.

We are unable to comprehend the purpose underlying proposed section 5(d), although we are concerned as to its possible impact. Farmers are already protected to a substantial extent by the Capper-Volstead Act from what would otherwise be the normal antitrust consequences of joining together for the purpose of joint marketing. If this proposed

subsection seeks or would have the effect of expanding the present anti-trust exemption for farm cooperatives we would have serious misgivings as to its economic effect. We question whether handlers would be secure from antitrust liability if they were to execute a contract with a multiproducer bargaining association. In any event, we concur with the testimony of the Department of Agriculture that the views of the Departments of Justice and Commerce should be solicited as to both this provision and the bill as a whole.

At this point I would like to make a very brief statement, Mr. Chairman.

I don't mean to imply by the detailed section by section comments on the bill that there is some way that the objection to the bill can be amended. The clear purpose of the legislation is to force handlers to bargain with representatives of growers. This is a clear and singular issue. We simply are unalterably opposed to any legislation that would force us to bargain with any of our suppliers.

In conclusion, Mr. Chairman we have passed this legislation principally because it would insinuate the element of compulsion into the voluntary relationship between growers and handlers of agriculture products. Both these entities are business firms with capital as well as labor invested. They are not disputants in their relationship but partners who cannot succeed individually but only as a team. Again, it is necessary to point out that the proposed bill does not relate only to broilers or to fruits and vegetables but to all American agriculture except cotton and tobacco. We can only speculate as to the ultimate impact of compulsory bargaining legislation on agriculture and the consumer. We doubt, for example, that the advances in production and technology which have occurred in the broiler industry and which have benefited all its segments as well as the consumer would have been possible had compulsory bargaining and supply management been imposed 10 or 15 years ago. We believe that the decision whether or not contractors and growers in the broiler industry should deal with one another through an association or individually is best left to the individual free choice of both segments of the industry subject to the exigencies of economic circumstances. Bargaining associations already enjoy benefits of considerable magnitude under Federal law in their efforts to secure membership and engage in negotiating with handlers. The Capper-Volstead Act exempts their formation and joint marketing from the antitrust laws. The Agricultural Fair Practices Act prohibits handlers from engaging in coercion, refusals to deal, discrimination, intimidation, commercial bribery, and misrepresentation in interference with growers' right to join and participate in bargaining associations and with associations' organizing and bargaining activities. If, notwithstanding these preferential statutory provisions, bargaining associations are unable to enlist the support of a sufficient number of farmers to accomplish recognition, we do not believe that recognition by force of law is warranted.

Thank you, Mr. Chairman.

Senator JORDAN. Thank you, Mr. Frazier.

May I ask you a question. Compulsory negotiations in bargaining sometimes take a long time. In the case of broilers, it is my understanding that the market likes a certain size broiler, isn't that true?

Mr. FRAZIER. That is true.

Senator JORDAN. You might have to negotiate and bargain until your broilers become hens, isn't that possible?

Mr. FRAZIER. Conceivably it is possible. I believe, however, Senator Jordan, that it would be unlikely, inasmuch as contracts would be negotiated prior to the time baby chicks were even put in the house, under the contracting system that we have in the broiler industry.

Senator JORDAN. You have that now?

Mr. FRAZIER. Yes, sir.

Senator JORDAN. But suppose an association had a group of people negotiating for it, and they had already had these houses going.

Mr. FRAZIER. It is conceivable that the condition could develop that you speak of; yes, sir.

Senator JORDAN. And the same thing could happen with the canners bargaining with the tomato growers. For instance, it wouldn't take but a week or two before the crop would rot in the field, would it?

Mr. FRAZIER. It wouldn't take long for tomatoes, I am sure.

Senator JORDAN. Tomatoes have to be pickled when they are ripe, and so do peaches and cherries and everything else. You could have long bargaining which could be in good faith and still the time of the fruit, or whatever it might be, being edible would pass.

Mr. FRAZIER. Your point is well taken, because the prime marketing age for broilers is limited to a matter really of a few hours.

Senator JORDAN. It would look like this would probably be to the disadvantage of a group who would bargain in good faith, to everybody, including the handlers, because they might have to bargain for a week or 2 weeks, which would put the chickens beyond the age to be sold, and the market wouldn't buy them. Nobody is going to win in a case like that.

Mr. FRAZIER. It is a real problem.

Senator JORDAN. Senator Allen.

Senator ALLEN. Actually that bargaining would apply to the next brood of chicks, I am sure, and not one already in the houses. You would have no bargaining as to that, because you already have an agreement. So there wouldn't be any bargaining as to the chickens already in the houses.

Isn't that correct?

Mr. FRAZIER. I mentioned that point to Senator Jordan. However, it is conceivable that you could have independent broiler growers who would be in the situation that Senator Jordan described, rather than contract broiler growers.

Senator ALLEN. Yes, you could have individuals. But they would not be covered by the bargaining, would they?

Mr. FRAZIER. Well, it would depend, I suppose, on their membership in the bargaining association and the activities of the bargaining association.

Senator ALLEN. Prior to the enactment of S. 109 was there any discrimination on the part of the processors against producers who did join bargaining associations.

Mr. FRAZIER. You mean from the standpoint of the broiler industry?

Senator ALLEN. Yes. Was there any discrimination against producers by processors prior to the enactment of S. 109?

Mr. FRAZIER. There were one or two examples that were cited, Senator. They were the exception by far rather than the rule in the in-

dustry. And I was rather amazed that the examples cited were about 4 years old.

Mr. RILL. Senator, I think this can be clarified somewhat by the definite statement that we know of no charge of such discrimination that has been sustained. We know of many that have been refuted.

Senator ALLEN. In other words, even though your group endorsed S. 109, in view of the fact that there was no discrimination, there is really not too much field of operation for S. 109, is there, and was there?

Mr. FRAZIER. I would say that there would be a considerable field of operation.

Jim, this gets into the legal field.

Mr. RILL. I think so, Senator. The point was made during the extensive deliberations on S. 109—

Senator ALLEN. This was no condition that it was designed to cure, though, no such situation existed, you say?

Mr. RILL. There were charges. And Congress, as I am sure you are well aware, does not always act as a court of law, but tends to react in advance of the creation of an obviously proven problem. Congress exercised its judgment to forestall any possible coercive activity, and not only by processors, but by bargaining associations, to set out ground rules of fair play, and to prohibit before they occurred any improper activity. And we supported that principle, Senator.

Senator ALLEN. Since according to the industry, then, there was no discrimination, obviously no concession was being made when you did support S. 109.

Mr. RILL. I think we made one very important concession, Senator, and we supported this too. Since the 1919 Supreme Court decision in the *Colgate* case—I hope I am not getting too deeply involved in this—it has been a principle of economic regulation and of law that a businessman may choose his own suppliers and customers. Handlers not opposing the compromise legislation agree that it would be improper and unlawful for handlers to refuse to deal with a grower because of his membership and participation in a bargaining association. I think that is quite a major departure from practices that prevailed before.

Senator ALLEN. Do any of your members now deal with bargaining associations?

Mr. FRAZIER. Many have had individual conferences with representatives of bargaining associations.

Senator ALLEN. Are there any negotiations carried on by members of your council with bargaining agents for producers?

Mr. FRAZIER. Could you answer that question, Jim?

Mr. RILL. Senator, the discussions that we have had indicate that invariably there are individual, oftentimes gritty negotiations between the individual grower and the contractor. This has seemed to be the preference of both. And there will be growers testifying, and you can ask them as to their views on that subject.

I don't have any personal knowledge of contract negotiations in the broiler industry between a bargaining association and a contractor, although there may have been some. There is always, of course, consistent negotiations between the farmer and the contractor.

Senator ALLEN. Do you have various different agreements that you have now reached with individual producers?

Mr. FRAZIER. Yes, there are many different contracts that are in effect with individual producers.

Senator ALLEN. Is it conceivable that it might be beneficial to the processor to reach a uniform agreement with a bargaining association representing numbers of producers?

Mr. FRAZIER. I think one of the major strengths that this industry has experienced up to this time is the keen competition between processors who are integrators, for the efficient growers. And certainly when we hear the discussion on bargaining power I think we need to look at this term "bargaining power" in the light of history, Senator. Up to this time the progress of the broiler industry cannot be attributed to a bargaining association. But I submit to you that the bargaining power in the broiler industry has been as strong or stronger than in any other major phase of American agriculture. And there is one reason for it, and that is competition under the free enterprise system. There was a time when growers in effect said, we don't want to lose money, and contracts were made available under which, for the first time so far as I know in agriculture, they were insulated against loss.

And then they said, we want to make money and share profits.

And then on slow markets there were no profits.

So there has been competition. And this competition has created bargaining power which has given the broiler producer something unique in American agriculture today.

Mr. RILL. May I expand on that. Our basic point, of course, is that this is a question of compulsory or voluntary. Voluntary bargaining is best left to the individual choice, and a bunch of trade associations and lawyers shouldn't tell the people what to do.

Senator JORDAN. We will recess a few minutes to vote.

(Short recess.)

Senator JORDAN. This committee will please come to order.

Mr. Frazier, you may finish your testimony, sir.

Mr. FRAZIER. I had just one additional point, Senator, that I would like to express for the record. And that ties back into the question you raised on planning.

The broiler industry is dealing with the system of production that starts about 18 months prior to the time the finished bird is actually processed. So consequently this whole effort has to be coordinated every step along the way, from the standpoint of breeder placements, eggs going into incubators, and the volume of feed manufactured. And the whole system needs to be very carefully and efficiently coordinated, so that you have a bird of optimum quality, the right weight, and one that is acceptable to the consumer at the time of sale.

Senator JORDAN. And at the right time.

Mr. FRAZIER. That is right, sir.

Senator JORDAN. In other words, you don't load the market up with broilers on Thanksgiving when that is the big day for turkeys?

Mr. FRAZIER. The industry tries not to.

Senator JORDAN. Do you have any further comments?

Mr. FRAZIER. No, sir.

Senator JORDAN. Mr. Rill.

Mr. RILL. No, sir.

Senator JORDAN. Thank you very much. I appreciate your being with us today.

Mr. Ford, the Southeastern Poultry & Egg Association, from Decatur, Ga.

Senator Talmadge sent his regards to you too. He is tied up on something else. He is on this committee, and he is one of the best Members of the Senate.

STATEMENT OF HAROLD FORD, EXECUTIVE SECRETARY, SOUTHEASTERN POULTRY & EGG ASSOCIATION, DECATUR, GA.

Mr. FORD. Thank you.

Mr. Chairman, I appreciate you allowing me to substitute for Mr. Johnson.

The Southeastern Poultry & Egg Association which I represent is a nonprofit trade association with a membership that produces approximately 70 percent of the Nation's frying chickens, 35 percent of the table eggs, and 24 percent of the turkeys. I point this out to emphasize that we are producer oriented.

The association supports the statements presented by the Institute of American Poultry Industries and the National Broiler Council in opposition to S. 2225. We have elected to present a supplemental statement to emphasize to you that S. 2225 includes the commercial egg and turkey industries as well as broilers. We respectfully request that amendments be made to exempt from the act the egg, turkey, and broiler industries.

The growth in production and the efficiencies in producing poultry products are well known to members of your committee. No other agricultural industry has equaled the dynamics of the poultry industry in the last 20 years. Many factors have contributed to the success of the poultry industry, however, one outstanding contribution has been the working relationship between the producers, handlers, processors of the products. Each have had the opportunity to function in a free enterprise environment and have demonstrated to all the business world that such an arrangement will work.

We now find our industry faced with the possibilities of Congress passing legislation to force a change in this free enterprise system—legislation that completely ignores the success of the industry and what has made it great.

It is legislation that levels a broadsided slap at the intelligence of the producers and their abilities as individuals to agree on contractual arrangements in good faith.

We are concerned over the philosophy expressed by the supporters of this legislation that all producers, regardless of the individuals capabilities, must advance together. We believe that such an attempt to control the industry, so that the inefficient will advance along with the efficient, will result in stagnation together rather than advancement together.

Southeastern supports the right of its producer members to voluntarily join agricultural bargaining associations and to be free from any discrimination because of such membership. Passage of S. 109 last year assures our producer members of this protection. No additional legislation is needed.

To our knowledge S. 2225 would be the first legislation to require compulsory collective bargaining in agriculture between two private business interests with each having a capital investment.

We have been advised that S. 2225 may be contrary to the antitrust laws and we ask that your committee seek an official opinion from the proper Government agencies.

Gentlemen, we realize that the poultry industry has reached a point in its development and growth whereby it will attract the outside "opportunity seekers." The legislation under debate is an excellent example of certain groups who desire to further their own efforts to gain control of the production of poultry products.

We trust that you recognize this effort for what it is worth and grant the request to exempt the poultry industry from being included in S. 2225.

Thank you.

Senator JORDAN. Am I correct in some information I think I have that one of the big processors of soup and other products has started its own poultry raising plant in South Carolina?

Mr. FORD. I think you will find a number of cases where companies, processors, do grow and produce some of their supply. However, by and large broilers are produced on contract with independent farmers.

Senator JORDAN. Is the same thing true about turkeys, that one of the big packinghouses has now bought one of the big turkey producing plants down in eastern North Carolina?

Mr. FORD. I believe that is correct, yes, sir. This is to assure plants of constant supply. This does not exclude, however, contractual arrangements for part of their production.

Senator JORDAN. That was the information I had, that they wanted a certain supply at a certain time of the year that they could control themselves.

There is nothing to prevent A. & P. and big organizations like that from putting in their own poultry houses.

Mr. FORD. That is correct, Senator. And it would be my belief that under such a bill as S. 2225, if it becomes law, you will see an acceleration on the part of the processors to put in their own production rather than take the chance and run the possibility of having to bargain at the last minute for their needs. They have commitments to customers for a constant flow of product to the market. They commit themselves, it has been mentioned, 18 months in advance, and some companies further in advance than that, to grain suppliers. They commit themselves to capital investment of buildings, processing plants, feed mills, trucking equipment. And they hold a commitment to maybe 500 or a thousand employees for a payroll. And they are put in a position where they cannot wait until a house of birds are placed on a farm to negotiate price. Because at that point they are boxed in. Their commitment to their employees for a payroll would be disastrous in case they could not reach agreement and they went even 1 week without chickens.

So you can see the economic impact that this bill would have on a small community in your State, sir, or any State.

Senator JORDAN. Wouldn't it be equally disastrous for a grower not to know that he had a reliable processor that he could make a contract with that would carry out that contract regardless of what the market did?

Mr. FORD. It would be more disastrous, in relationship to a company, it would be perhaps more disastrous to a producer to come up to a

point where he needs chickens delivered on his farm, and because some third party could not reach agreement in his behalf, if he went 2 or 3 weeks or a month without chickens, you can see what it would do to his annual income. And this is a critical thing for our producer members. And that is one of the reasons that they object to this, because they now feel like they have the right and the freedom to negotiate these things well in advance and independent of any third party group. And they are a little reluctant to turn this authority and this power over to a third party.

Senator JORDAN. They also have the right as it is now to change who they sell their chickens to if they want to.

Mr. FORD. And many do. I think you will find the history of a good producer has been that he has changed from contractor to contractor a number of times. And in a sense he is more independent today than he has even been, if he is a good efficient producer.

Now, if he is not efficient, no one really wants him. And this is where we are afraid the support for this bill is coming from, from the people who have had a little trouble making a sufficient return on their investment and from their effort.

Senator JORDAN. Senator Allen.

Senator ALLEN. No, sir.

Senator JORDAN. Thank you very much, Mr. Ford.

Mr. Brian, National Association of Frozen Food Packers.

Mr. Brian, we are glad to have you, sir. You may proceed as you wish.

STATEMENT OF JAMES H. BRIAN, PRESIDENT, NATIONAL ASSOCIATION OF FROZEN FOOD PACKERS

Mr. BRIAN. My name is James H. Brian. I am president of the National Association of Frozen Food Packers on whose behalf I appear. The membership of the association packs some 90 percent of the national production of frozen vegetables, fruits, and juices and a large volume of other frozen foods.

The frozen food industry is opposed to S. 2225.

We are grateful for this opportunity to explain our viewpoint on the bill. We want to express our conviction that this bill, if enacted into law, would constitute a drastic experiment in government by private groups which would be unsound economically and contrary to the basic tenets of long-established antitrust policies. It is a departure from basic and tried principles of competition. We look upon it with grave apprehension.

S. 2225 would amend the Agricultural Fair Practices Act of 1967, which began as S. 109, by adding to section 4 of that act a new subsection (f) making it unlawful for handlers, or processors, to refuse to negotiate prices and other terms of contracts with agricultural bargaining associations representing certain producers of agricultural products. Since the majority of products used by freezers are grown under contracts with farmers the impact of this provision upon the industry is evident.

Some processors obtain their supplies both through marketing associations and from individual growers who are not association members. We have, of course, no criticism of such a practice. Under present

law the processor may freely choose whether to bargain with the association or with individual growers, on the basis of his business judgment. S. 2225, however, would force him to bargain with such associations or face judicial proceedings against him for failure to do so.

Processors of agricultural products were opposed to S. 109, as originally drafted, basically because, without specifically so providing as does S. 2225, it would have created conditions under which processors would be forced to negotiate with bargaining associations or face legal proceedings for boycotting them, with the ultimate result that membership in such associations would, as a practical matter, be forced upon growers.

The requirement that processors negotiate with bargaining associations was firmly disavowed by the principal supporters of S. 109, including the American Farm Bureau Federation, as an aim of that legislation, and subsequently was expressly negated by amendments to that bill. Thus, section 5 of S. 109, as enacted, specifically disclaims any intention to prevent handlers and producers from selection of their customers and suppliers for any reason except that of a producer's membership in an association of producers, or to prevent handlers and producers from dealing with one another individually on a direct basis, or to require a handler to deal with an association of producers.

The about-face represented by S. 2225, which was introduced less than 13 months after the enactment of S. 109, cannot very persuasively be attributed to alleged hardships to growers which have developed since the enactment of S. 109. Of the incidents described in testimony of supporters of S. 2225 before this subcommittee on November 20, 1969, some occurred before enactment of S. 109; more importantly, the others were of a kind with those which had been advanced as justification for the enactment of S. 109 before its amendment and passage with the agreement of processors as well as grower groups.

The supporters of S. 2225 have, in effect, come full circle with the proposal of the specific requirement that handlers negotiate with bargaining associations. A corollary to this requirement is that, as an end result, membership of affected growers in the bargaining association will cease to be voluntary, not by reason of the provision of the statute itself, but because of the practical compulsions upon growers and processors created by the legal obligation to negotiate.

Of course the requirement of negotiation means negotiation in good faith. A processor bargaining with an association offering to supply all of his needs from a particular area for the current year would, therefore, be unable to negotiate with growers who are nonmembers of the association—even those who had satisfactorily supplied the processor's needs in prior years—until it had become evident that no agreement could be reached with the association. Obviously the processor could not afford to obligate himself to nonmembers until it had become clear that he could not reach such an agreement.

Thus, in this situation, it is apparent that if the processors did come to an agreement with the association, nonmembers would be excluded from dealing with him. This result may well be duplicated with other processors of the same crop who obtain a supply from the same growing area, thus effectively excluding nonmember growers

who are not fortunate enough to contract with other processors for the production of the same or some other crop. It seems difficult to avoid the conclusion that in the following year nonmember growers would feel a compulsion by reason of the hard economics of the matter, to join the bargaining association.

Experience in the field of labor relations leaves little room for doubt that, if processor and association fail to agree upon contract terms, charges of failure to bargain in good faith with the intention and purpose of reaching an agreement will become commonplace. This means litigation, with the possibility of injunctions which will delay, surely on too many occasions, the planting of crops important to the food supply, until so late in the season that it would no longer be profitable to produce them.

Even where no litigation ensues the possibility of delays inherent in the proposed bargaining system are too great to be contemplated with anything less than trepidation. We cannot ignore such a threat to the food supply and the consequent unavoidable increase in costs to the consumer of the food products involved.

We have suggested a situation where the bargaining association proposes to supply all of the processor's needs for the season. In fact, however, how can a processor know, until the forced negotiations are completed, whether an agreement will be reached and, if it is reached, what portion of his processing needs will be covered by the agreement? In most situations he cannot know this. The result is that he again faces the dilemma of whether to risk overextending by dealing with nonmember growers before the forced negotiations are completed or broken off, or to risk delay until it is too late in the season to produce a profitable crop.

If we envisage, as practically we may, more than one association presenting itself to the processor as a bargaining agent for a group of growers, the problems inherent in forced negotiations must be multiplied by factors now unknown. Clearly, in order to avoid a charge of violation of law, the processor must deal with each such association which demands to negotiate, regardless of whether the association has two members or many members. How it would be possible for a processor to bargain in good faith with the purpose and intention of coming to an agreement with two or more competing associations, each seeking to supply the processor's needs, poses a dilemma whose solution is not apparent to us. We submit that it would not be reasonable to force any person or firm into the position of having to pretend to negotiate in good faith, with two associations, each of whom wants the same thing.

S. 2225 must, we submit, be judged in the light of the established national policy favoring competition and condemning monopoly and other restrictive practices violative of the antitrust laws.

I am advised that the statutory authorizations for farmers to organize cooperative enterprises and their exemption from certain portions of the antitrust laws do not extend to the use of coercive tactics by such enterprises to gain or to retain members, either directly or indirectly, by forcing processors or others to deal with the cooperatives. It is not a legitimate object of mutual help under long-existing national policy and legal principles, for an association to monopolize or attempt to monopolize the marketing of farm products or to gain members for the association on any other than a voluntary basis.

These principles would be severely shaken by the forced bargaining requirement of S. 2225 and the consequent pressures on nonmembers to join a bargaining association.

Another provision of S. 2225—a proposed amendment to section 5 of the present act—would provide that nothing in the act shall “be construed to forbid the affiliation of an association of producers, as defined in section 3 of this act, with other associations having similar objectives, or with bona fide agricultural or horticultural organizations whose primary objectives are to promote, protect, and represent the business and economic interests of farmers and ranchers.”

This provision has not been explained by those supporting S. 2225. I am advised that similar language in other proposals was objected to by the Department of Justice as possible basis for a claim by such associations of special immunity from the antitrust laws. Thus, producers and associations of producers may now act together in processing and marketing their products; but the proposed amendment to section 5 of the act might be construed to include a marketing arrangement involving cooperatives and other sellers of agricultural commodities providing for sale by the affiliating parties at fixed prices. This would not only be contrary to firmly fixed legal principles but would, as we have stated, constitute a departure from our policy favoring competition and discouraging undue concentration of economic power.

Certainly the meaning and possible effects of this provision should be thoroughly explored.

The alleged imbalance of bargaining power between grower and processor can be related to the purposes of S. 2225 only by excluding from consideration Government-controlled and supported crops such as cotton and wheat and crops sold for the fresh market. We express no opinion on the position of producers of such crops vis-a-vis the purchasers of the commodity. The amendment to section 4 of the Agricultural Fair Practices Act of 1967, with which S. 2225 is primarily concerned, deals only with refusals by handlers “to negotiate prices and other terms of contracts.” It has nothing to do with crops which are purchased otherwise than on a contractual basis.

The growers of annual crops for freezing have prospered by reason of a strong marketing position, bolstered by the need on the part of processors to contract for more acreage year by year as their business expands.

The position of the grower can be illustrated by the table attached to my statement as exhibit A. The table compares the percent of change from 1964 to 1968 in the price to growers per ton of five leading freezing crops, with the percent of change (during a reasonably comparable 4-year period) in the wholesale prices per pound for institutional packs of the processed products. It will be seen that the price to the grower per ton of asparagus spears increased by 56 percent from 1964 to 1968, while the wholesale price to the processor increased by only 8 percent; that the price per ton of corn to the grower increased by 25 percent, while the wholesale price decreased by 20 percent; and that the price of peas to the grower increased by 4 percent, while the wholesale price decreased by 12 percent. The same comparisons for lima beans and green beans showed little or no advantage to either grower or processor.

The food processing industry is highly competitive. Not only do frozen food processors compete with other product forms in the consumer market, they also compete with other food processing industries and fresh market outlets for agricultural production. This is why even though all costs of production have been rising, and profits have been squeezed, prices for many raw materials have been bid up relative to their wholesale value. For example, wages of production workers in food manufacturing plants increased 21 percent from \$1.95 per hour in 1964 to \$2.36 per hour in 1968. The National Commission on Food Marketing reported, in 1966, on the profits for the years 1960 through 1964 of 23 freezers of fruits and vegetables in California and the Pacific Northwest. These firms had total combined sales of frozen fruits and vegetables of \$115.6 million in 1960 and \$148.5 million in 1964, an increase of 28 percent. During the same period their net profits after taxes, as a percent of sales, ranged as follows:

[In percent]

Year	Weighted average	Simple average
1960.....	3.1	2.9
1961.....	0	.7
1962.....	.1	(.1)
1963.....	.3	1.1
1964.....	1.3	1.9
5-year average.....	.9	1.3

It is safe to say that, for fruit and vegetable packers generally the profits realized since 1964 have not exceeded and probably are lower, than those indicated in the report of the National Commission on Food Marketing.

We may ask: Why is the contract growing segment of agriculture as prosperous as it is in its dealings with an industry with such low profit margins? There are many reasons, of which I shall mention only three.

1. Contract growing, as contrasted with growing for the open market, reduces the danger of over or underproduction by the grower inexperienced in analysis of market conditions, so that what is grown can be sold at a price acceptable to the consumer. The parties are now free to make their own business judgments in adjusting supply and demand, without Federal intervention.

This has worked to the benefit of both consumer, grower, and processor.

2. Breakthroughs in genetics and cultural practices have been shared by contract growers in particular, because the overproduction which might otherwise result, can be avoided.

3. The grower, at the time of contracting has not put the seed in the ground or, at worst, does not have a perishable product on his hands which must be marketed immediately. At the time of contracting he has many available options.

Processors, many of whom are small and must struggle to remain in business on an extremely low-profit margin, must have an insured supply of the vegetables to freeze as they cannot afford to carry their operations over from one shutdown to the next without an intervening season of production. It is clear that the processor must have an in-

sured supply of incoming ingredients if he is to survive. Quite apart from his fixed charges the seasonal processor cannot afford to have his product absent from the retail shelf for a period of a year. These are compelling economic sanctions weighing on the processor. There are no similar compelling economic sanctions on the grower. The grower can decide not to grow carrots or peas or some other crop for processing, or to grow peas rather than carrots, or to grow one or more of these crops for the fresh market rather than on a contract basis, or to grow some entirely different crop such as soybeans.

We cannot doubt that the eventual supply control which this bill promises to bargaining associations will, in turn, involve control by such associations of the prices of annual processing crops now produced and sold in a free competitive economy. Under such conditions processors will be forced more and more into growing crops for their own needs; consumers will seek other sources of supply from abroad; and those who are supporting S. 2225 may be expected to be before you asking tariffs to protect their price structure.

The difference between the economic position and the problems of employees vis-a-vis their employers and the position and problems of contract growers vis-a-vis processors who seek to contract with them for the production of needed crops, is so great and so striking that, of itself, it dictates extreme caution in adopting for regulation of the farmer-processor relationship the device of collective bargaining which governs the relationship of union and management.

Regardless of whether it would be prudent to expose a substantial portion of our food supply to the kind of monopoly and price control which S. 2225 may be expected to provide for marketing associations—a matter which I have already discussed—it seems evident that:

1. The interference with the growth of essential food crops inherent in the proposed system of collective bargaining between grower and processor is not comparable to the interference in industrial production resulting from employer-union bargaining. In the latter case the delays can be frequently compensated for; in the former they cannot, for the seasons do not wait upon negotiations.

2. Even under the system of collective bargaining between union and employer the employer can select the employees whom he wants to work for him. The marketing association, on the other hand, may be composed of efficient growers who produce quality crops as well as inefficient growers whose produce would be rejected by the processor if he were dealing directly with the grower. We do not regard this as good economics, either for the consumer or the processor.

3. Basically, the concept of an employer dealing with an agent of employees is not comparable to that of a processor dealing with an agent of growers. The growers are not employees and have options which employees do not have. Since the contract crops with which we are here concerned can be grown without extensive investment of equipment the farmer can, as we have noted, shift from one crop to another, if necessary to avoid an unfavorable contract. An industrial employee ordinarily has no such choice.

We sincerely hope that the committee will adhere to the view it held when it reported upon S. 109, as amended, viz, that:

There are many good, sound economic reasons for handlers and producers to select customers and suppliers. The bill does not attempt to prevent these sound reasons from operating (S. Rept. 474, 90th Cong., first sess., p. 7).

We have tried to point out some of these reasons which are just as good and sound today as they were when S. 109 was enacted in 1968.

We, therefore, urge that the subcommittee recommend against the enactment of S. 2225.

Thank you.

(The attachment follows:)

EXHIBIT A.—PRICE COMPARISONS FOR 5 FROZEN FOODS

	Price to growers, ¹ dollars per ton			Wholesale price for institutional pack, ² cents per pound		Percent change
	1964	1968	Percent change	Jan. 1, 1965	Jan. 1, 1969	
Asparagus spears.....	215	335	56	55	59.50	8
Lima beans.....	211	227	8	21.25	23	8
Green beans.....	110.40	102.92	-7	19.75	18	-8
Corn.....	22.90	28.70	25	17.75	14.25	-20
Peas.....	100.20	103.97	4	18.75	16.50	-12

¹ Prices to growers from the Almanac.

² Wholesale prices from Quick Frozen Foods magazine.

Senator JORDAN. I thank you, Mr. Brian.

Mr. Brian, may I ask you a question. Would it be possible for three persons to set up an association, an association of three members? That may be rather farfetched, but this bill does not say how many members it has to have to be an association; is that correct?

Mr. BRIAN. That is correct.

Senator JORDAN. Suppose he would come to one of the big processors representing an association and want to bargain for their cucumbers, peaches, and pears, or whatever it might be. He would have to bargain under this bill. He would have to negotiate. Is that correct?

Mr. BRIAN. That is our understanding, yes.

Senator JORDAN. I think that is correct.

Well, if he arrived at some kind of a contract, then he could go out to a lot of other people and say he had this contract, was negotiating this contract, and they would have to come into his association, or else they won't be able to sell their crop to this processor. Would that be possible under this bill?

Mr. BRIAN. Yes. We brought out in the testimony that if nonmembers of an association were excluded 1 year, that they would be driven into membership the following year, which is strictly against present law.

Senator JORDAN. That would have to come in, or else they would have to quit producing for that particular processor?

Mr. BRIAN. They would be eliminated.

Senator JORDAN. Thank you.

Senator Allen.

Senator ALLEN. All the association would be bargaining for would be people it represented; wouldn't it, Mr. Brian?

Senator JORDAN. That would be true. But it wouldn't have to tell you what percentage of the total farmers in that area it would have to be representing.

Senator ALLEN. Couldn't that be covered by an amendment?

Senator JORDAN. I don't know.

Mr. BRIAN. Bringing up subcontracting.

Senator JORDAN. Bringing up subcontracting. But under this bill it seems to me that would be entirely possible.

Senator ALLEN. All he would represent would be people that gave him authority in writing to represent them. So he could be required to show whom he represented.

Senator JORDAN. I think that is quite true. But all these people that didn't belong to his association would be on the outside. And I don't believe the processor under this bill would have the right to go on the outside and start negotiating with somebody else because they didn't belong to that association. And he would be violating this particular law.

Senator ALLEN. No, I don't think that would follow. All the bargaining association would purport to be bargaining for would be its own members, they wouldn't be bargaining for anyone else.

Senator JORDAN. I understand that. But suppose he just represented a third of the farmers in that particular area. Now, what are the two-thirds out there going to do? Who is going to bargain for them?

Senator ALLEN. They could represent themselves, just like they are doing now.

Senator JORDAN. It is entirely possible that they could bring action to say, you didn't deal with us, so-and-so, and that you can't bargain with them and these people here, too. Because you would get into this factor, which came up in S. 109. If you had a contract with these producers, say, at \$1.50 a bushel for potatoes, and then you went over here to some nonmembers and wound up with \$1.75, you would say, that is unfair competition, you can't do that, you are paying him something extra not to belong to a thing. That is the old S. 109.

Mr. BRIAN. Yes.

Senator JORDAN. So this is a complicated situation.

Senator ALLEN. Of course, an amendment could be prepared to remove an objection of that sort, I would say.

And right in that connection, I would like to ask Mr. Frazier, who discussed the various provisions of the bill section by section, and also Mr. Rill, if your council has prepared a series of amendments that might possibly remove some of your objections to the bill?

Mr. FRAZIER. As indicated in the supplemental statement that was presented to the committee, Senator Allen, the position of the council is that a principle is involved that could not be successfully amended. And we oppose the principle.

Senator ALLEN. That is your position now. But at the time the original statement was prepared, did you not plan to suggest amendments to the bill?

Mr. FRAZIER. No.

Senator ALLEN. And no amendments have been prepared?

Mr. FRAZIER. Not to this committee, no.

Senator ALLEN. On the floor, then?

Mr. FRAZIER. There are no plans for amendments.

Senator ALLEN. No amendments have been prepared to guide the subcommittee in coming up with a bill that might possibly meet your objections?

Mr. FRAZIER. We don't have any amendments that we are in a position to offer.

Senator ALLEN. So you don't feel that the bill could be amended in such a way as to remove the major objections that you have to the bill?

Mr. FRAZIER. You either favor or oppose compulsory collective bargaining, and the position taken by our association is that we oppose it.

Senator ALLEN. In other words, you don't want to bargain or to negotiate; is that it?

Mr. FRAZIER. That is right.

Senator ALLEN. That is all.

Senator JORDAN. We will recess until we can vote.

(Whereupon, there was a short recess.)

Senator JORDAN. Mr. Fleming, we are glad to have you sir.

**STATEMENT OF JAMES F. FLEMING, EXECUTIVE VICE PRESIDENT,
ALABAMA POULTRY INDUSTRY ASSOCIATION, CULLMAN, ALA.**

Mr. FLEMING. Senator Jordan, I would like to introduce the president of our association, Gus King from Decatur.

Senator JORDAN. That is Senator Allen there. And I want to say to you that is a great addition to this committee. I have got him on two committees. He is on the Rules Committee with me, and I am glad to have him.

Mr. FLEMING. We are glad to have good representation up here from Alabama, too.

Senator JORDAN. Mr. Fleming, you may proceed as you wish, sir.

Mr. FLEMING. My name is James F. Fleming. I am executive vice president of the Alabama Poultry Industry Association, a nonprofit trade association with headquarters in Cullman, Ala. This association represents almost 4,000 members, all of whom are active in some phase of the poultry industry in the State of Alabama. Of this number, approximately 90 percent are poultry growers who raise chickens under contract with one of the many contracting firms in Alabama.

Mr. Chairman, at this point I would like to emphasize that our association supports the statement presented by the National Broiler Council earlier.

Senator JORDAN. I notice your name was on that endorsement as one of the large poultry groups represented by Mr. Frazier.

Mr. FLEMING. Yes.

The poultry industry in Alabama is more than one-third of the agricultural cash income of the State according to the U.S. Department of Agriculture. Last year, farm income from production of poultry products was \$244 million.

I wish to quote from a letter written by Mr. Forrest Ingram, president of Golden Rod Farms, Inc., Cullman, Ala. to Senator James B. Allen.

Senator JORDAN. Has he gotten it?

Mr. FLEMING. I am sure he has, sir. This was a week or so ago. Mr. Ingram was writing in reply to statements made before this committee on November 20, 1969, by Dan Hall, a representative of the Alabama Farm Bureau Federation.

Perhaps Mr. Hall should be reminded that these same companies who he criticizes so severely have, during the past 20 to 25 years, furnished capital and leadership to bring the poultry industry in the State to the number one agricultural spot. I know that in Cullman County very few farmers had refrig-

erators or bathrooms when he started placing broilers here. Now Cullman County is number one in poultry income and number one in agricultural income in the State. If poultry had not taken up the vacuum left by the decline in cotton, Cullman County would be in a pitiable condition from an agricultural standpoint. Cotton has been regulated and subsidized until very few farmers in this county depend on it for a livelihood.

I would like to remind you and your Committee that this progress in poultry has been accomplished without Government controls or subsidies. Where can you find another segment of agriculture so vigorous and self-sustaining?

Mr. Chairman, as Mr. Ingram illustrated in his letter to Senator Allen, the poultry industry has brought a new prosperity to the farms of Alabama. This was accomplished without Government subsidies, price supports, production allotments, or farm bargaining associations. We maintain that this is a grand example of what free enterprise can do when left alone.

When Mr. Hall appeared before your committee on November 20, 1969, he made statements about the industry which are misleading. For instance, he referred to one page of a report prepared by Auburn University which showed a negative income for a poultry grower who depreciated his chickenhouse over a 5-year period and the equipment over a 3-year period.

I would like to point out that very few businesses can depreciate buildings and equipment over this short period of time and expect a profit.

Senator JORDAN. If it is a brick building the final depreciation period is 50 years. A frame building is something less than that. You can check it.

Mr. FLEMING. The Auburn report also gives more realistic budgets which depreciates houses over a 10-year period and equipment over 5 years. The complete Auburn report is attached to our testimony.

Senator JORDAN. I would think that equipment depreciation over a 5-year period would be realistic.

Mr. FLEMING. We think it is more realistic than 3.

Senator JORDAN. Three is not realistic. Five would not be quite as realistic, however, as 6 to 7 years. It depends on the equipment. I have seen all the equipment that they have used.

Go ahead, sir.

Mr. FLEMING. Mr. Hall indicated by his testimony that no poultry firms were cooperating with the Farm Bureau Bargaining Association, but in a recent newsletter from the Alabama Farm Bureau headquarters in Montgomery, it was reported to their members that meetings had been held with two large contracting firms operating in the State of Alabama. A photocopy of this news report is attached to my testimony.

Also attached to this statement is a photocopy of a news story from the official newsletter of the American Farm Bureau Federation which tells of the AAMA revised model broiler growout contract.

This story says:

The original model broiler contract was first released in March, 1967, and has been used in numerous discussions with broiler contractors.

Mr. Chairman, since preparing this testimony, I have found a page, it is page 23 of the November issue of Nation's Agriculture, which is the National Farm Bureau's official magazine, which makes a statement relative to the progress made by contract growers in Alabama,

in fact, it quoted one grower as saying that he credited the Farm Bureau with having gained at least \$1,800 more a year for him.

The poultry grower is a vital segment of the poultry industry and his prosperity will be geared to the prosperity of the total industry. The contractor has insulated him from the market risk, and has provided him with a guaranteed income.

The poultry industry has made great strides in helping the small farmer stay on his farm, retain his property, and elevate his standard of living. Had the need for a third party to bargain for him been necessary, he would have flocked to bargaining associations. This, of course, has not happened.

We believe that the farmer wishes to retain his identity as a businessman and to retain his individual right to grow with any contractor who offers him a better contract.

As stated at the beginning of my testimony, we have the president of our association with us. We had planned to have our former president with us, but unfortunately, due to illness, he was unable to be here.

And we will, of course, be happy to answer any questions you might have.

Senator JORDAN. Do you have any statement to make?

Mr. KING. No, sir; no statement.

Senator JORDAN. I am sorry, Senator Allen went out while you were making your statement, but I am sure he will read the record here.

And I am interested in knowing whether he got this letter from Ingram. I imagine he did, because as bad as our mail service is, it usually gets there in a week or two.

Mr. KING. It was over a week ago when it was written.

Mr. FLEMING. The letter was dated November 29.

Senator JORDAN. There are a great many things connected with the production of broilers, turkeys, layers, and all the things that go in that family. And one of them is the amount of local grain that is grown in the territory right around where they are, and which is fed locally.

North Carolina, as you know, is a large producer of poultry. And corn has become a big crop, as well as milo, and other feed grains.

Eastern North Carolina produces a great deal of corn. They get over 100 bushels to the acre, and that is sorry farmland. I used to do a little farming, and when I got up to 20 bushels an acre I thought I had really done something, and I had.

But it has been an important part of the economy in all the States where broiler production has really flourished.

You have a very fine statement, and I appreciate it.

Mr. FLEMING. Thank you very much.

(The prepared statement of Mr. Fleming is as follows:)

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We believe that the farmer wishes to retain his identity as a businessman and to retain his individual right to grow with any contractor who offers him a better contract.

Both the current President and the immediate Past President of the Alabama Poultry Industry Association are present, Mr. Chairman, to answer questions should the committee wish. Thank you.

[Excerpt from Nation's Agriculture, November 1969]

ACTION MARKETING

(By Ken Hood)

Prices of Concord grapes to be processed for juice have been established at or near the AAMA minimum price recommendation of \$150 per ton (16° brix) in the "Lake States" and \$95/ton in Washington state. The demand for ConCORDS exceeds the short supply and active bidding may further strengthen the 1969 prices.

Processing apple growers working through the New York Farm Bureau Marketing Co-op and AAMA have influenced western New York apple processors

to increase prices approximately 25¢ per hundredweight. This increase resulted from strong resistance to early price offerings. These price changes affect approximately 10,000,000 bushels of processing apples and will result in over \$1,000,000.00 additional *net* returns to New York growers. Program to improve prices over original offerings got good response in other states in AAMA program.

AAMA has highlighted skyrocketing broiler costs in the press, at industry meetings and through direct communications with broiler contractors. We pointed up the need to increase contract grower returns, which have been lagging in too many areas.

State associations are reporting successes in meetings with broiler contractors in improved pay schedules and other terms of contracts. A grower in Alabama has recently figured that the Farm Bureau broiler program for this year had benefited him, in improved pay, by over \$1800.

Activity in the broiler states is getting in high gear. Renewals and new member sign-up is encouraging. Growers in most states are enthusiastic about the new "exclusive bargaining agent contract" between themselves and their state association.

Many points in Farm Bureau's overall broiler program have been incorporated into a proposed set of regulations prepared by the Packers and Stockyards Administration. The proposed regulations will be published and comments invited.

Interest is spreading in the new AAMA livestock marketing program that is now being offered to the 30 state Farm Bureau marketing associations that have active programs under way or are about to inaugurate new programs. First priority is being given to a nationally coordinated program for feeder cattle. AAMA's role will center around contracts with feedlots, information, coordination of inter-state sales, assistance to states and developing satisfactory working relationships with existing marketing associations.

Guidelines governing interstate transactions have been designed to facilitate state marketing associations working with one another with the assistance of AAMA.

New slaughter hog programs are developing in a number of states—including North Carolina, South Carolina, Arizona and a number of others.

New marketing programs under consideration include popcorn, silage, wheat, fowl and several others.

[Excerpt from Newsletter, American Farm Bureau Federation]

AAMA ISSUES REVISED "MODEL" BROILER CONTRACT

The American Agricultural Marketing Association has revised its recommended "model" broiler growout contract, based on changing industry conditions and experiences with its first model contract.

The original model broiler contract was first released in March, 1967, and has been used in numerous discussions with broiler contractors.

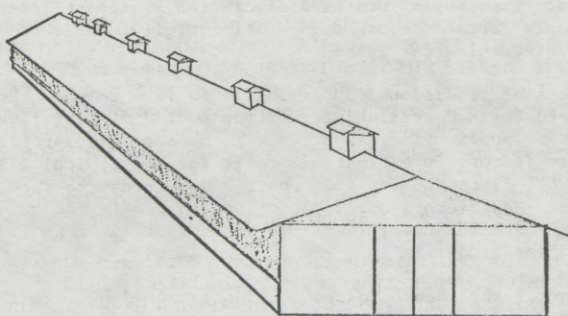
AAMA has never suggested that its model contract should be adopted "as is," said Kenneth Hood, AAMA general manager. However, a number of provisions included in the first contract have been adopted by some firms, and the model has been adopted virtually as written by at least one firm, he noted.

"There have been many improvements in broiler contracts since 1967," Hood said, noting that a number of efforts have been made to "legalize" contracts that had been little more than grower payment schedules. Some firms have adopted the use of written contracts for the first time, under AAMA's urging and widespread publicity concerning the need for legal contracts that are signed by both parties, Hood explained. Some growers now are getting copies of the contracts they sign, he said—something many did not receive in the past.

AAMA's revised contract continues to include provisions that meet the needs and reasonable desires of both contractors and growers, on an equitable basis, Hood said. In addition to the feed conversion and bracket-type sample payment schedules included in the original version, AAMA's revised contract includes a sample payment schedule based on the "spread" system as well as one based on the floor-space "rental" system.

"We commend those contractors who have used the model contract we issued in 1967," Hood said, "and urge all contractors to study our revised model contract and adopt those provisions that will improve current contracts and build better relationships with their independent contract growers."

TYPICAL CASH FLOW BUDGETS
FOR CONTRACT BROILER GROWERS



Cooperative Extension Service
Auburn University
Auburn, Alabama

TYPICAL CASH FLOW BUDGETS FOR CONTRACT BROILER GROWERS

by

V. Wilson Lee¹ and Morris White²

The broiler industry has grown by leaps and bounds in Alabama and in certain other parts of the South during the past 20 years. Production continues to expand and many questions have been raised regarding the profitability of this enterprise to the grower. Knowledge of the profitability of the enterprise is needed as a basis for sound decisions on whether to enter or expand broiler production.

Enterprise budgets have long been relied on to estimate profit potential. Budgeting, simply stated, is an analyses of expected costs and returns for a given period of time. Frequently in budgeting, too little consideration is given to fixed or non-cash costs such as depreciation, interest, taxes, and insurance. Often only variable costs such as electricity, fuel, and litter are considered in determining net income.

Another weakness of traditional budgeting is failure to show the expected cash flow or the need for and availability of funds at different times throughout the year. In this publication, an attempt is made to give proper consideration to all these factors in estimating profit for the typical Alabama broiler producer. All fixed and variable costs and returns are shown and presented as expenses and average spendable or non-spendable income. No labor or management charges are included; therefore, the profit or loss figure is a return to labor and management.

The assumption was that death losses would not exceed overage in placements; however, a few companies no longer place extra chicks. A grower should be aware of the procedure his contractor will use since this will affect his income.

These budgets were assembled using the best available information. Alabama grower payments average about 1.9 cents per pound, and average live weight per bird is about 3.5 pounds. Grower payments are generally based on efficiency factors, such as feed conversion. Therefore, some growers average less than 1.9 cents per pound while others average 2 cents and above. In some cases, above-average growers will receive returns greater than these budgets

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indicate; at the same time, below-average growers will receive less. Contracts vary but if the top payment to growers is 2.3 cents per pound, the low will likely be 1.7 or less.

Tables 1 and 2 show estimates of cash income and expenses from both 20,000- and 45,000-bird broiler units in 1969. These estimates reflect the returns to growers in situations where costs for buildings and equipment have been paid and where no depreciation or cost of maintenance and repairs are considered. A number of Alabama growers who have had a broiler enterprise for several years are in this situation and are realizing favorable cash returns. In many cases, farmers permit cash figures to exert undue influence on decisions about feeding broilers, but cash figures do not reflect a true costs and returns situation as can be readily detected in Tables 3 through 6.

Historically, during the winter months broiler demand has slackened and some growers left broiler houses vacant. If only three batches are produced and all cash expenses considered, the average spendable income and return to labor and management is -\$3,363.00 per 20,000-bird unit. When manure and increase in net worth from accumulated equity in buildings and equipment were calculated as non-spendable income, return to labor and management was -\$628.00 (Table 3). On the other hand, if an average of 4.5 batches were raised, spendable income would be -\$2,110.50. When non-spendable as well as spendable income were considered, a small return to labor and management of \$889.50 per year would be realized (Table 4). The spendable and non-spendable income return for a 45,000-bird unit was \$2,001.37 (Table 5).

If 10- and 5-year loans were secured on a building and equipment respectively, returns to labor and management (spendable and non-spendable income) for a 45,000-bird unit would be \$2,174.62 or about \$173 more per year than when 5- and 3-year loans were secured. Average spendable income with this type of loan repayment schedule was \$374.62 per year, or about \$31 per month. No increase in net worth occurred because house and equipment were fully depreciated at the close of the repayment period (Table 6).

The broiler business continues to become more competitive as time passes and new technology develops. The average grower of 5 years ago who has continued to use the same practices and has not adopted new or advanced technology is probably a below-average grower today. A prospective grower must approach the business with the determination, dedication, and willingness required to compete and improve through the years if he expects to remain competitive and to make a reasonable return. As with all farm enterprises, other alternatives should be considered and analyzed thoroughly before capital is committed. One objective of business management is to distribute capital resources among enterprises so that total net return to the producer will be the greatest.

Table 1. Estimated Cash Income and Expenses, 20,000-Bird Capacity Broiler Unit. Alabama, 1969

Item	4½ Batches	
	Budget Guide	Your Budget
Estimated cash income ^a :		
3.5-pound bird @ 1.9 cents/pound =		
6.65 cents/bird.		
6.65 cents x 20,000 x 4½ batches.....		\$ 5,985.00
Estimated cash expenses:		
Litter (\$0.004/bird x 90,000 birds).....	\$ 360.00	
Brooding (\$0.010/bird x 90,000 birds).....	900.00	
Electricity (\$0.007/bird x 90,000 birds)..	630.00	
Insurance and taxes @ 1 percent		
\$20,000 investment.....	200.00	
Clean out (\$0.00375/bird x 90,000 birds)..	337.50	
TOTAL.....		<u>2,427.50</u>
Cash income minus cash expenses.....		<u>\$ 3,557.50</u>

Table 2. Estimated Cash Income and Expenses, 45,000-Bird Capacity Broiler Unit. Alabama, 1969

Item	4½ Batches	
	Budget Guide	Your Budget
Estimated cash income ^a :		
3.5-pound bird @ 1.9 cents/pound =		
6.65 cents/bird		
6.65 cents x 45,000 x 4½ batches.....		\$13,466.25
Estimated cash expenses:		
Litter (\$0.004/bird x 202,500 birds).....	\$ 810.00	
Brooding (\$0.010/bird x 202,500 birds)....	2,025.00	
Electricity (\$0.007/bird x 202,500 birds)..	1,417.50	
Insurance and taxes @ 1 percent		
\$45,00 investment.....	450.00	
Clean out (\$0.00375/bird x 202,500 birds)..	759.38	
TOTAL.....		<u>5,461.88</u>
Cash income minus cash expenses.....		<u>\$ 8,004.37</u>

^aAssumes that number of chicks delivered will average 3 to 4 percent above stated house capacity and that death loss will not exceed this. A few companies no longer place extra birds.

Table 3. Broiler Unit Budget Guide, 20,000-Bird Capacity, Five-Year Loan on Houses, Three Years on Equipment. Alabama, 1969

Item	3 Batches	
	Budget Guide	Your Budget
Investment (lock & key):		
Buildings.....	\$14,000.00	
Automatic equipment.....	6,000.00	
TOTAL.....	<u>\$20,000.00</u>	
Annual repayment schedule:		
Avg. prin. payment (equipment).....	\$2,000.00	
Avg. equipment int. @ 7 percent, 3 yr. amortization.....	280.00	
Avg. prin. payment (buildings).....	2,800.00	
Avg. building int. @ 7 percent, 5 yr. amortization.....	588.00	
TOTAL.....	<u>\$5,668.00</u>	
Income ^a :		
3.5-pound bird @ 1.9 cents/pound = 6.65 cents/bird. 20,000 x 6.65 cents = \$1,330.00 x 3 batches.....		\$ 3,990.00
Expenses:		
Prin. and int.	\$5,668.00	
Litter (\$0.004/bird x 60,000 birds).....	240.00	
Brooding (\$0.010/bird x 60,000 birds)....	600.00	
Electricity (\$0.007/bird x 60,000 birds)...	420.00	
Insurance and taxes @ 1 percent.....	200.00	
Clean out (\$0.00375/bird x 60,000 birds)...	225.00	
TOTAL.....	<u>\$7,353.00</u>	
Avg. spendable income.....		-\$ 3,363.00
Avg. non-spendable income (107 tons of litter @ \$5).....		535.00
Increase in net worth, 50 percent of house value prorated over 5 years ^b		1,400.00
40 percent of equipment value prorated over 3 years ^c		<u>800.00</u>
Total annual spendable and non-spendable income (Return to labor and management)..		<u>- \$ 628.00</u>

^aAssume that mortality and condemnations will not exceed average in placements. A few companies no longer place extra birds.

^bA 10-year life is assumed; thus 50 percent of each payment covers depreciation. Repairs and improvements will offset house depreciation after year ten.

^cA 5-year life is assumed; thus 60 percent of each payment covers depreciation.

Table 4. Broiler Unit Budget Guide, 20,000-Bird Capacity, Five-Year Loan on Houses, Three Years on Equipment. Alabama, 1969

Item	4½ Batches	
	Budget Guide	Your Budget
Investment (lock & key):		
Buildings	\$14,000.00	
Automatic equipment	6,000.00	
TOTAL	<u>\$20,000.00</u>	
Annual repayment schedule:		
Avg. Prin. payment (equipment)	\$2,000.00	
Avg. equipment int. @ 7 percent, 3-yr. amortization	280.00	
Avg. prin payment (buildings)	2,800.00	
Avg. building int. @ 7 percent, 5-yr. amortization	<u>588.00</u>	
TOTAL	\$5,668.00	
Income ^a :		
3.5-pound bird @ 1.9 cents/pound = 6.65 cents/bird 20,000 x 6.65 cents = \$1,330.00 x 4½ batches		\$ 5,985.00
Expenses:		
Prin. and int	\$5,668.00	
Litter (\$0.004/bird x 90,000 birds)	360.00	
Brooding (\$0.010/bird x 90,000 birds)	900.00	
Electricity (\$0.007/bird x 90,000 birds)	630.00	
Insurance and taxes @ 1 percent	200.00	
Clean out (\$0.00375/bird x 90,000 birds)	<u>337.50</u>	
TOTAL	\$8,095.50	
Avg. spendable income		-\$ 2,110.50
Avg. non-spendable income (160 tons of litter @ \$5)		800.00
Increase in net worth, 50 percent of house value prorated over 5 years ^b		1,400.00
40 percent of equipment value prorated over 3 years ^c		<u>800.00</u>
Total annual spendable and non-spendable income (Return to labor and management)		<u>\$ 889.50</u>

^aAssumes that chicks delivered will average 3 to 4 percent above house capacity and death loss will not exceed this. A few companies no longer place extra birds.

^bA 10-year life is assumed; thus 50 percent of payment covers depreciation.

^cA 5-year life is assumed, thus 60 percent of payment covers depreciation.

Table 5. Broiler Unit Budget Guide, 45,000-Bird Capacity, Five-Year Loan on Houses, Three Years on Equipment. Alabama, 1969

Item	4½ Batches	
	Budget Guide	Your Budget
Investment (lock & key):		
Buildings.....	\$31,500.00	
Automatic Equipment.....	<u>13,500.00</u>	
TOTAL.....	<u>\$45,000.00</u>	
Annual repayment schedule:		
Avg. prin. payment (equipment).....	\$ 4,500.00	
Avg. equipment int. @ 7 percent, 3-yr. amortization.....	630.00	
Avg. prin. payment (buildings).....	6,300.00	
Avg. building int. @ 7 percent, 5-yr. amortization.....	<u>1,323.00</u>	
TOTAL.....	\$12,753.00	
Income ^a :		
3.5-pound bird @ 1.9 cents/pound = 6.65 cents/bird. 45,000 x 6.65 cents =		
\$2,992.50 x 4.5 batches.....		\$13,466.25
Expenses:		
Prin. & int.	\$12,753.00	
Litter (\$0.004/bird x 202,500 birds).....	810.00	
Brooding (\$0.010/bird x 202,500 birds).....	2,025.00	
Electricity (\$0.007/bird x 202,500 birds)..	1,417.50	
Insurance & taxes at 1 percent.....	450.00	
Clean out (\$0.00375/bird x 202,500 birds)..	759.38	
TOTAL.....	<u>\$18,214.88</u>	
Avg. spendable income.....		-\$ 4,748.63
Avg. non-spendable income		
(360 tons of litter @ \$5).....		1,800.00
Increase in net worth, 50 percent of house value prorated over 5 years ^b		3,150.00
40 percent of equipment value prorated over 3 years ^c		<u>1,800.00</u>
Total annual spendable and non-spendable income (Return to labor and management)....		<u>\$ 2,001.37</u>

^aAssumes that chicks delivered will average 3 to 4 percent above house capacity and death loss will not exceed this. A few companies no longer place extra birds.

^bA 10-year life is assumed; thus 50 percent of payment covers depreciation.

^cA 5-year life is assumed; thus 40 percent of payment covers depreciation.

Table 6: Broiler Unit Budget Guide, 45,000-Bird Capacity, Ten-Year Loan on Houses, Five Years on Equipment. Alabama, 1969

Item	4½ Batches	
	Budget Guide	Your Budget
Investment (lock & key):		
Buildings.....	\$31,500.00	
Automatic equipment.....	<u>13,500.00</u>	
TOTAL.....	<u>\$45,000.00</u>	
Annual repayment schedule.		
Avg. prin. payment (equipment).....	\$ 2,700.00	
Avg. equipment int. @ 7 percent, 5-yr. amortization.....	567.00	
Avg. prin. payment (buildings).....	3,150.00	
Avg. building int. @ 7 percent, 10-yr. amortization.....	<u>1,212.75</u>	
TOTAL.....	\$ 7,629.75	
Income ^a		
3.5-pound bird @ 1.9 cents/pound = 6.65 cents/bird. 45,000 x 6.65 cents = \$2,992.50 x 4.5 batches.....		\$13,466.25
Expenses:		
Prin. & int.	\$ 7,629.75	
Litter (\$0.004/bird x 202,500 birds).....	810.00	
Brooding (\$0.010/bird x 202,500 birds)....	2,025.00	
Electricity (\$0.007/bird x 202,500 birds)..	1,417.50	
Insurance and taxes @ 1 percent.....	450.00	
Clean out (\$0.00375/bird x 202,500 birds)..	<u>759.38</u>	
TOTAL.....	\$13,091.63	
Avg. spendable income.....	\$ 374.62	
Avg. non-spendable income (360 tons of litter @ \$5).....	<u>1,800.00</u>	
Total annual spendable and non-spendable income (Return to labor and management)....	<u>\$ 2,174.62</u>	

^aAssumes that chicks delivered will average 3 to 4 percent above house capacity and death loss will not exceed this. A few companies no longer place extra birds.

Senator JORDAN. Mr. Collins.

Mr. Collins is from North Wilkesboro, N.C., and is one of my constituents.

Mr. Collins, we are glad to have you here.

He knows something about the broiler business, because he loans a little money for that business.

We are glad to have you with us, and we will be glad to hear from you.

**STATEMENT OF GEORGE B. COLLINS, VICE PRESIDENT,
NORTHWESTERN BANK, NORTH WILKESBORO, N.C.**

Mr. COLLINS. Mr. Chairman, my name is George B. Collins. I am vice president of the Northwestern Bank, North Wilkesboro, N.C., and in charge of the agricultural department. We have approximately 100 offices serving western and Piedmont, N.C.

I personally live on a poultry and beef cattle farm in Wilkes County and have some 22,500 breeder hens on contract. I have produced both hatching eggs and pullets on contract for approximately 5 years.

Until recent years, the economy of western North Carolina was based primarily on agricultural income, and there was a steady out-migration from this area because technological developments in agriculture resulted in farmers having to become larger and more efficient in order to return a decent living to the operator.

Our small livestock, dairy, and tobacco farms in this area could not compete because of limited usable land. The poultry industry was a natural for this area because of the small land requirements, ideal climate, and proximity to the large population centers.

Fifteen years ago poultry played a minor part in the economy of this area. At this time, there was a large number of relatively small independent hatcheries, feed mills, and farmers who were producing broilers on an independent basis. Immediately after World War II, many independent poultry producers were successful in growing and marketing broilers profitably and many people were attracted to the industry. Very shortly there was a tremendous overproduction of broilers, prices hit the bottom, and many of these people could not afford the losses they incurred.

The broiler industry did not become a dominant factor in the economy until it became apparent to the leaders in the poultry industry that their survival could only be possible through consolidation into large companies with sufficient finances to weather the price fluctuation as supply adjusted to demand. Since this time a dynamic and growing broiler industry as well as a sizable commercial egg and hatching egg industry have been established.

The following figures will give you an indication of growth in the 11-county Northwest North Carolina Development Association area. In 1954, the total poultry income in the 11 counties was \$7,640,000; 1964, \$52,965,000; and the 1969 preliminary figures furnished by the North Carolina Extension Service indicate that the poultry income for this same area will be \$81,614,000. In 1954, poultry represented 14 percent of the total farm income in this same area. Today, it represents approximately 44 percent of the total farm income.

These figures should give you some indication of the impact on the

economy of the area. To be more specific, in Wilkes County, the poultry industry is the largest single employer. Some 2,750 people are employed by the poultry industry other than farmers. There is approximately 25 million square feet of chickenhouses in Wilkes County. This represents an investment by farmers in excess of \$25 million in buildings and equipment alone.

A tremendous amount of capital has been required to develop the various poultry enterprises, and I can safely say that the Northwestern Bank has supplied more capital to contract growers for the construction of housing and purchase of equipment than any other single lending institution in the State of North Carolina. The management of the Northwestern Bank is confident that our faith in the poultry industry has been well justified. To the best of my knowledge, we have yet to foreclose on a broiler farm and have experienced limited past-due problems.

At the present time, the Northwestern Bank does not have sufficient funds to supply the tremendous demands for new poultry houses in the area. In the past 6 months, we have turned down or referred to other lenders approximately 50 contract growers who requested additional capital for expansion of their operations.

This industry could not have developed into the giant that it is today without the mutual trust, confidence, and teamwork of the large integrators, contract farmers, and financial institutions. This three-way partnership has been most satisfactory in the past with no indication from any of the three partners that he is being shortchanged.

Prior to this three-way partnership being formed, Wilkes County and the surrounding area was a typical Appalachian poverty area with more than its share of gullies, broom sage, and running briars. Today, this area is by no means the ultimate but tremendous improvement has taken place. Since 1959, total employment in Wilkes County has increased by 82.5 percent and the average weekly wage has increased by 70.9 percent.

In the 11-county northwest area, the number of jobs has increased 34.5 percent and the average weekly wage rate, 65.6 percent during this same period. The poultry industry has been the largest single contributing factor to this progress, and we anticipate continued progress in the future.

Thank you for your time and attention. If you have any questions, I will answer them to the best of my ability.

Thank you.

Senator JORDAN. Thank you, Mr. Collins.

I want to have the pleasure of knowing not only you, but I think all the officials of your bank. And I know the tremendous job that you have done in financing a great many of these growers.

I want to ask you one question: When a man comes to you who wants to go into the poultry producing business, wouldn't it be a natural thing for you to ask him where he is going to sell his chickens?

Mr. COLLINS. That is very true.

Senator JORDAN. And if you didn't have a good strong processing plant in the area that would take his production, you wouldn't want to finance that business, would you?

Mr. COLLINS. That is very true. And when a producer requests additional money to expand, the first thing that we do is check with the

integrator, whoever he might be selling to, and find out what type of job he is doing, and how they feel about his ability to enlarge and do a good job and make money.

Senator JORDAN. That is the natural thing.

Senator Allen, I am sorry you weren't here to hear the testimony of your distinguished citizen from Alabama. He had a mighty good statement.

Mr. Collins is with the Northwestern Bank in western North Carolina, where the Holly Farms Poultry Co. is located, one of the largest in the United States.

Mr. COLLINS And we have growers in our area who deal with six or eight farms, contractors, not only the Holly Farms.

Senator JORDAN. Thank you very much.

Senator ALLEN. I am sorry that I missed Mr. Fleming's testimony. I was called to the phone and had to leave the hearing for a few moments. We are certainly proud of the poultry industry in Alabama, and the contributions that it makes to the economy there. It constitutes the largest source of farm income of any in the State. And we are certainly proud of that. And proud of the growth of the industry. And we certainly want to cooperate with the industry and put no barriers in the way of its future progress and future contributions to our economy.

Senator JORDAN. Mr. Fleming referred to a letter that he said Mr. Ingram had written to you in the last several days. Did you get that letter?

Senator ALLEN. Yes, sir; I did.

Senator JORDAN. I am sure you will read the testimony of Mr. Fleming, because it was real good. And we are so glad he came up.

I understand Mr. Hungerford is not here. This record will be held open for a while anyway, so that the statement can be put in at a later date.

Mr. Phillips, we are glad to see you here again, sir. Have a seat and proceed as you wish, sir.

STATEMENT OF PAUL L. PHILLIPS, MARDELA SPRINGS, MD.

Mr. PHILLIPS. My name is Paul Phillips, and I live at Mardela Springs, Md. I am a farmer; broilers, hogs, and grain. My farm has 30,600-capacity broiler houses and I keep a herd of 65 sows. I have no employees.

Senator JORDAN. You have no employees?

Mr. PHILLIPS. Only myself.

I got up at 3 o'clock this morning, and I have eaten breakfast twice.

I am a member of Farm Bureau. We have a three-county local poultry association—I am a director and immediate past president. I am a director of the Delmarva Poultry Industry, Inc.—a three-State regional organization. Maryland has a commission of agriculture—I am a member, appointed by the Governor. I am a director of NBC and serve as chairman of the Grower Advisory Committee. Over the years, I have served in other areas of responsibility—mostly in poultry.

And I am a member of the National Growers Advisory Committee appointed by the Secretary of Agriculture.

The Grower Advisory Committee has discussed this bill and decided unanimously against it. The farmers on this committee wanted to

continue to have the right to individually select their own contractor rather than surrender their freedom to a bargaining association. Many questions were raised: will we be forced to bargain with labor unions if we try to force our customer handlers to bargain with us? Will we be forced to bargain with handlers if we force them to bargain with us? Will we be forced as individual farmers to bargain with a bargaining union, if this bargaining union gets a monopoly?

And will farmers be forced to bargain with farmers, since all breeding animals, all feeder animals, much of seed, hay, et cetera, is sold directly from one farmer to the other? Fresh vegetables are sold at auctions by commission merchants and by farmers directly to handlers; what would be the effect of this system?

I would like to speak as an individual. Bargaining is like Gaul, it can be divided in three parts: the bargaining association, the contractor, and the farmer.

Bargaining associations: the bargaining associations we know did not originate at grassroots of the broiler country. They were brought to us by professional organizers of national associations. And when a farmer is asked to sign a membership contract, can he bargain with the bargaining association in an attempt to negotiate a better deal? No. He is told, "Take it or leave it."

Handlers: Since each handler offers a different contract, in most places growers can choose the one offering him the best terms. This sets up a competitive situation that results in improving contracts to attract and keep the best growers.

At the moment, in Delmarva, there is more competition for good growers than ever before. Favorable markets have brought about a significant increase in production, but high interest rates put the brakes on new house construction. Therefore, the only ways a contractor could expand, is by getting his growers to raise more flocks per year in the same house, offering more favorable contracts to the grower, and by getting a few growers away from other contractors. This is a chain reaction, and contracts have advanced over the entire area in recent months.

Farmers: The broiler farmers are not so favorable to bargaining. Only a small percentage is willing to join a bargaining association. Bargaining has failed to attract a significant number of broiler farmers. Why? I will list a few. The order of importance varies with each individual. Getting in is easy but to get out can be very difficult and expensive.

Sometimes you would have to give up 10 percent of that year's sales if you go outside the bargaining association and deal individually. Yet, listen to this language from a bargaining association membership contract, "[the] association shall have no obligation to approve any or all contracts, and it may approve one contract without approving others which have identical or more favorable terms." Now this sounds to me like the bargaining association can favor one grower over another.

You have to agree to abide by the decision of the association regardless of how it affects your family or business. Regular meetings can be replaced by meetings called without adequate notice.

You are not allowed to join unless you join as many as three other organizations first. And if you fail to keep up dues in these organizations you are kicked out of the association. You can't join for just one

crop with certain bargaining associations, it must be all crops on that farm regardless of the customer you have established over the years.

Now, I want to speak for a moment about the history of the broiler business. When the broiler growing business started back in the early thirties, farmers bought their own chicks and fed, but after experiencing low prices, refused to put risk capital in the business. We then started a system whereby the feed company would use their capital, carried the risk, and we divided the profit, but not 50-50. We took 75 and the feed company 25. Sometimes we could push to 80-20. But when we experienced low prices there often was no profit to divide. So then we changed.

Then we pushed the feed companies to pay us a minimum payment plus half the profit. But when prices would get low there wasn't any half profit. So today we have just about succeeded in shifting market risk to the contractors who in turns pays us on the basis of our efficiency to produce.

And I can readily agree with the gentleman who spoke for the bank. I don't know of any farmer that lost his farm through bankruptcy.

All this has worked fine for the farmer because we have built more and larger houses on the farm. But it has not worked so good for some of the handlers. In 1961, we have a "drought" of prices. As a result, we lost many of the handlers. We would like to have them back in business today. But that is water over the dam. In 1966, it happened again. We lost a few more. Now we are down to a point that if we lose one it hurts.

Most of the broiler farmers have a similar farm background. The sons of small farmers, a product of the depression, not much money, no inheritance, and early training of hard work, an unquestionable reputation, excellent credit, willing to work 7 days a week each week of the year. As a result, most of us have command over more capital than we had ever hoped to acquire.

We average about one-third of our time in broilers and create about two or three jobs off farm jobs. If we build a farm capacity to use all our time we create about six or seven other jobs. As you can see, we can measure quite well the impact on our community.

We have a few years left on our mortgage—we have to think in the long-term effect on our business. As business people we are constantly interested in getting a better price for the service we perform. We produce a product with nationwide pricing. We have to think in terms of the entire broiler belt, not company by company or even one State at a time.

We believe integrated and contract farming is here to stay. We see it growing. But most of all, let's look at this: we are dealing with a new economic system of food production that produces a delicious product at one-half the price of our competition. We—broiler farmers—are the sweetheart of every housewife in America. She depends on us to balance her food budget. And she loves us more and more when she realizes that no part of her or her husband's paycheck goes to pay a broiler grower not working.

My testimony would be completely unfair if I did not mention three unusual aspects of the broiler industry:

1. A new economic system of production that is the world's most efficient production system of food.

2. Integrated broiler growing has done more for the small farmers and poverty-stricken rural areas than anything in operation today.

3. And we should listen to this very carefully—most important for men to observe, the broiler world is a woman's world. They produce half the broilers, more than half the processing employees are women, they buy 99 percent of the retail chickens, and buy the greater part of the cooked carryout chicken to make it the No. 1 carryout meat.

Attached are copies of some of the papers farmers are required to sign to be a member of a bargaining association. You may need them for reference. They will be delivered later today.

(The documents are as follows:)

THIS AGREEMENT is entered into on the date subscribed hereto by and between the Maryland Agricultural Cooperative Marketing Association Corporation, a corporation organized under the laws of the State of Maryland for the purpose of promoting agricultural products, hereinafter called "Association", and the undersigned grower.

WITNESSETH: That

In consideration of their mutual promises, agreements and obligations, the undersigned grower and Association agree as follows:

1. *Application for services.*—The undersigned grower hereby applies for the services of the Association in connection with its broiler market service program, and if accepted, agrees to be bound by and subject to all obligations and conditions as herein set forth by the Association.

2. *Approval of application.*—The Association hereby accepts said application for services and extends to the undersigned grower, hereinafter referred to as "grower" all rights and privileges under the Association's Broiler Market Service Program.

3. *Market service program.*—The Association shall provide a broiler grower market service to Grower, as outlined on the back hereof, and as supplemented or amended from time to time by the Association.

4. *Fees.*—Grower agrees to pay for services rendered at an annual rate of \$1.00 per 1,000 Broiler House capacity with a minimum of \$10.00 per year.

5. *American Agricultural Marketing Association.*—The Association shall maintain a membership in the American Agricultural Marketing Association and shall pay a portion of Grower's annual fee to the AMMA for services rendered.

6. *Farm Bureau membership.*—Grower agrees to be a member in good standing of Farm Bureau during the period of this Agreement.

7. *Termination.*—This agreement shall continue in effect from year to year unless cancelled as herein provided. After this Agreement has been in effect for one full year, either party hereto shall have the right to cancel this Agreement on the 31st day of May in any year by giving written notice to that effect by mail to the other party during the month of April of such year.

IN WITNESS WHEREOF, This Agreement has been executed in duplicate by the parties hereto on this _____ day of _____, 1968.

MARYLAND AGRICULTURAL COOPERATIVE
MARKETING ASSOCIATION CORPORA-
TION,

By _____
President

Signature of Grower

Address of Grower

House Capacity

County

OBJECTIVES OF THE SERVICE

1. To develop marketing activities that will help solve individual grower problems as well as industry problems.

2. To encourage and assist in making it possible for contractors to provide production contracts that will reflect the highest net income to growers.

3. To cooperate with all segments of the broiler industry in developing expanded markets, both domestic and foreign.
4. To provide growers with information which will assist them in bringing about a better balance between production and consumer demand.
5. To encourage more effective competition among contractors in order to improve grower's returns.

SERVICE TO BROILERS GROWERS

The Maryland Agricultural Cooperative Marketing Association Corporation, an affiliate of the Maryland Farm Bureau, Inc. and the American Agricultural Marketing Association, an affiliate of the American Farm Bureau Federation, will provide the following services for growers:

1. Furnish a comprehensive market analysis and information program related to the marketing of broilers.
2. Plan and conduct informational and educational meetings for growers.
3. Conduct research which includes analysis of grower contracts, production costs, feed conversion experience, etc., and make such information available to members.
4. Arrange and participate in conferences between the Marketing Association and contractors to discuss mutual problems related to the production and marketing of broilers.
5. Participate in analyzing factors relative to grower earnings and contract responsibilities.
6. Advise members of current grower earning schedules paid by contractors in other states.
7. Assist processors in developing and expanding markets for broilers, including the necessary promotion of broilers in domestic and foreign markets. Utilize the facilities of the Farm Bureau Trade Development Corporation (an affiliate of the American Farm Bureau Federation offices in Rotterdam and Chicago) to the fullest extent feasible.
8. Assist in planning and carrying out organizational activities in all producing areas in order to increase participation by other broiler growers in the broiler market service.
9. Participate in a coordinated broiler grower market service with growers in other states through affiliation with the American Agricultural Marketing Association.

stock certificate number

MEMBERSHIP AGREEMENT AND BROILER BARGAINING CONTRACT

THIS AGREEMENT, made and entered into on the date subscribed hereto, by and between the North Carolina Farm Bureau Marketing Association, Inc., an agricultural cooperative association incorporated under the laws of the State of North Carolina, hereinafter called "Association," and -----, a broiler grower whose post office address is -----, Hereinafter called "Member."

WITNESSETH:

In consideration of their mutual promises, covenants and obligations, the parties hereto agree as follows:

MEMBERSHIP

If not already a member of Association, Member hereby applies for membership in Association, tenders herewith \$----- for his membership fee, and subscribes to the Articles of Incorporation and Bylaws of Association. Association hereby accepts said application for membership.

Association shall maintain a membership in the American Agricultural Marketing Association and shall pay a portion of Member's annual dues to the AAMA for services rendered.

BARGAINING AUTHORITY

Member hereby appoints Association as his agent (a) to recommend terms of contracts by which Member shall raise broilers, (b) to solicit offers from contractors for broiler grow-out contracts, and (c) to present to contractors suggestions for improvement in the terms of contracts for production of broilers.

Subject to the provisions for notice and referendum set forth in this Agreement hereof and hereby expressly made a part of this Agreement. Member design-

nates and appoints Association his exclusive bargaining agent. Association hereby accepts these appointments.

OBLIGATIONS

Association shall use its best efforts to represent Member in accordance with this Agreement, and pursuant thereto, Association shall perform educational, informational and operational services as authorized by the Board of Directors.

Member shall pay to Association an annual service fee of one dollar (\$1.00) per thousand birds broiler house capacity (minimum fee of \$10.00; maximum fee of \$100.00) with the Member further agreeing to purchase, and by the execution of this Agreement does hereby purchase, one share of common stock of the Association having a par value of \$1.00 per share which shall be deducted from membership dues upon initial enrollment of member into said Association. Member certifies that he now is, and will during the life of this Agreement remain, a member of Farm Bureau in the county of his residence.

The authority granted herein to said Association shall continue and shall be irrevocable unless cancelled as herein provided. After this Agreement has been in effect for one full year, it may be cancelled by either party on the first day of September in any year by giving written notice to that effect by mail at least thirty (30) days prior to September 1 of such year or by a failure of the Member to renew his membership in the North Carolina Farm Bureau Federation, Inc.

A. The Association shall become exclusive bargaining agent for Member under the following procedure:

1. The Board of Directors of Association or its designee shall determine that, by virtue of Agreements similar in principle to this one, the Association may operate effectively as exclusive bargaining agent with a particular broiler contractor on a statewide basis or in a particular production area.

2. Following said determination, the Board of Directors or its designee shall authorize that a referendum of broiler-grower members, who grow for the contractor on a statewide basis or in the particular area determined, be held.

3. Each member entitled to vote in said referendum shall be given at least seven (7) days written notice of said referendum.

4. The referendum may be taken by secret ballot, by mail, by solicitation, or by any combination of methods.

5. The Association shall be the exclusive bargaining agent for Member, provided an affirmative vote is given in said referendum by two-thirds of the members voting representing at least 50% of the broiler house capacity operated by those voting.

B. The parties will be governed by the following rules when Association is exclusive bargaining agent:

1. Member shall not enter any broiler grow-out contract with any contractor unless (a) such contract has received prior approval by Association or (b) Member is notified by Association in writing that he is released for a specific period of time, not less than four (4) months nor more than one (1) year from his obligation to enter only approved contracts.

2. Association shall notify Member in writing of its approval of contracts, either by letter or by stamping contracts with the words "approved" and the name of the Association, and such other symbols or legends as may be appropriate.

3. Association shall seek, to the best of its ability, to negotiate the most favorable contract terms possible, but Association shall have no obligation to approve any or all contracts, and it may approve one contract without approving others which have identical or more favorable terms.

4. If Member shall enter any contract contrary to the provisions hereof, such act will damage Association in an amount that is impractical and extremely difficult to fix. Therefore, for the duration of this Agreement, Member shall pay to Association an amount equal to the product of his broiler house capacity multiplied by one cent (\$.01), as liquidated damages, for each flock produced under a contract not approved by the Association.

5. This Agreement shall extend to and be binding upon the Member and all qualified assignees, however, in the death of the Member during the existence of this Agreement, said Agreement shall terminate; however, in such event this Agreement shall continue for the remainder of the Membership year and the deceased member's Estate or Personal Representative shall have all rights in the Agreement that the Member had.

6. Association shall have no right hereunder to require Member to enter any broiler grow-out contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at _____, the _____ day of _____, 19_____.

Name of producer (L. S.)

Witness: _____ (L. S.)

Receipt of this Agreement acknowledged this _____ day of _____, 19_____.

Signature of member

NORTH CAROLINA FARM BUREAU
MARKETING ASSOCIATION,

By: _____
President

RFD Town Zip code County

Contractor Broiler house capacity Amount of dues collected

Telephone number Farm Bureau membership number

Dues received by

Name _____ or _____ Date _____

County _____ Township _____ State _____

ARTICLE I—AUTHORIZATION

I authorize the National Farmers Organization (hereinafter referred to as the N.F.O.) its agents or representatives to act for me as my exclusive representative in collective bargaining in respect to all commodities marketed from my farm, with the exception of those commodities presently covered by other marketing contracts, and to enter into contracts with the producers of products I own and control covering the selling prices and other conditions of disposal, and establish marketing procedure. I further authorize the said organization to act as my exclusive representative in the presentation, prosecution and adjustment of any complaint that I may have against the producer of the commodities of my farm, in accordance with and subject to the rights and privileges granted me by the By-laws of the N.F.O.

This authorization and direction shall be irrevocable for a period of three (3) years from the date appearing above. I agree and direct that this authorization and direction shall be automatically renewed and shall be irrevocable for successive periods of three (3) years each unless written notice is given by me to the N.F.O. not more than twenty (20) days and not less than ten (10) days prior to the expiration of each three (3) year period. This authorization is made pursuant to the provisions of the Capper-Volstead Act enacted February 18, 1922.

ARTICLE II—NATIONAL N.F.O. COMMODITY DEPARTMENTS

Sec. 1. The Board of Directors of the N.F.O. shall create National Commodity Departments for Dary, Grain, and Meat. Miscellaneous commodities may be assigned by the Board of Directors to any one of the three established Commodity Departments.

Sec. 2. The President of the N.F.O. shall appoint a Department Head who shall be known as a Director, and staff for each of the National Commodity Departments subject to the approval of the Board of Directors. The Board of Directors

shall have the power to remove a director or staff members of a Commodity Department.

SEC. 3. The National Commodity Departments shall be under the direction of the President and responsible for carrying out the intent of this Agreement and administrative policy established by the Board of Directors.

SEC. 4. The National Commodity Departments shall have the responsibility of assisting the Marketing Area Bargaining Committees in their negotiations with the processors and coordinate the activities of all Area Marketing Committees.

SEC. 5. The National Commodity Departments shall at the direction of the Board of Directors make plans for effective marketing procedures to be submitted to the Marketing Area Bargaining Committees for their consideration.

ARTICLE III—MARKETING AREAS

SEC. 1. The President and the Board of Directors shall establish marketing areas for each commodity based on area of supply of key markets.

SEC. 2. Bargaining with processors in each marketing area shall be done by Elected Meeting Area Bargaining Committees under the supervision of the Executive Board and with the assistance of the National Commodity Departments.

SEC. 3. Contracts consummated with processors shall cover only members of the Marketing area who have signed membership contracts with the N.F.O.

SEC. 4. Marketing areas may from time to time be changed to provide better service for the membership.

ARTICLE IV—MARKETING AREA BARGAINING COMMITTEES

SEC. 1. When in the opinion of the Board of Directors of the N.F.O. sufficient contracts have been signed covering a specific commodity to be effective in collective bargaining, the President shall call a meeting of the members of County Bargaining Committees who represent the commodity in each zone of the marketing area for the purpose of electing a member of the Area Bargaining Committee and an alternate member who shall serve as a member of the Area Bargaining Committee when the regular member is unable to serve.

SEC. 2. The Board of Directors shall divide each marketing area into seven (7) geographical zones for the purpose of distribution of bargaining committee representation.

SEC. 3. Each Marketing Area Bargaining Committee shall be composed of seven (7) members, one from each of the geographic zones of the marketing area.

SEC. 4. The term of office of the bargaining committee members and alternates shall be for a period of one year.

SEC. 5. The Marketing Area Bargaining Committee shall be responsible for the bargaining with the processor for the commodity they represent within their marketing area under the direction of the Board of Directors and the assistance of the National Commodity Department.

SEC. 6. The Marketing Area Bargaining Committee shall meet and counsel with the County Bargaining Committees as provided herein and at other times that they deem necessary.

ARTICLE V—COUNTY BARGAINING COMMITTEES

SEC. 1. Each county organized under the N.F.O. shall call meetings and elect a bargaining committee composed of a chairman and four members for each commodity represented by the N.F.O. in the county, such committees to be for Dairy, Grain, and Meat.

SEC. 2. Anyone who is an N.F.O. member producing farm products for which a bargaining committee is established is eligible to vote for members of the bargaining committee. However, in order to be elected to a bargaining committee, a member of the N.F.O. must be able to furnish ample proof that a substantial part of his farm income is derived from the commodity that the bargaining committee represents.

SEC. 3. County Bargaining Committee shall gather information and determine fair prices for the agricultural commodities which their committee represents.

SEC. 4. The Marketing Area Bargaining Committee shall, before entering into negotiations with a processor, call a meeting of the County Bargaining Committee for the commodity they represent, and by a two-thirds vote of

those attending this meeting shall determine the fair price for the commodity to be bargained for with the processor.

SEC. 5. From time to time, Marketing Area Bargaining Committees may call meetings of the County Bargaining Committees to report on the status of negotiations and seek their advice.

SEC. 6. The County Bargaining Committee shall be responsible for organizing farmers in their counties who produce the commodity they represent.

SEC. 7. The County Bargaining Committees may at times be called by the Area Marketing Committee to represent the organization in collective bargaining with processors of their commodity.

ARTICLE VI—RATIFICATION OF MARKETING CONTRACTS

SEC. 1. No contract consummated with a processor shall be effective or binding until it has been ratified by a two thirds' vote of members in a marketing area who have signed contracts with the N.F.O. for this commodity, attending a meeting called for that purpose by the Marketing Area Bargaining Committee and has been approved by the Board of Directors of the N.F.O.

SEC. 2. If a marketing procedure is formulated for a marketing area, it will require the same ratification as contracts with processors.

SEC. 3. It will be the responsibility of the Marketing Area Bargaining Committee to give at least ten days' notice to members who have signed marketing contracts, by first class mail, to the address shown on this contract, giving date, time and place of meetings on any issue requiring ratification of N.F.O. members.

ARTICLE VII—MARKETING REQUIREMENTS

SEC. 1. Until such time as a contract has been consummated with the processor for a commodity I own or control in accordance with the provisions of this agreement, or until a marketing procedure has been established for a commodity and ratified in accordance with the terms of this agreement, a member shall be free to market his commodity as he chooses.

SEC. 2. When a contract has been consummated in accordance with the terms of this agreement covering a member's commodity, and he sells this commodity to a processor other than the one specified by this agreement, the member shall be assessed 10% of the gross sale of the commodity for liquidated damages.

SEC. 3. A member may request his Marketing Area Bargaining Committee to waive provisions of this agreement in instances arising that were unforeseen at the time of the signing of this agreement. The Area Marketing Committee must make a complete report on all such cases to the N.F.O. Board of Directors, on waivers granted. The Board of Directors shall have authority to revoke a waiver if, in their opinion, the waiver is not justified.

ARTICLE VIII—QUOTAS

SEC. 1. If quotas should become necessary on members under contract, they will be determined by the same democratic procedure that the fair price formula was determined and shall require the same procedure of ratification, membership and approval of the Board of Directors as the contract with the processor before becoming effective.

SEC. 2. If quotas are established they will be based on contracts with processors for a specific quality and quantity of products and quotas will be based on quality, bushel and poundage basis and good land practices and ratio instead of crop history, and administered by the establishment of pools based on quality.

SEC. 3. This to be financed, if necessary by additional deductions at the processor level from commodities marketed.

SEC. 4. To implement the provisions of the other Sections of this Article, approval must be obtained from the members affected, in accordance with Article VI of this agreement.

SEC. 5. By a two-thirds' vote of N.F.O. members attending county meetings of which due notice has been given by the County Bargaining Committee at least ten days in advance of the meeting to the affected member giving date, time and place and purpose of meeting; an additional surplus disposal amount shall be checked off at the processor level, either for buying farm products and channeling to needy worthwhile organizations, or to form welfare agencies or others the N.F.O. may find necessary to keep production in balance with consumption.

ARTICLE IX—MEMBERSHIP DUES AND FEES

SEC. 1. The membership dues of the N.F.O. shall be \$5.00 per year, or such amount as may hereafter be established by the N.F.O., which shall be due and payable to the Treasurer of the member's county organization, at the date of making application for membership in the N.F.O., and yearly thereafter, as prescribed by the By-Laws of the organization.

SEC. 2. A member shall be assessed \$20.00 at the time of signing this contract and yearly thereafter by the N.F.O., which shall be used as directed by the Board of Directors to defray expenses incurred in carrying out a program of effectuating collective bargaining with the processor, and other activities in the best interest of the membership of the organization to be determined by the Board of Directors of the N.F.O.

SEC. 3. When a marketing contract has been consummated by the N.F.O. covering a member's commodity, it shall provide that the processor check off 1% of the gross sales of the commodity for the N.F.O. This amount shall then become the member's dues and shall replace the dues and fees otherwise prescribed above in Sections 1 and 2.

ARTICLE X—RESPONSIBILITY OF THE N.F.O.

SEC. 1. The N.F.O. shall not become legal owner or engage in business activities but must remain within the framework of a service organization bargaining for its members who have signed marketing contracts.

SEC. 2. The Board of Directors of the N.F.O. shall decide on all questions involving interpretation of this agreement and make decisions on matters arising not covered by this agreement between conventions.

ARTICLE XI—RESPONSIBILITY OF MEMBER

SEC. 1. I agree to be bound by the terms of this agreement as herein provided, and further agree to comply with the decisions made by the membership and Board of Directors of the N.F.O., as herein provided.

SEC. 2. I agree to process any complaint I have against the N.F.O., its officers or members in accordance with the terms of the By-laws of this N.F.O.

ARTICLE XII—MODIFICATION

It may become necessary during the life of this agreement to change or modify certain Articles, or make amendments to it. In the event this becomes necessary, it will require a two-thirds' vote of members in attendance at marketing area meetings called for that purpose, which notice has been given in accordance with Article VI, Section 2 of this agreement.

Witness -----Member's Legal Signature-----
 -----Mailing Address-----State-----

Senator JORDAN. You are talking about the women doing the work. Two or three weeks ago I was in India on a mission for the U.S. Government, and I find out who does the work over there. It is the women. They even carry bricks, mortar and stone on their heads. And they have got some stiff-necked women over there.

I went in to Moscow, and I ran into a snowstorm up there. And the officials in the Kremlin were telling us about the modern machinery they had to get off the snow. Next morning I saw them. They were women. They were pushing it up into a little truck.

Mr. PHILLIPS. They get into this broiler business quite a bit. If a man came home and said, look what I signed, I don't know what she would do. I wouldn't like to be in the room. And I would like to see it on television when some bargaining official tells these ladies that he is going to assign them to a certain company to grow chickens for. This would be all right, this would be real nice to listen to.

Senator JORDAN. Mr. Phillips, we have gone a long way from the setting hen, haven't we?

Mr. PHILLIPS. That is right. She was the first producer of chickens. Senator JORDAN. They run around the barn and pick it up for themselves. And I remember looking for their nests. We had to look everywhere.

Mr. PHILLIPS. When we built our first chicken house, a man gave us a lot of large boxes that came apart. And I went in the woods with my father, and we cut poles and framed up this house and built this chicken house for broilers. And we saved up the eggs for about a month and took them to a custom hatcher and got three or four hundred chicks out of them. And that is how we got into the broiler business.

Senator JORDAN. I had an incubator once that handled 50 eggs, and I did pretty well until the cats got into our chickens.

Thank you very much.

Mr. Cowan, you have Mr. Moready, Mr. Racklay and Mr. Rouse with you. We are very glad to have you North Carolinians here with us today.

STATEMENT OF GEORGE COWAN, BEULAVILLE, N.C.

Mr. COWAN. Senator Jordan, I am George Cowan, a producer, and this is Mr. Moready, from Chinquapin—all of us are from Duplin County—and Mr. Racklay, from Rose Hill, also a producer; and Mr. Rouse, from Rose Hill.

It is a little difficult to follow a gentleman like Mr. Phillips. There were many things that I wanted to say that he has already said. Of course, it is easy to be repetitious. But I would like to tell the story a little bit different.

I don't have a prepared statement. I did pick up a few things just in the event a question was asked that I might be able to answer.

Along about 1954, we were told that things were so bad in Duplin County that even birds that migrated would carry their lunch across the county, it was such a poor place. And I am sure it must have been. I lived there, and I came through the depression, and I found it that way. And we were hitting a difficult problem. We filled a small tobacco allotment, and then we would work on any type of work to get through the winter months and try to make it.

In 1954, a move got underway to start broilers. There was some thought that it wouldn't be a good thing, and I was about to go another way. But we had a planning expert come from Raleigh, and he talked to us concerning community development. And in our conversation he said that it might be a good idea to read a little bit about the broiler industry.

In the northwestern part of the State they had already begun. And from that we got the first 100-foot broiler house. And our neighbors came over, and we had to lock the doors, because it was sort of new, and they wanted to see what was going on, and they couldn't have that many visitors.

So they wanted to see our record. The first time we sold and we got a little money we were pleased with what we had done, and we told the story. And from the story we told in our community—I don't have the number, but I would say roughly 50 additional growers came in. And we continued enjoying our work with the growers.

And I would like to say here that just a few witnesses back, Senator Allen and you, Senator Jordan, were questioning somebody about how the negotiations went on between your handler and the growers.

Since we have been in the broiler business I think at least once a year we have had what is known as a broiler meeting. And it is divided up into counties. That was early when we didn't have too many. And to be convenient for the growers we would have it in a community center, maybe in various parts of the county, and we would get a caterer to put out a big supper.

And during these meetings we had a right to take a jab at our handlers; if there was something that we didn't like there we had an opportunity to tell them we didn't like so and so.

That continued on through the years. And more recently we have had a group of growers to meet—within the last year, I might say the last 6 months, we have had two meetings to revise our contract. And we talked the situation over—we had it explained to us, and then a question and answer period, and an opportunity for us to come over and say what we liked and what we didn't like about it.

In the last meeting we had the contract that was presented to us completely torn up. Some of the members didn't like it. They said, we would like it like this. And it was written that way. And it was favorable to us. And from that point, we have had no quarrel. And it has been a very good thing for us in the county.

I know you have heard figures, and you don't like to hear them.

Senator JORDAN. It is all right.

Mr. COWAN. But in the county we did have some figures compiled to let anyone know about what we were doing.

Now, in the western part of the State the figures were given for 11 counties. And we are going to sound pretty small in comparison with 11 counties. But in Duplin County from zero in 1954 to 1968—the figure we arrived at is the same as was arrived at through the extension people—of course, we have an accurate account of the amount of floor space in the county, and we run up to 37 million for the county.

And that is the county that the birds were afraid to fly over. And we don't have to tell people about what we are doing in Duplin County, because those that ride through see the improvement.

I can name—it wouldn't mean much to you, but I can name numerous homes where there used to be homes without bathrooms, and today they are brick. And the people are driving nice cars. And some of them are complaining.

But it is the biggest thing that has ever happened to Duplin County. Our home agencies and our extension services and those like me who are in the grower business know that this is true. Then we have a sizable investment in this.

And we are not in favor of having another party come in and maybe jeopardize our contracts that we already have. Not only that, but many growers in the county have commitments, and they have to make payments. And they don't like the idea of not being able to meet their obligations. And they are afraid from that standpoint alone that they won't enjoy it.

I might say also that this broiler business has fitted so well in our area, until in my situation we decided—we were planning that we ought to at least farm or get out and do something else, so when this broiler industry—we decided to go full time. Tobacco was so short a

crop that I couldn't do any good with 2½ acres. Today we are producing on our farm, in a kind of partnership between my son and my wife and myself, close to 650 million broilers per year.

And I have a heart condition. And I had a heart attack in 1960, not a severe one, but the doctor said I would never be able to work again, and he put his finger down and "You walk like this the rest of your life" [indicating]. I am not saying that if you have had a heart attack that you can go into the broiler business. But I would say this, that it is about the best thing you can try, because you don't have to get out there and try, you can do a job.

And I have worked until I wasn't able to pick up a bucket of feed. And today I can do pretty near a man's work.

And the company hasn't held us back. They have tried to look objectively to each individual farm, and I am sure they have an interest in each farm. And the service that is provided to us, we do a little bit of quarreling about, as I think everyone would, and maybe we get a serviceman, or we have some reason that we like to quarrel.

But, Senator Allen, that is one of the best things that we have ever done in Duplin County—going from nothing to \$37 million. And our total income in the county is \$72 million. And that exceeds what the planning group had planned to have by this time.

We are the No. 1 agricultural county in North Carolina.

Some of the other people might not like for me to say this, but we are, agriculturally speaking, the largest in North Carolina, with a \$72 million income, and \$37 million coming from the poultry industry.

And I would be glad to try to answer any questions that any of you might have. And I am sure that you have some questions.

And I would like to have been where I could have answered some of the questions that were posed this morning, but I don't remember what they were now.

Our returns, you might say—some growers are going out of business because they haven't made any money. All our income is chiefly from broilers. And we have got to figure—and no one else could possibly figure like me—that we figure we are getting about 22 percent. What part goes for labor that we put in, we haven't got quite figured out.

But we like this freedom to operate independently. It has already been discussed with the group that we have the right to change. But even so, in 15 years we haven't had a reason for changing. Our relationship with our company has been good enough so that we haven't changed but very little.

And I don't know of a house, except maybe one, when someone started independently real early before we started, that might have to quit, and had a tarpaper topped building.

We do have something to do with the policymaking when we meet with our group. And also it gives me time between times to go rock collecting.

I would be glad to answer any questions you might have.

Senator JORDAN. Thank you very much.

Senator Allen.

Senator ALLEN. I have no questions. I just want to commend Mr. Cowan on his fine operation and the contribution that the broiler

industry is making to his county. It has certainly been a God-send to Alabama and our section of the country.

And we certainly want to see it continue to develop and to prosper. And we are proud that you are having that same experience in your county.

Mr. COWAN. Thank you, Senator.

In conclusion, I would say that in the broiler business, if someone might tell how much was required of the grower, and the time it takes—and someone has to stay with it all the time—but since I have been in this we have successfully organized a community development for the first time in eastern North Carolina. And I have time to be in the community development as the chairman of community development in the six-county area.

I work with the Ruritan, 4-H, and the Boy Scouts. And in my poultry enterprises we can do these things. And if either one of these other gentlemen would like to add anything, he may do so.

STATEMENT OF HILTON MOREADY, CHINQUAPIN, N.C.

Mr. MOREADY. I am Hilton Moready. I am a grower. And the only comment that I have got that I would like to get across is that I think most growers who understand bargaining wouldn't be interested in it, because we know that we only have us and the dealers we deal with, and we can always go to the dealer and talk. And if he is not satisfied with us he can come and see us, and if we are not satisfied with him, we can go to see him.

We have got to keep going between us. And as to somebody coming between us, we are not interested in that part. And I am satisfied that if it were put to our growers that way the majority of them would feel the same way.

Senator JORDAN. Do you have any remarks?

STATEMENT OF FELTON RACKLAY, ROSE HILL, N.C.

Mr. RACKLAY. I am Felton Racklay, Rose Hill, N.C.

Senator JORDAN. A good place to live. And the rabbits that go through there don't have to carry their lunch now.

Mr. RACKLAY. No, they are fat, and they eat up everything.

I am thoroughly enjoying managing my own business and dealing directly with the handler. I am not an advocate of anything that might lead into a union. And I am thoroughly enjoying the relation that we have with our country. And we, personally, would like to see it continue as it is.

Senator JORDAN. Thank you.

I happen to know your neighborhood very well. I have traveled down there a good many times. And you do have a prosperous county. And you couldn't have all those new homes scattered all over the county if somebody were not making money. And they are entitled to it.

You do have to work hard, but you have got to work hard on anything to make a success.

Mr. RACKLAY. I would also like to say that I am in other enterprises than farming. I have a few cows. I grow bulks which I ship all over

the country. And I also grow tobacco. But I am realizing equally as much or more money out of my poultry enterprise as I am any other enterprise that I am connected with.

Senator JORDAN. All right, sir.

STATEMENT OF W. N. ROUSE, ROSE HILL, N.C.

Mr. ROUSE. W. N. Rouse, Rose Hill.

I am very much like Mr. Cowan. I will give you my personal experience.

I have a small acreage of tobacco. I couldn't make it on it. And I had to go to broilers. And to my notion it is the nicest work I ever did. And I enjoy it. And my wife, she, like the gentleman said, she is interested in it. And she is right there. And she is looking after them for me today.

And I just hope things continue like they are at the present.

Senator JORDAN. Thank you.

These are all my constituents. Senator Allen, you had one here. And he is still here. I have more of mine up here than you have. But we are glad to have all of you here.

We will keep the record open for any insertions that anybody wants to put in at a later date. Some of the meatpackers have not had the opportunity to get their statements in. But they will be included when they can get them here. The record will be open for about 2 weeks.

Senator ALLEN. It will be open to both sides.

Senator JORDAN. Absolutely.

Thank you very much for being with us.

(Whereupon, at 1:35 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.)

(Additional statements filed for the record are as follows:)

STATEMENT OF JOHN W. SCOTT, MASTER, NATIONAL GRANGE

Mr. Chairman and members of the subcommittee, I am John W. Scott, Master of the National Grange, with offices at 1616 H Street, N.W., Washington, D.C. 20006.

The National Grange has a long history of involvement with the development of the cooperative movement in the United States. Martin A. Abrahamsen, Deputy Administrator, Farmer Cooperative Service, U.S. Department of Agriculture, made the following statement when he appeared before the Agriculture Committee of the Grange, during the 103rd Annual Session held in Daytona Beach, Florida, November, 1969.

"I think it's especially fitting to associate the Grange, cooperatives and Farmer Cooperative Service (FCS) together. As you know, we trace our inheritance to a common ancestor, Oliver Hudson Kelly (founder of the Grange). Farmer cooperatives in the United States have come a long way since early Grange efforts to develop cooperatives businesses in the 1870's."

Mr. Abrahamsen concluded his remarks by saying:

"I believe, therefore, that the Grange—an organization that has a long and distinguished history of support for cooperatives—is in a unique position to take the leadership in active support of cooperatives. It seems to me that you can be in the forefront in helping cooperatives achieve their true potential by—

"(1) Encouraging an aggressive program, including the support of cooperatives, by your newly founded marketing committee.

"(2) Taking the leadership among the 22 farm organizations in emphasizing the important place of cooperatives in agriculture policy.

"(3) Encouraging the cooperative research, technical assistance, and educational program of Farmer Cooperative Service.

"(4) Giving highest priority in your policy deliberations to problems of cooperatives in view of the long-time interests of the Grange in these organizations."

The National Grange continues its interest and support of farm cooperatives and bargaining associations, not only in the field of legislation that directly affects organizational structure and methods of increasing their effectiveness as tools of the farmer to receive a higher return for this labor, capital and investment, but also in the related fields of just and equal tax treatment of farm cooperatives and increased opportunities for ample credit to finance even greater areas of farmer cooperative marketing and bargaining.

Please permit me to quote a resolution from the Committee on Cooperation as it appeared in the Journal of Proceedings of the Annual Session of the National Grange of 1920.

"The American farmer is thoroughly sick and tired of conditions that make it impossible for him to have a voice in determining what he is to receive for the product of his toil. They are tired of developing millionaire grain gamblers, meat packers and food distributors, while tenantry increases and the boys and girls leave the farm by the thousands. The American farmer is never radical, but he is conservatively progressive, and when once aroused can be relied upon to take action for the welfare of agriculture and the nation.

"Most farmers and all farm organizations have been giving lip-service at the shrine of cooperation for more than a generation. The time is at hand when the welfare of agriculture and the life of the nation demand definite, constructive and forward-looking progress in this direction * * * individualism and personal selfishness must give way to cooperative effort and community spirit; and the first essential step is the planting of the Grange or some similar organization into the rural communities of the nation. * * * Next in importance must come a complete development of our commodity organizations. Agriculture must organize around meat, milk, grain, fruit, etc., for the sake of efficiency. Equal in importance to this is the necessity of having these organizations strongly financed, and the farmers must be willing to pay, for these various groups will not interfere with each other's success. Legislation may be necessary to protect the producer and the consumer in the development of the movement."

That resolution passed in 1920, 49 years ago, speaks today to agriculture organizations, farm leaders and—most strongly—to Congress, because agriculture still does not have the necessary legislation to provide cooperative marketing and bargaining associations or organizations the authority to control their own product or the economic return of that product, as it passes through the farm gate and to the ultimate consumer.

The legislation pending before this subcommittee, S. 2225, amends the Agricultural Fair Practices Act of 1967, but not to the extent that it has strong Grange endorsement. Frankly, it still does not provide what we feel is the necessary authority for farmers to control the marketing of the products at fair and reasonable prices.

When S. 109 was first introduced in 1966, the Grange supported it with some recommendations for strengthening it. When it was changed to become considerably less effective and to have some definite defects as far as we were concerned, in our second testimony before the Senate Committee on Agriculture and Forestry we opposed the legislation and outlined in very specific terms our reasons for this opposition.

The legislation was re-written and presented to the Senate again that year under its original number and with its original sponsor, the distinguished Senior Senator from Vermont, The Honorable George Aiken. Before the beginning of our testimony, Senator Aiken remarked that he hoped that we had noted that the bill had been re-written to meet some of the specifications we had proposed in our second testimony. Because of these changes in the bill, we were in a position to support it again, but did so with some reservations.

The whole purpose of the proposed legislation was to increase the opportunity of the farmer to obtain an equality of bargaining power in the marketplace, an equality which he has never had. It started with the assumption that the processors, indeed a very small number of processors in certain cases, who handle a majority of certain commodities, especially perishables such as fruits and vegetables, milk and poultry products, are always in a position to dominate the market. The farmer was in the sub-servient position of having to place his products on the market and ask the buyer what he would pay, and then be required to accept the offer because they were no alternatives. Thus, when a farmer consigned his eggs, his poultry products, his vegetables, his fruit, etc. to a market

they were sold at the time they left the farmer's house. The price he was to receive was determined by someone else after they were received at the marketplace. In no other segment of our economy is it required that the producer must place his product upon an unpredictable market without any assurances whatsoever as to price, and then be required to accept that which the processor, handler, or consumer offered for that product without any opportunity to bargain for a better price.

Despite all their protest to the contrary, as this committee heard in the testimony concerning a marketing order for pears, potatoes and similar legislation, the fact remains that the farmer has to sell his perishable product within a very limited period of time. There have been to many instances when processors and handlers have stored these commodities until the new crop year and then placed them on the market at the point of production at cut-rate prices in order to destroy whatever equality might have been obtainable under the market system.

This is the basic inequality faced by farmers all over the world and which is becoming intensified as farmers in both the developed and developing countries try to maintain an equality in their economic position with the nonagricultural segments of the economy. This situation is doubly important in areas which have expanding economies with increasing prices. This certainly includes the United States.

The changes which the subcommittee and the Committee on Agriculture and Forestry made to S. 109, which was approved by the Senate and the House, continue to be opposed by the National Grange. The amendments contained in S. 2225 remove some of our objections but not to the extent that it has strong Grange support.

At the 103rd Annual Session of the National Grange, the Delegate Body adopted the following as Grange policy regarding marketing:

Marketing orders:

"Extend market order authority to any commodity subject to approval by majority of affected producers.

"Set up advisory committee to help write market orders.

Order may provide, among other things:

"a. Market supply control ranging from grading standards to marketing allotments subject to approval of two-thirds of affected producers.

"b. Pooling of sale proceeds where commodity is sold on use-classification basis.

"Public hearings on terms and conditions of the market order.

"Secretary of Agriculture would develop market order following public hearings.

"Producer referendum with two-thirds vote required for operation of the market order."

The Delegate Body adopted the following resolution pertaining to "Bargaining Power and Cooperatives":

"Bargaining Power and Cooperatives

"Resolved, That the National Grange reaffirm its long-standing position in support of stronger and better cooperatives, placing greater emphasis on bargaining power and encouraging farmers to retain important production and marketing decisions and further support legislation to prohibit coercion, boycott and intimidation of those who are members of bargaining associations."

The above resolution adopted at the 103rd Annual Session reaffirms the following National Grange position adopted in Peoria, Illinois during the 102nd Annual Session:

"Cooperative Marketing and Bargaining Authority

"Whereas, the American farmer, operating as a family enterprise unit, has been and is the most efficient producer of food and fiber in the history of the world; and

"Whereas, the present marketing structure for agricultural products has not rewarded this efficiency with a financial return in keeping with other segments of the national economy; and

"Whereas, this failure to reward agriculture with a fair price in the market place has resulted in a decline in rural population, liquidation of many small businesses and has increased the economic and social problems of our urban centers: Therefore be it

"Resolved, That the National Grange support legislation which will strengthen the bargaining position of farmer cooperatives; permit the formation of effective bargaining groups with authority to control production and marketing when approved by their membership; and extend the marketing order concept to other agriculture commodities wherever practical and desirable."

We see little in S. 2225 that meets the objectives of the National Grange in increasing the producers' marketing and bargaining power. In fact the opponents of giving the farmer true bargaining power can point not only to S. 109, but also to S. 2225 and say "What does the producer want? Look what legislation has been passed already."

PRODUCERS ARE PERPLEXED

The American producer has sought many ways to increase his bargaining power and each time obstacles have been raised in his path to obtain true bargaining that can be reflected in a higher return for his investment, labor and capital—in short higher net income.

Bargaining power is not a new subject in agriculture not in farm legislation. In our organization, the effort to improve the economic position of the farmer in the market goes back more than 90 years and it took a variety of forms—establishment of farm cooperatives at both the local and regional levels, obtaining of a place for co-ops on the terminal markets and commodity exchanges, development of commodity loan programs, provisions for acreage allotment and marketing quotas, encouragement of on-the-farm storage, provisions for acreage diversion and conservation programs, authority for producer payments, creation of federal marketing orders and agreements, two-price system for wheat—all these have been part of the campaign for a farm economic stability—all of these programs and tools have been and are elements of market power for farmers.

When a producer does not have to sell in a distressed market—because the loan and storage programs give him a ready alternative—then he has the beginning of bargaining power. Or when either surplus capacity or farm surpluses themselves are diverted by government programs, this also is bargaining power for producers. Or when minimum prices to be paid by handlers are prescribed under a marketing order, this, too, is an element in bargaining power. Or when farm storage or extended resale opportunities enable producers to hold grain under their control, this also is bargaining power.

Now we are told by some members of Congress, consumers and others, that these types of programs to increase farm bargaining power are too costly to the taxpayer, and ineffective in dealing with the problem of increasing farm income and therefore must be done away with and replaced by the magic words of getting a fair return from "open market." In order to have the market places return a fair price to the producer he must first have supply control and increased bargaining power—something this Congress and previous Congresses have failed to support.

The latest example was the passage in the Senate of a bill to exempt potatoes for "other forms of processing" from marketing orders. Secondly, the House refused to adopt a simple measure to allow producers of potatoes to have a check-off system to raise the necessary funds for the research and promotion of potatoes. What, may we ask, is the road to increased profits for agriculture, in the eyes of Congress? The producer is truly becoming perplexed and "thoroughly sick and tired of conditions that make it impossible for him to have a voice in determining what he is to receive for the product of his toil."

The development of enabling legislation for effective and direct bargaining with handlers on prices has never been successfully achieved on a broad base. Some limited bargaining takes place under the federal marketing orders, but the establishment of a broader and more effective mechanism has been a frustrating process and an elusive goal.

In every instance in which agriculture has tried to improve its income through direct federal legislation, we have had a steady parade of various groups before Congress claiming that these economic objectives should be attained by a better organized bargaining system or through the functioning of the marketplace. When we have tried to improve the marketing situation through the application of market orders, we have had the same group coming before this committee and presenting testimony with charges that any such action to improve farm income would automatically eliminate them from the processing business, and at the

same time, promising us that adequate income will be forthcoming from the marketplace.

The takeoff in our economic system during this decade coincides with the improvement in farm income. The slowing down of the economy would have been much more drastic with the recent decline in farm prices had it not been for the extra impetus of war. Thus, in dealing with this particular subject, this distinguished committee has had placed upon its shoulders the awesome responsibility of deciding what can be done to maintain adequate farm income with its proper relationship to the general welfare.

One of the certainties amid all of the uncertainties of our modern economic system is that agriculture cannot be forced to accept what the processors and handlers distribute as a largess or the abundance left over after profits as a part of a benevolent despotism. If we are to continue to make our major contribution to the welfare of these United States, to our earnings in foreign trade, to our domestic and international welfare, then we need the protection that can come only from adequate legislation.

For most of us, many times this committee and your counterpart committee in the House is the only recourse and the court of last resort to which widely dispersed agricultural producers growing commodities which tend to be in excess of market demand can turn. Part of the unusually high outflow of agricultural producers from the land has been the result of the successful efforts to oppose the attempts of farmers to improve their income in the marketplace or the legislative attempts to give to agriculture some of the protection so long thrown around industry and labor.

With the farmer, a decreasing minority, it is a matter of great concern to us that the best of our efforts are so often brought to naught by the concentrated economic power of the processing industry with whom we are doing business and to whom we are beholden for our markets.

LEGISLATION SHOULD BE STRENGTHENED

We objected strenuously, and still object, to the elimination of the word "boycott" from the legislation despite the memorandum from the office of the Legislative Counsel, because this is precisely the situation which is alleged to exist in the broiler industry in Arkansas. Action was taken by the Packers and Stockyards Division and Civil action has been attempted by those affected. Three giant integrators are accused of boycotting, in its collective sense, producers whose efficiency was at least average or above the average of the other contractors with these integrators, and whose sole offense was in joining an association seeking to improve their bargaining power.

We believe that one of the blackest pages of history will be written on the relationship of farm producers to processors when the full story is revealed concerning the successful efforts of integrators to prevent the organization of U.S. Egg and Poultry Producers Association from becoming an effective organization. This organization's concern for farmers being boycotted and blacklisted and the fact that they did not have the financial resources to rescue them, forced them to withdraw from the organizational efforts to improve farm income in the long run simply to protect farmers in the short run from economic ruin.

The latest on the Arkansas Poultry Boycott case is as follows: "Appeals Court Overturns Ruling in Arkansas Poultry Boycott Case:

"The U.S. Eighth Circuit Court of Appeals has set aside a U.S. Department of Agriculture ruling issued under the Packers and Stockyards Act which ordered three western Arkansas poultry processing firms to stop alleged 'boycotting and blacklisting' of broiler farmers.

"Respondents in the 1968 USDA decision were Ralston Purina Co., of St. Louis Mo.; Tysons Food, Inc., of Springdale, Ark.; and Arkansas Valley Industries, Inc. (AVI), with main offices at Little Rock.

"The Court's ruling also voids USDA's order to the poultry firms to reinstate, upon application, any growers whose contracts were terminated because of their membership in a growers' association.

"In its July 30 decision, the Court of Appeals held that the poultry processing firms are 'live poultry dealers or handlers,' but said that the statute does not give USDA authority to issue a cease and desist order under provisions of the law which the court said apply only to packers.

"The Court noted that the 1935 amendment to Title II of the Packers and Stockyards Act did include poultry dealers and handlers along with packers in the enumeration of unlawful practices.

"However, it pointed out that the amendment did not specifically provide USDA with authority 'to proceed against live poultry dealers' in administrative proceedings under Title II of the Act, which is applicable to meat packers only.

"The Court said that USDA could control poultry dealers or handlers who violate the P&S Act by either presenting its evidence to the Court through the Justice Department, or by its authority to license poultry dealers.

"Thus it is apparent that (USDA) * * * have great and extensive control through licensing procedure to apply near fatal sanctions to live poultry dealers for noncompliance with the Act even though Congress did not authorize the procedure for issuing cease and desist orders applicable only to packers,' the decision said.

"The respondents were accused of 'unfair and unjustly discriminatory practices' against western Arkansas poultry farmers who were trying to form a producers association.

"The firms were specifically charged with trying to destroy the farmers' organization by 'blacklisting and boycotting' persons who were known or suspected members of the group.

"The USDA Judicial Officer had ruled that Congress would not have included poultry dealers under provisions of the P&S Act without providing statutory authority to proceed against violators with administrative hearings.

"However, the Appeals Court said, 'This argument ignores the authority of the Attorney General to take action as well as the authority vested in the Department of Agriculture under the licensing provisions of the statute.'"

We fully realize that this action was under the Packers and Stockyards Act. We only used it as an indication that the bargaining rights of agricultural producers is not fully protected and therefore legislation should be enacted to insure the necessary bargaining power and protection from anti-trust action. Only in this way will the producer of America's food and fiber be able to obtain his share of the consumer's dollar in his quest for a higher net income.

If the pending legislation is to be reported to the Senate floor for action, (which we urge this committee not to do unless it is strengthened in accordance with the original S. 109, on which we testified in support on May 2, 1967, before this same subcommittee) we would support the changes as outlined in the testimony of David W. Angevine, which are, as he stated on November 20, 1969, when he appeared before this distinguished subcommittee:

"The bill proposes, in amended subsection 4 (f), that it shall be unlawful for any handler to refuse to negotiate 'with agricultural bargaining associations which represent producers of agricultural products from whom the handler usually obtains agricultural products, or who may reasonably and efficiently supply agricultural products to, or produce agricultural products for, such handler when proof of representation is provided the handler by the agricultural bargaining association in the form of a written authorization signed by the producers.'

"We feel the association should represent some substantial number of producers. The handler, before entering into negotiation with a farmers' association, has a right to know that the association represents a substantial number of producers within the area of production.

"We also feel that Congress should not require a farmer-owned processing cooperative—a handler under the Act—to negotiate with a bargaining association that represents farmers who are not members of the processing co-op but 'who may reasonably and efficiently supply agricultural products to it.'

"The Department is also mindful of difficulties that might arise under this provision if a farmer-owned processing cooperative were required to negotiate with a bargaining association that represents some or all of its own members. A farmer would, in effect, have a representative on either side of the negotiating table—his co-op and his bargaining association—and the Department is very eager to avoid such conflict.

"The proposed amended subsection 5 (d) raises the question of permitting associations of producers to join with 'other associations having similar objectives.' Existing legislation—for example, the Capper-Volstead Act of 1922 (7 USC 291)—permits associations of producers to join with other associations of producers. It should be clear that S. 2225 does not intend permitting associations of producers to join with non-producers or their associations and, together, to negotiate prices and other terms of contracts with handlers."

This Act is a step in the right direction, but agriculture bargaining needs a "giant leap" and not just a step, if the producer is to obtain his fair share of the increases in the national prosperity that are enjoyed by other segments

of the economy, segments that have contributed less to the economic growth but have enjoyed it more.

It is difficult for us to imagine the circumstances under which this legislation could be used to strengthen a small group of agricultural producers seeking to organize a bargaining cooperative to protect their interests. The financial and legal requirements are such that only those larger bargaining associations underwritten by giant organizations would have a chance to accomplish the objectives of this bill.

As we have pointed out before, this legislation does not give any protection to those who have chosen by referendum and majority vote through elections conducted by the Federal Government various farm programs. We believe that the terms of this legislation applying to misrepresentation should also be applied to another type of bargaining, and that is the kind carried out between the people of the United States and the farmers of this country through the good offices of Congress and administered by the appropriate department of the Executive Branch of the government and subject to referendum by the producers.

One of the greatest bargaining sessions which has ever been held in this country was conducted by this very committee during the 89th Congress, and led to the passage of the Agricultural Act of 1965. This led in turn to an improvement in net farm income of \$6 billion, even though we have seen half of that dissipated by increased costs of production and declining prices during this last few years. This kind of bargaining is particularly pertinent when it concerns the basic commodities such as wheat and feed grains, as well as those commodities which make up about \$7 billion in agricultural exports.

Those of you who were members of this committee at that time know how desperately you labored to find an answer to the problem of getting an equity of income represented by a parity of price to wheat producers for that part of their production being consumed for human food on the domestic market.

As we have pointed out, there are numerous ways in which farmers can bargain for higher prices. Bargaining associations are only one of them. The effective use of federal and state market orders is another way. The one we have just pointed out in terms of the benefits which have accrued under the Agricultural Act of 1965 is another way. To try to destroy all of these seems to us to be particularly imprudent at this time, especially in the light of the fact that the bargaining associations of the present time have not made a great deal of success out of their attempts to improve income in those segments of our agricultural economy not under "government programs." This is despite the fact that the U.S. government has used billions of dollars of Section 32 funds during the last five years to trying to upgrade the prices for unsupported commodities, ranging from orange juice to beef and including poultry and poultry products, dairy products, various kinds of fresh and canned fruit, and fresh and canned vegetables. With few exceptions, it is almost entirely in those areas where the commodities are grown in very limited areas and handled by only one or two packers that bargaining associations have really done an effective job.

It will become increasingly difficult to pass this kind of legislation or any other farm legislation if it offers to the farmers an opportunity to improve their prices and, at the same time, increases the cost of food to the consumers. One of the unfortunate facts of our time is that we do have, contrary to what has been officially stated, a cheap food complex in the United States, if not a cheap food policy. The American people have had cheap food for so long that they do not know what the value of food is, and any attempt to increase the value of agricultural products in the marketplace to reflect an adequate return to the farmers regardless of the method is going to be met with consumer resistance which will be reflected in political reluctance. We are not blaming the Congress, nor the Administration for this. We are simply stating that this is a fact of life.

This kind of a bill before you today is evidence of one of the political facts of life which, like it or not, we are going to live with for the foreseeable future.

Only when the world faces the fact that it must pay its farmers an adequate return for their work, their management, their risk, and their investment can they be assured the kind of a diet which has made the American people the best-fed nation in the world.

We foresee a long and dreary future for agricultural producers until all of those interested in improving farm income recognize the necessity of using every means at their disposal to improve farm income, and not just those means which happen to coincide with a particular political or economic bias.

We are pleased, however, to note that there is recognition of the fact that we

cannot depend entirely upon supply and demand factors without making some attempt to adjust those supply factors into some kind of reasonable balance with the projected demand factors, and to begin to bargain on the basis that we manage our economy in such a way that we shall not destroy our own economic integrity by overproduction of unwanted, unneeded and unsalable agricultural commodities. This is what we have been trying to do in the development of some of the farm programs on the books at the present time.

We ask that any legislation on this subject coming from this committee more closely resemble the original bill introduced by Senator Aiken and his associates at the beginning of the 90th Congress.

The Grange, therefore, stands ready when effective legislation is presented to help farmers bargain for an acceptable price in the marketplace and giving them some equality with the handlers and processors of agricultural commodities to support such a bill. Unfortunately, S. 2225, although it offers some improvement, does not fall within this classification, therefore we cannot give strong endorsement to this legislation and urge its being amended by the original S. 109.

We wish to thank the Chairman of the subcommittee for holding additional hearings on S. 2225 and for holding the record open so all sides could be heard. We especially appreciate this opportunity of presenting the position of the National Grange and sincerely hope that legislation coming from this committee will be such that it can be supported by the National Grange.

American farmers need immediate improvement in farm income. Any measures coming from the Agriculture Committees will be judged by producers according to the improvement in net farm income. We ask that S. 2225 be changed so as to attract wide support from the agricultural community as a tool which they can use to improve this economic status.

Thank you.

WASHINGTON, D.C., December 23, 1969.

SENATE COMMITTEE ON AGRICULTURE AND FORESTRY,
Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the National Milk Producers Federation I appreciate this opportunity to comment on S. 2225.

The Federation is a national farm commodity organization. It represents dairy cooperative associations and their farmer members throughout the United States. The cooperatives affiliated with the Federation do business in all fifty States of the Nation.

Some of the dairy cooperatives represented through the Federation are bargaining associations which bargain with processors for the sale of milk produced on the farms of the members and patrons of the cooperatives. Others are processing associations which process and market milk in finished form.

Dairy farmers were one of the first and are one of the principal users of the cooperative form of marketing. Based on our experience with the growing pains associated with the development of agricultural cooperatives, we recognize the need for further improvement and refinement of bargaining laws.

To meet high costs of operations, labor, taxes, and other expenditures, farmers need fair and adequate prices for their commodities. Their right to bargain cooperatively should be fully recognized by those who buy farmers' products and handlers should negotiate in good faith with cooperatives in the marketing of farm commodities.

The right of farmers to act together through their cooperatives in bargaining for the sale of their produce and in the processing and marketing of their produce has been of great importance to American agriculture.

Congress has recognized the value of these organizations to the agricultural economy and for many years has maintained a firm and consistent national policy of encouraging their development.

One of the most recent Congressional actions in this area was the enactment of the Agricultural Fair Practices Act of 1967. This Act protects farmers' rights to organize and to join cooperatives by prohibiting handlers from discriminating against those farmers who are members of agricultural cooperatives.

This legislation was needed; and we commend this Committee and the Congress for its enactment. Although this Act prevents processors from interfering with

farmers cooperatives by discriminating against their members, it does not deal with refusal of a processor to bargaining with a cooperative.

S. 2225 would extend this Act one step further and make it an unlawful practice for a processor to refuse to recognize a cooperative in bargaining for prices and other terms of sale of the agricultural commodities produced by the members and patrons of the cooperative.

We believe it is important that Congress should affirmatively establish the handlers' responsibility to recognize the farmers cooperative organizations and to enter into bargaining negotiations with it in good faith.

This is the purpose of S. 2225, and we fully support its objectives.

In some cases, processors refuse to meet with representatives of farmers cooperatives or to bargain in good faith for prices and terms of sale. We believe that this more frequently occurs in the case of newly developed cooperatives and that one objective of such refusal is to hamper or prevent the development of the cooperative.

We believe that it is an advantage to processors to have in their production area a responsible farmers cooperative organization to which they can look for a dependable supply of high quality farm produce.

We believe also that farmers cooperatives have proven their value to the Nation as a whole by being an important link in the marketing process which assumes an orderly and efficient flow of agricultural products from the farm to the consumer at prices which are reasonable to consumers and to the agricultural producers.

While we fully support the objectives of S. 2225, we concur with the Department of Agriculture that some clarification of the language of the bill is needed.

We offer our cooperation to the staff of the Committee in this respect.

We shall greatly appreciate it if you will include this statement in the hearing record on S. 2225.

Sincerely,

PATRICK B. HEALY,
Secretary, National Milk Producers Federation

STATEMENT OF HARRY G. CHALKLEY, LAKE CHARLES, LA.

My name is Harry G. Chalkley of Lake Charles, Louisiana. I am a producer of rice, cattle, soybeans and eggs. The section of the bill, S. 2225, which provides for a bargaining procedure between the handlers of agricultural products and the processors or distributors and the like, of finished farm products is, in my opinion, an attempt to force all producers into a handlers organization whether or not they feel it is in their best interest to belong.

The bill, if carried to its ultimate possibilities, could easily bring about a boycott of all farmers or producers who do not belong to special handlers' organizations and therefore I feel that while the mandatory bargaining procedure may appear just, there is not enough protection given to the producer who is simply, in my opinion, placed in the position of being a victim of pressure by organized groups.

STATEMENT OF OAKLEY M. RAY, VICE PRESIDENT, AMERICAN FEED MANUFACTURERS ASSOCIATION

The American Feed Manufacturers Association is the national association of the feed manufacturing industry. Members of the Association produce more than 70% of the formula feed which is sold by feed manufacturers.

The American Feed Manufacturers Association is opposed to the adoption of S. 2225 which could drastically change the traditional way of doing business throughout U.S. Agriculture to a labor union type of negotiation. For the first time in this country a businessman would be required by law to bargain with a third party representing one or more of his suppliers or potential suppliers, regardless of whether or not he wanted to do business with the supplier(s) represented by the third party, and regardless of whether the businessman and his present supplier(s) were satisfied with their existing business relationship.

Although most of the discussion of S. 2225 has centered around the production of broilers, and fruits and vegetables, the proposal, if adopted, could affect all segments of agriculture except for cotton and tobacco which were excluded from the basic Act. It could affect feed manufacturers in their purchase of

feed ingredients from producers, and by disrupting the efficient production of meat, milk and eggs.

Some proponents of S. 2225 argue that the bill only requires "bargaining," it does not require that an agreement be reached. The same argument could be made concerning bargaining on labor contracts. We know of no law which requires labor unions and management to reach agreement either, but it is obvious to everyone how difficult it would be for General Electric (as an example) to resume production before reaching a bargaining agreement.

It would seem that the production of food would be one of the last places where we should consider setting up machinery which could stop production or marketing for even a short period of time. If the legal machinery is set up, it is almost certain that there will be disruptions in the production and/or marketing of agricultural products. Since many agricultural products are perishable and many have to be harvested and/or marketed within a short period of time, a disruption might well result in extensive product loss which would be costly to consumers and to producers as well as to food processors.

Under present legislation producers of agricultural products are permitted to join together into associations and are permitted by combination or agreement to establish their selling prices and otherwise regulate the marketing of their products. Thus producers under these preferential provisions of law are capable of exercising economic bargaining power.

However, it is a long step from voluntary bargaining on price and other terms of sale between willing buyers and sellers to legislation which would make such bargaining mandatory, S. 2225 could require a firm to bargain even though the association asking to bargain represented none of the firm's current suppliers, and even though the firm's present suppliers were perfectly satisfied with their present relationship with the firm.

If 20 different organizers each formed a bargaining association which represented some suppliers who conceivably could supply a given company, apparently the company could be forced by S. 2225 to bargain with every one of the 20 different associations. The costs involved in such forced negotiations could not help but sharply increase marketing costs to the detriment of both producers and consumers. If the company did not bargain seriously with each and every one of the bargaining associations which asked to bargain, we believe that the company might well be subject to legal action for not complying with S. 2225.

We also believe that if S. 2225 passed, a company might well face possible legal action if it did not reach agreement with a bargaining association which asked to bargain. If an agreement was not reached and then the company negotiated contracts with some of the company's suppliers who were also members of the bargaining associations, it appears that the company might be charged with violating the Agricultural Fair Practices Act of 1967 (S. 109) which prohibits a firm from offering producers any inducements for ceasing to belong to an association of producers. On the other hand, if the company refused to negotiate individually with the members of the bargaining association after being unable to reach agreement with the association, but did reach agreement with other suppliers, then it would appear that the company could be charged with violating the Act for refusal to deal with suppliers because of their membership in an association of producers.

Thus we believe that the enactment of S. 2225 would be impractical and unwise. It would disrupt agricultural production and marketing and sharply increase costs of marketing to the long run detriment of both producers and consumers. It would substitute a labor union type of approach for the traditional right of suppliers and agricultural firms to select voluntarily those with whom they wish to do business. We object to this major change in the American way of doing business and urge members of the Committee to oppose S. 2225.

WASHINGTON, D.C., December 24, 1969.

Hon. B. EVERETT JORDAN,
*Subcommittee on Agricultural Research and General Legislation, Committee
 on Agriculture and Forestry, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The Grain and Feed Dealers National Association has 1300 dues paying members ranging in size from the smallest country elevator to the largest grain and feed companies including processors. We have 54 State or

regional associations which are affiliated with the National representing some 15,000 firms.

We have studied the provisions of S. 2225 and attended the hearings on November 20 and December 9, 1969. We are seriously concerned with the dire consequences on the grain and oilseed industries which would obtain if S. 2225 were to be enacted.

In the testimony before your subcommittee in the 90th Congress on S-109 and again this year no testimony was elicited which reflected adversely on the grain or oilseed industry. Perhaps this absence of complaint is brought about by the active and efficient price determinations made continuously by the commodities future markets. These price determinations which are in the public domain, together with transportation and handling costs plus a small mark-up immediately dictate the price a grain merchandiser can pay a producer. The proponents of S. 2225 would destroy this efficient marketing system and require every handler of grains and oilseed to negotiate price and other terms of contracts with any and all bargaining groups representing as few as two producers.

The Grain and Feed Dealers National Association actively supported enactment of S-109 as reported out by your subcommittee since the original bill had been amended to overcome the objections we had voiced in our letter of May 25, 1967. We are unable to suggest at this time any amendments which would cure the basic defects contained in S. 2225 and are therefore opposed to S. 2225.

Specifically, we object to S. 2225 for the following reasons:

(1) Enactment of this bill could lead to the harrassment of country elevator managers, privately owned or cooperatives, who could be forced to negotiate, contrary to market indicators, the price and other terms of a contract, with any bargaining agent (bona fide only because they have signed agreements from two producers) while neglecting his responsibilities for receiving and conditioning the grain and oilseed products and providing service to, his producer customers.

(2) Permitting the combination of bargaining agents is contrary to the anti-trust principles of the United States against monopolies and could result in price fixing of the greatest magnitude since total basic commodities are involved. As suggested by the Bureau of the Budget and transmitted to your subcommittee by the USDA witness, it is essential that the views of the Department of Justice be obtained in this area.

We share the same concern as witnesses for the National Canners Association and the National Broiler Council that two years ago S. 109 as reported by your subcommittee, was agreed to by the proponents of S. 2225 as adequate legislation to protect the producers of agricultural products and in less than two years those proponents were disenchanted with the results of the deliberation of your subcommittee, was agreed to by the proponents of S. 2225 as adequate legislation stop only with the complete and total control of agricultural marketing in the hands of one group, most logically the Federal Government?"

In view of the foregoing we strongly recommend that enactment of S. 2225 be denied. It is requested that this letter be made a part of the hearings on S. 2225.

Sincerely yours,

ALVIN E. OLIVER,
Executive Vice President,
National Association of Grain & Feed Dealers.

STATEMENT OF HAROLD DE GRAFF, PRESIDENT, AMERICAN MEAT INSTITUTE,
CHICAGO, ILL.

The American Meat Institute, national trade association of the meat packing industry, appreciates the opportunity of presenting its views with respect to S. 2225, a bill to amend the Agricultural Fair Practices Act of 1967.

The 1967 legislation prohibited processors of agricultural commodities from discriminating against any producer because of his membership in or contract with an association of producers. S. 2225 would amend the statute and extend it by making it unlawful for processors to refuse to negotiate prices and other terms of contracts with agricultural bargaining associations.

The American Meat Institute, for two principal reasons, believes S. 2225 as introduced is too broad. First, insofar as the marketing of livestock is concerned, there is no need for the legislation. Second, it would create uncertainties

in an area where existing law already has imposed general responsibilities on processors and other handlers.

On the first point, the proponents of this legislation apparently are not suggesting that meat packers have refused to negotiate with producers' organizations, for on November 20, 1969, Dr. Kenneth Hood of the American Farm Bureau Federation testified: " * * * We do have a new and very extensive livestock marketing program, where we are seeking contracts with feed lots and processors and others, and we have not had the same problems here as we have had in others, so we have not brought any testimony on that particular area."

Producers of livestock have available to them a number of marketing outlets. There are 2,200 public stockyards, including the old established terminal markets, which still are extensively utilized and serve in some areas as the principal mechanism for establishing livestock prices. There is the widespread system of auction markets. Then there are the 16,000 independently functioning market agencies and livestock dealers, who represent the seller of livestock in his relationships with processors. Finally, there are more than 2,000 slaughterers who buy livestock directly from producers. When a producers association is utilized, its function is essentially that of a market agency or dealer, and we have in our industry a number of such organizations that have long-established and cordial relationships with meat packing companies. Generally speaking there is no need to use compulsion to persuade anyone to deal with anyone else. In fact, the threat of compulsion would tend to damage relationships that now are quite good.

Going on to our second point, a very comprehensive statute already governs trade relationships between livestock producers and the packing industry—the Packers and Stockyards Act. Section 202 of that Act provides, in part, that it is unlawful for a packer to "engage in or use an unfair, unjustly discriminatory, or deceptive practice or device" or to "make or give * * * any undue or unreasonable preference or advantage * * * or subject * * * any particular person or locality to any undue or unreasonable prejudice or disadvantage * * *"

This portion of the Act was construed by the Judicial Officer of the Department of Agriculture in the case of Capital Packing Company in a decision handed down November 18, 1963. In that case, the packing company had a disagreement with a commission firm operating on the Denver stockyards and refused to do business with it. The USDA Judicial Officer, after hearing, found that the refusal to deal was not justified and issued an order directing the packing company to cease and desist from "subjecting any market agency or other seller of livestock to any undue or unreasonable prejudice or disadvantage by refusing, without reasonable cause, to negotiate for the purchase of livestock offered for sale by such market agency or other seller."

It appears to us that the enactment of S. 2225 would have the effect of creating confusion in a situation where the provisions of existing law are adequate. For example, S. 2225 would permit any agricultural bargaining association to compel negotiation, but the principle of the Capital Packing Company case requires the packer to treat all sellers of livestock equally, including producer bargaining associations. We do not consider it to be sound legislative policy to give any person or group of persons an "inside track" so to speak. Moreover, S. 2225 would require negotiation without qualification. We believe this also is unsound, for there may be good and valid reasons why negotiation in a particular situation should not be compulsory. This was recognized inferentially in the Capital case. Bad reputation, inability to deliver according to agreement, inadequate supply of suitable livestock and lack of a need for more livestock are just a few of the reasons why a packer might be justified in not negotiating in a specific case. Yet S. 2225 apparently would require him to negotiate if an agricultural bargaining association was involved, even though such negotiation could not produce any beneficial result.

In summary, we regard the proposed unqualified requirement for negotiating with particular groups to be less desirable than the present requirement of law that no person be discriminated against or subjected to an undue or unreasonable prejudice or disadvantage. Therefore, to give recognition to existing law and to avoid confusing duplication, we suggest that S. 2225 be amended to exclude livestock from the agricultural products covered. This might be done by inserting the words "except livestock" following "products" on line 4, page 3. Alternatively, we suggest that products covered by the Packers and Stockyards Act be excluded from the proposed legislation.

WASHINGTON, D.C., December 29, 1969.

Senator B. EVERETT JORDAN,
Chairman, Subcommittee on Agricultural Research and General Legislation, Committee on Agriculture and Forestry, U.S. Senate, Washington, D.C.

DEAR SENATOR JORDAN: This statement is submitted in behalf of the National Soybean Processors Association in opposition to S. 2225. This impact of this legislation if enacted is much broader than might appear at first glance.

The development of legislative requirements that processors and handlers of agricultural commodities deal or negotiate with producers bargaining associations would affect and touch the entire economic complexion of United States agriculture and as such our members are opposed to this legislation.

This disadvantages of this legislation, if enacted, have been outlined by the grain and poultry industries in testimony before your committee. Those arguments apply equally to oilseeds.

We thank you for the opportunity to have this statement inserted in the record in opposition to Senate bill S. 2225.

Cordially,

SHELDON J. HAUCK,

Executive Director, National Soybean Processors Association.

WASHINGTON, D.C., December 12, 1969.

Hon. B. EVERETT JORDAN,
Chairman, Subcommittee on Agricultural Research and General Legislation, Committee on Agriculture and Forestry, U.S. Senate, Washington, D.C.

DEAR SENATOR JORDAN: The Chamber of Commerce of the United States appreciates the opportunity to share with your subcommittee its views on S. 2225.

This bill appears to be an attempt to reinstate some of the more objectionable features which were removed from S. 109 prior to its enactment as Public Law 90-288, "The Agricultural Fair Practices Act of 1967."

The bill amends the present law by (1) recognizing "agricultural bargaining associations" as a special type of producer association for the primary purpose of bargaining with processors and handlers in behalf of the producers; (2) requiring handlers to negotiate prices and other terms of trade with such bargaining associations; and (3) permitting producer associations further exemptions from the antitrust laws with respect to mergers.

We recognize the right of producers to join together voluntarily to market their products under existing statutory exemptions from the antitrust laws. We supported S. 109, enacted into law in 1968, which prohibits unfair trade practices specified in the bill. But we are opposed to proposals to amend this law to require a buyer to negotiate with an association of producers—or, in effect, to prohibit producers and their customers from dealing with one another individually or on a direct basis.

It seems that satisfactory answers must be forthcoming to the following questions before serious consideration is given to S. 2225:

1. Assuming a handler agrees to "negotiate" with a bargaining association to comply with the intent of S. 2225 but does not come to agreement with the association on the terms, would the handler likely be charged with refusing to negotiate in good faith? Might the handler also be liable to such a charge if, at the breakdown of negotiations, it returns to the individual producer-supplier who is a member of the bargaining association and completes a contract with the producer?

2. How can a handler be free to continue negotiations with the producer for production and delivery specifications, as well as for price, if the handler is required to negotiate with the bargaining association of which the producer is a member?

3. Can a producer join a bargaining association and still be free to sell directly to his former customer-handler if he chooses? In other words, if the producer, in joining the bargaining association, signs a contract agreeing to market his produce only through the bargaining association, then it appears to us that the answer to the second question is academic, because even though the handler may theoretically be free to "deal" with a producer if an agreement is not reached with the bargaining association, the producer would not be free to deal with the handler.

4. What will determine which of several self-declared "bargaining associations" in the same production area is the legitimate one for required negotiations with the handler? Or would a handler be required to negotiate with each of several bargaining associations?

5. What are the views of the Antitrust Division of the Justice Department on Amendment (d) to Section 5, with respect to freedom of producer associations to affiliate with other associations having similar objectives? It is our understanding that the Antitrust Division was in disagreement with this provision in S. 109. It was included in the original version of S. 109 in the 90th Congress, but was removed prior to enactment of the legislation. Has the Justice Department changed its position?

The hearings before your committee in November reported considerable evidence that handlers do not want to deal with producer bargaining associations. If there are real advantages to the handlers, as well as to the producers, in dealing through a bargaining association, then these advantages can be realized voluntarily without legislation. Compulsory bargaining is not the solution to the farmer's marketing problems.

Whenever the bargaining associations can provide additional services which offer advantages to both sides, they will more than likely be considered through the collective bargaining process. Bargaining terms which lead to greater efficiency in trading and lower costs of production, processing and handling could result in savings to both sides. The free exchange of information on consumer demand, market supplies and production capabilities can contribute to greater stability in markets, prices and production.

The ingenuity of competition under existing laws governing antitrust and trade practices provides the necessary protection for producers to organize and seek effective means for marketing their products. To do more would give them virtually monopolistic powers.

Based upon our understanding of the intent of the legislation, the Chamber of Commerce of the United States believes it would not serve the long-run interest of individual producers or of processors and other handlers who are customers of the producers to enact S. 2225.

Since the primary purpose of this bill is compulsory negotiations, S. 2225 is not the type of legislation which can be amended to be acceptable to both the proponents and the opponents. Therefore, we urge your disapproval of the bill.

I would appreciate your making this statement a part of the record of your subcommittee's hearings.

Cordially,

HILTON DAVIS,
General Manager, *Legislation Action*,
Chamber of Commerce of the United States.

WASHINGTON, D.C., December 29, 1969.

HON. B. EVERETT JORDAN,
Chairman, Subcommittee on Agricultural Research and General Legislation,
Committee on Agriculture and Forestry, U.S. Senate, Washington, D.C.

DEAR SENATOR JORDAN: We are pleased to have this opportunity to express our opposition to S. 2225, the Agricultural Marketing and Bargaining Act of 1969.

S. 2225 would amend the Agricultural Fair Practices Act, which was enacted only last year. That legislation had its origin in a bill, S. 109, which was originally introduced in 1965 by Senator Aiken and thereafter underwent various revisions. On three occasions our Association submitted to your Subcommittee statements voicing our vigorous opposition to S. 109 in its various forms.

In one of these statements we quoted a resolution on the subject of S. 109 which had been adopted by the Board of Directors of our Association. It stressed our very basic opposition to any interference by legislation with the long-recognized right of processors to select their own suppliers of agricultural commodities or other raw materials.

At about the same time the Justice Department, commenting on an early version of S. 109, voiced its objection thereto on the ground, among others, that "since the section might be interpreted in a manner to subject a purchaser to criminal penalties for seeking to choose his suppliers, the Department of Justice is opposed to the section." The Department went on to observe that "a purchaser can generally choose to deal with whomever he wishes."

On the other hand, proponents of S. 109, primarily the American Farm Bureau Federation, repeatedly gave assurances that it was not their intent through this legislation to compel processors to negotiate with producers. Thus, in testimony before this Subcommittee on June 14, 1966, Mr. Charles B. Shuman, President of the Farm Bureau, stated:

"We want to emphasize that Farm Bureau *does not seek, and will not support*, legislation to force processors to negotiate with marketing associations. We seek only legislation which sets forth rules of fair-play on the part of processors and others in their business relationships with farmers and ranchers. [Emphasis supplied.]

Mr. Shuman made an almost identical statement to that quoted above when he testified before the Subcommittee again on May 2, 1967, when he added:

"The legislation does not—

"(1) Force purchasers of agricultural products to deal with a marketing association of producers. Contrary to the contention of some, there is no such requirement in the legislation.

"(2) Prevent a purchaser from choosing the producers with whom he wants to deal. The bill only prohibits a purchaser from refusing to deal with a producer because of the producer's decision to join a marketing association."

Following such assurances, and as the result of amendments developed by this Subcommittee, last year a compromise version of S. 109 was enacted into law, as the Agricultural Fair Practices Act. It prohibited coercion and other unfair conduct to interfere with the right of producers to join and participate in bargaining associations. But it also, for the first time, encroached upon the freedom, and narrowed the long established right of, businessmen to choose their own suppliers. It prohibited processors from individually refusing to deal with producers which were based on membership of the latter in bargaining associations. Our own Association did not then and does not now believe that such special, compromise legislation, favoring the associations of producers and curbing the freedom of the processors, was justified.

Today, less than two years later, the very associations of producers which disavowed any intent to force handlers to bargain with such associations have returned and boldly advocated amendment of the Act, via S. 2225, to provide just that! The only reason given by these associations for this legislation is the alleged refusal of some processors to negotiate with them. It appears that these processors are negotiating directly with producers themselves. If this be so, obviously both the processors and the producers prefer to deal directly with each other, rather than through the unwanted intermediary, the marketing association.

Since it has been unable to attract to its ranks, on its own merits, the meaningful number of producers it would like to represent, the marketing association now seeks to do so by force of law. The effect of S. 2225 would be not only to require processors to deal with marketing associations; it also would mean that *producers* inevitably would have no alternative but to join such associations. If this drastic and far reaching legislative proposal were adopted, the normal forces of competition and free enterprise would be done away with, to the detriment of all parties concerned—producer, processor and consumer.

It is contended, by proponents of S. 2225, that it would not compel handlers and associations of producers to conclude an agreement with respect to any negotiations. They cite, in this respect, a proposed new Section 5(c) which S. 2225 would insert into the Agricultural Fair Practices Act. But the bill does not spell out any meaning of the requirement to "negotiate prices and other terms of contracts." If the cases decided under the National Labor Relations Act give any guidance in this respect, the requirement here to negotiate with bargaining associations would compel each processor to negotiate, with the purposes and intent of reaching an agreement, with every bargaining association, irrespective of the number of producers which it represented, and regardless of their individual capabilities. The potential for disagreements and for litigation which could result, unnecessarily, from such legislation is staggering. Whatever may be the merits of this compulsory bargaining approach in employer-employee relationships, we do not believe it has any place in the purchase and sale of agricultural commodities.

It is very significant, we think, that even the Farm Bureau apparently can cite no need for this legislation insofar as the livestock and meat industry—of which our member packers are a part—is concerned. It is our understanding that in testimony given earlier in the present hearings by Dr. Kenneth Hood, General

manager of the American Agricultural Marketing Association, a cooperative marketing affiliate of the American Farm Bureau Federation, it was indicated that meat packers and other purchasers of livestock had shown no reluctance to deal with producers' marketing associations. We believe this graphically shows that this legislation is not needed and that its enactment would be unwise. For when producers today believe the services of a marketing or bargaining association are worth engaging and paying for, they retain these services voluntarily. Similarly, when processors believe it is to their advantage to deal with marketing associations today, they do so voluntarily. This is the free enterprise system working as it should. Congress should not tamper with these basic forces and compel either party, against its will, to utilize the services of an intermediary.

Under the Capper Volstead Act, farmers and producers—unlike meat packers and other processors—already enjoy substantial protection from the antitrust laws so that they may join together and engage in joint marketing. Last year, Congress went farther and enacted the Agricultural Fair Practices Act, prohibiting handlers and processors from interfering—through refusals to deal, coercion, intimidation or commercial bribery—with the right of producers to join and participate in bargaining associations. It is admitted by the proponents that there is no need for the legislation insofar as our livestock and meat industry is concerned. If in other parts of the food industry the bargaining associations, despite all the statutory preferences already given to producers, are unable to attract producers to their ranks, we do not believe additional legislation, which would force the use of such associations for bargaining purposes, is in the public interest.

We further submit that the bill is not susceptible to amendments which could cure its defects. For its very purpose and objective is to interfere by statute with the rights of processors to select their own suppliers of raw materials. This we vigorously oppose.

We respectfully request that the Subcommittee recommend against enactment of this bill.

Sincerely yours,

JOHN G. MOHAY,
Executive Secretary,
National Independent Meat Packers Association.

STATEMENT OF HAROLD M. WILLIAMS, PRESIDENT, INSTITUTE OF AMERICAN POULTRY INDUSTRIES

The Institute of American Poultry Industries appreciates this opportunity to express its views on the proposed Agricultural Marketing and Bargaining Act of 1969.

The Institute of American Poultry Industries is a nonprofit organization established in 1926. Its membership consists of persons and organizations engaged in the breeding, hatching, production, processing, and distribution of chickens, turkeys, and ducks and their products, and eggs and egg products.

In presenting our views in opposition to the provisions of the pending bill, the Institute wishes the record to be clear on the point that it is not opposed to co-operatives and that some of its outstanding members are cooperative organizations. The Institute also recognizes the right of any person to join or to refrain from joining any organization of his choice.

We oppose the adoption of S. 2225 because we do not believe it is in the public interest. The proposed legislation in our judgment revives a basic issue which arose under the Agricultural Fair Practices Act of 1967 but which was put to rest by this Committee and the Congress by the final language adopted in that Act which recognizes the historic and fundamental right of buyers and producers to select their suppliers and their customers.

S. 2225 would modify this fundamental right and impose on persons classified as handlers the requirement of compulsory negotiation with agricultural bargaining associations on matters of price and other terms of contracts with respect to the production, sale, or marketing of agricultural products.

Such a requirement we believe is inconsistent with our free competitive enterprise system, destructive of our marketing system, and would tend to lessen rather than promote competition. We believe that it would impose serious and costly burdens on the marketing processes which ultimately would have to be borne by

producers in the form of lower returns or by consumers in the form of higher prices, or both.

In addition, we do not believe that this legislation is needed to protect producer interests. Producers under the Capper-Volstead Act already have a unique and special status under the antitrust laws in that they have the right by combination or agreement to market their production on a collective basis or through a common marketing agent and to establish their selling prices by joint agreement. We believe that effective use of this authority provides ample means for producers to effectuate economic bargaining, and that this bill which would authorize union-labor type compulsory bargaining procedures is unnecessary and in the long run detrimental to all. Producers under the Capper-Volstead Act and under the recognized and accepted cooperative framework have it within their power to the extent they choose to utilize it, to control both price and market supply availability and are therefore capable of exercising full economic bargaining power in the marketplace.

A further objection which we have to the proposed legislation has to do with burdens and interferences to the marketing processes which could result. The language of the bill is so vague that it is simply not possible to determine with any reasonable degree of certainty what would be required under the statutory command "to negotiate prices and other terms of contracts." Persons subject to such a command would be forced to act at their peril. The costs, burdens, delays and interruptions in the marketing of agricultural products could be disastrous and the interests of producers, consumers and handlers severely injured.

To illustrate:

(1) Though there is no question but that the bargaining would have to be conducted in good faith, the question arises how long would such negotiations have to continue before it might safely be concluded that no agreement could be reached and the negotiations lawfully terminated?

(2) What are the "terms of contracts" which would be subject to negotiation? Do such terms embrace such matters as credit and financing? Would these be appropriate matters for negotiation if the identity of the producers who are to be the beneficiaries of the credit or financing are not disclosed?

(3) If there are several agricultural bargaining associations all desiring to bargain with a handler, could the handler establish a priority?

(4) If a number of different bargaining associations were seeking to bargain with a handler, would he be able to reach agreement and make a contract with one bargaining association before conducting negotiations with the others? In other words, must a handler negotiate with all groups desiring to bargain before concluding a transaction?

(5) During the course of bargaining negotiations with one bargaining association is the handler free to consummate transactions with other producers who are not members of the bargaining group? If not, would not the rights of these individual producers be impaired?

(6) If bargaining negotiations fail to result in agreement, is the handler free to deal individually with an individual member of the bargaining group without subjecting himself to a possible charge of violation of the Act?

(7) What are the terms and conditions that can appropriately be considered in negotiations with respect to price, production or supply availability in view of the antitrust laws?

(8) What is a "reasonable time and place" for negotiations for the purchase of an agricultural product? Who would make such a determination? What have market conditions, customer requirements, financing, etc., to do with the question of "reasonable time and place" for negotiations between handlers and agricultural bargaining associations?

(9) What criteria are to be used to determine whether an agricultural bargaining association represents producers who could "reasonably and efficiently supply or produce agricultural products"? Who would make such a determination, or is this also a matter for negotiation?

(10) What procedure or rule would be expected to be applied in the event different agricultural bargaining associations sought to negotiate for the same producers?

(11) What is an agricultural bargaining association? Section 3 of the bill defines it as "an association of producers which has as *its principal function, as agent of producers, the negotiation with handlers of prices and other terms of contracts with respect to the production, sale, or marketing of agricultural products.*" [Emphasis supplied.]

What does "principal function" mean? Who would make this determination, and how would it be determined?

Does this rule out a bona fide marketing cooperative whose principal function is the physical handling and marketing of agricultural commodities for its members rather than attempting to fix prices and other terms of sale through advance agreements with handlers?

(12) Would bargaining associations be required to bargain with handlers in good faith? Would such associations be required to bargain with handlers before engaging in processing on their own behalf?

The foregoing are but a few of the many questions which would arise should this bill become law. None of these questions can be resolved without litigation. The expense, the delays, the interruptions to the marketing processes while seeking answers to these and other questions cannot help but be detrimental to the public interest and we believe to the producer and handler interests as well.

It has been suggested that the views of the Department of Justice be obtained by the Committee for the purpose of determining possible antitrust implications, with particular emphasis on section 5(d) which would purport to authorize affiliation of associations of producers with other associations having similar objectives. We concur in this position and believe the Committee should seek the opinion of the Department of Justice. Since the "other associations" with which affiliation could be had do not appear to be limited to Capper-Volstead agricultural associations, such obligations could materially interfere with the competitive processes.

The tremendous advancement and efficiencies in the poultry industry since the close of World War II have been achieved only through a high degree of coordination between the different segments of the poultry industry. Consumers have been the beneficiaries of an increasing volume of poultry and eggs at prices which have made them outstanding food bargains. This achievement within the framework of our free competitive enterprise system under which capital, labor, credit, management and improved production, processing and marketing techniques have been organized and put together has benefited producers and all other segments of the industry but in particular the ultimate arbiter, the consumer. It is in the light of this broad record of achievement that we urge this Committee to consider S. 2225.

We believe that the concept of compulsory negotiations between buyers and sellers is such a significant departure from our historic public policy of reliance on a free enterprise, private incentive and a competitive marketing system, subject only to such restraints as are imposed by the antitrust laws or other specific laws administered by appropriate governmental authorities as to clearly warrant the rejection of this bill by the Committee.

We therefore urge that this Committee not report favorably on the bill.

SALEM, OREG., November 20, 1969.

HON. ROBERT PACKWOOD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: Enclosed is a legislative proposal which is the result of serious effort on the part of the Pacific Coast Bargaining Associations to seek unanimity in an act that, we believe, would enhance the legal climate our Associations operate in as well as encourage new commodity groups.

We understand that hearings were held today, November 20, on S. 2225, sponsored by Senator Aiken of Vermont. We do not believe that S. 2225 meets the critical needs of bargaining associations.

The Pacific Coast has more active bargaining associations of any area in the United States and has had many years of active experience in the field of co-op bargaining. It is the objective of the Pacific Coast group to get as many sponsors of this bill as possible. It is my hope that you can, with good conscience, give this your support and sponsorship. It is our hope too, that action on S. 2225 will be delayed until this suggestion is given careful consideration.

I am sending a copy of the proposed bill to Senator Mark O. Hatfield for his perusal.

Yours very truly,

WALTER R. COLLETT,
Executive Secretary,
Oregon-Washington Growers Association, Inc.

(The explanation and draft bill are as follows:)

STATEMENT OF REASONS

The principal necessity for the proposed Act arises from the fact that the Agricultural Fair Practices Act of 1967 did not include an affirmative duty to bargain. Therefore that Act's prohibitions against unfair bargaining practices have been meaningless wherever there has been an outright boycott or refusal to bargain.

This Bill establishes a mutual duty to bargain in good faith on the part of processors and cooperatives and sets up national administrative machinery to clearly delimit, through Board standards and certification proceedings, those cooperatives to which the statutory duty to bargain extends.

The Bill also amends the Agricultural Fair Practices Act of 1967 to clarify that that Act was intended primarily to protect cooperatives against unfair bargaining practices of processors. The proposed Bill, therefore, redefines "handler" in Section 3(a) so that the prohibitions of the Act would clearly apply only to handlers as that term is generally understood.

Finally, the proposed Bill amends the Agricultural Adjustment Act of 1933 so that any agricultural commodity with the exception of canned or frozen products would be eligible for a federal marketing order.

Worthy of special note is the fact that the duty to bargain that would be implemented by the proposed Bill would apply only to those cooperatives meeting the financial and managerial standards as certified by the national board. Nevertheless, every cooperative, whether certified or not, would continue to benefit from the provisions of the Agricultural Fair Practices Act of 1967 prohibiting unfair bargaining practices on the part of processors. Thus, though a cooperative may not have acquired the status necessary for certification under the proposed Act, still that cooperative would have available all of the procedural and remedial protection of the Agricultural Fair Practices Act of 1967.

NATIONAL AGRICULTURAL MARKETING AND BARGAINING ACT OF 1969

AN ACT To create a National Agricultural Bargaining Board, to provide standards for the accreditation of associations of producers, to define the mutual obligation of handlers and associations of producers to negotiate regarding agricultural products; to amend the Agricultural Fair Practice Act of 1967 and to amend the Agricultural Adjustment Act of 1933, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. § 608c and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that:

SECTION 1. Chapter 58 (commencing with Section 2501) is added to the Agriculture Code to read:

Chapter 58. Agricultural Marketing and Bargaining

SUBCHAPTER I. GENERAL PROVISIONS

2501. Congress has already found that because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. Congress hereby finds, further, that membership by a farmer in a cooperative organization can only be meaningful if a handler of agricultural products is required to bargain in good faith with an agricultural cooperative organization as the representative of the members of such organization who have had a previous course of dealing with such handler. The purpose of this Act, therefore, is to provide standards for the accreditation of agricultural cooperative organizations for bargaining purposes, to define the mutual obligation of handlers and agricultural cooperative organizations to bargain with respect to the production, sale and marketing of agricultural products and to provide for the enforcement of such obligation.

2502. This Chapter shall be known and may be cited as the "National Agricultural Marketing and Bargaining Act of 1969."

SUBCHAPTER II. DEFINITIONS

2503. "Accredited Association" means an association of producers accredited in accordance with Subchapter IV of this Chapter.

2504. "Association of Producers" means any association of producers of agricultural products engaged in marketing, bargaining, shipping or processing as defined in Section 15(a) of the Agricultural Marketing Act of 1929, as amended (49 Stat. 317; 12 U.S.C. 1141; (a), or in Section 1 of the Act entitled "An Act to authorize association of agricultural producers," approved February 18, 1922 (42 Stat. 388; 7 U.S.C. 291).

2505. "Board" means the National Agricultural Bargaining Board provided for in this Chapter.

2506. "Handler" means any person other than an association of producers engaged in the business or practice of (1) acquiring agricultural products from producers or associations of producers for processing or sale; (2) grading, packaging, handling, storing or processing agricultural products received from producers or associations of producers; (3) contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or (4) acting as an agent or broker for a handler in the performance of any function or act specified in (1), (2) or (3) above.

2507. "Person" includes one or more individuals, partnerships, corporations and associations.

2508. "Producer" means a person engaged in the production of agricultural products as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable or nut grower.

SUBCHAPTER III. NATIONAL AGRICULTURAL BARGAINING BOARD

2509. There is hereby established in the Department of Agriculture a National Agricultural Bargaining Board, which shall administer the provisions of this Chapter.

2510. The board shall consist of three (3) members who shall be appointed by the President with the advice and consent of the Senate. The original board shall be composed of one member for a one-year term, one member for a three-year term and one member for a five-year term. The President shall indicate the length of term when making the appointment of the original board. Thereafter, as the term of each member expires, the President shall, with the advice and consent of the Senate, appoint a successor to serve for a term of five (5) years. Any individual chosen to fill a vacancy caused by other than expiration of the term shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall select one member of the board to serve as chairman.

2511. Any member of the board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office but for no other cause.

2512. A vacancy in the board shall not impair the right of the remaining members to exercise all of the powers of the board. Two members of the board shall, at all times, constitute a quorum of the board.

2513. All of the expenses of the board, including all necessary traveling and subsistence expenses incurred by the members of the board or the employees of the board under its orders, shall be allowed and paid in the same manner as payment of such expenses for employees of the Department of Agriculture.

2514. The board shall have authority from time to time to adopt, amend and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary or appropriate to carry out the provisions of this Chapter.

SUBCHAPTER IV. ACCREDITATION OF ASSOCIATIONS OF PRODUCERS

2515. Only those associations of producers that have been accredited in accordance with this subchapter shall be entitled to the benefits provided by Section 1 of this Act.

2516. An association of producers desiring accreditation shall file with the Board a petition for accreditation. The petition shall contain such information and be accompanied by such documents as shall be required by the regulations of the Board.

2517. The Board shall provide for a public hearing upon such petition. If based upon the evidence at such hearing the board finds:

(a) that under the charter documents or the by-laws of the association, the association is directly or indirectly producer-owned and controlled;

(b) the association has contracts with its members that are binding under State law;

(c) the association is financially sound and has sufficient resources to carry out the purposes for which it was organized;

(d) the association's management and staff are capable of performing the duties of the association under its membership agreements and of bargaining effectively with handlers; and

(e) the association represents a sufficient number of producers and/or a sufficient quantity of agricultural products to make it an effective agent for producers in bargaining with handlers

the Board shall accredit such association.

2518. After the Board accredits such association, it shall give notice of such accreditation to all known handlers that, in the ordinary course of business, purchase the agricultural commodities that such association represents.

2519. An accredited association shall file an annual report with the Board in such form as shall be required by the regulations of the Board. The annual report shall contain such information as will enable the Board to determine whether the association continues to meet the standards for accreditation.

2520. If an accredited association ceases to maintain the standards for accreditation set forth in Section 2517, the Board shall, after notice and hearing, revoke the accreditation of such association.

SUBCHAPTER V. BARGAINING

2521. As used in this Act, "bargaining" is the mutual obligation of a handler and an accredited association to meet at reasonable times and negotiate in good faith with respect to the price, terms of sale, and other contract provisions relative to the commodities that such accredited association represents and the execution of a written contract incorporating any agreement reached if requested by either party. Such obligation on the part of the handler shall be limited only to such commodities as are produced by the members of the association with whom the handler has had a prior course of dealing. Such obligation does not require either party to agree to a proposal or to make a concession.

2522. A handler shall be deemed to have had a prior course of dealing with a producer if such handler has purchased commodities produced by such producer in any two of the preceding five years.

2523. Whenever it is charged that an accredited association or handler refuses to bargain as that term is defined in Section 2521, the Board shall investigate such charges. If, upon such investigation, the Board considers that there is reasonable cause to believe that the person charged has refused to bargain, in violation of this Act, the Board shall issue and cause to be served a complaint upon such person. The complaint shall summon the named person to a hearing before the board or a member thereof at the time and place therein fixed.

2524. The person complained of shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise at the hearing and give testimony. In the discretion of the Board, or the member conducting the hearing, any person may be allowed to intervene to present testimony. Any hearing shall, insofar as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States.

2525. If, upon a preponderance of the evidence, the Board determines that the person complained of has refused to bargain, in violation of this Act, it shall state its findings of fact and shall issue and cause to be served on such person an order requiring him to bargain as that term is defined in Section 2521 and shall order such further affirmative action, including an award of damages, as will effectuate the policies of this Act.

2526. If, upon a preponderance of the evidence, the Board is of the opinion that the person complained of has not refused to bargain, in violation of this Act, it shall make its findings of fact and issue an order dismissing the complaint.

2527. Until the record in a case has been filed in a court, as hereinafter provided in Subchapter VI, the Board may at any time, upon reasonable notice and in such manner as it deems proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

SUBCHAPTER VI. ENFORCEMENT OF ORDERS AND JUDICIAL REVIEW

2528. The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the refusal to bargain occurred or wherein the person who engaged in such refusal resides or transacts business, for the enforcement of its orders made under Section 2525 and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in Section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board. No objection that has not been urged before the Board or the member before whom a hearing was conducted shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, or a member thereof, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in Section 1254 of title 28.

2529. Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the refusal to bargain was alleged to have occurred or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the board, as provided in Section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the board under Section 2527 and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

2530. The commencement of proceedings under Section 2528 or 2529 shall not stay enforcement of the Board's decision but the Board or the reviewing court may order a stay upon such terms as it deems proper.

SUBCHAPTER VII. MISCELLANEOUS PROVISIONS

2531. The Board shall at all reasonable times have access to and the right to copy evidence relating to any person or action under investigation by it in connection with any refusal to bargain. The Board is empowered to administer oaths and to issue subpoenas requiring the attendance of witnesses or the production of evidence.

2532. In case of contumacy or refusal to obey a subpoena issued to any person, the district court, upon application by the Board, shall have jurisdiction to order such person to appear before the Board to produce evidence or to give testimony touching the matter under investigation, and any failure to obey such order may be punished by the court as a contempt thereof.

2533. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

2534. Complaints, orders and other processes and papers of the Board may be served personally, by registered mail, by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return of service shall be proof of such service. Witnesses summoned before the Board shall be paid the same fees and mileage allowance that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

2535. All processes under any court of which an application or petition may be made under this Act may be served in the judicial district wherein the person or persons required to be served reside or may be found.

2536. The provisions of this Act are severable and if any provision shall be held unconstitutional or invalid by a court of competent jurisdiction the decision of such court shall not affect or impair any of the remaining provisions.

2537. The activities of accredited associations and handlers in bargaining with respect to the price and other terms of sale of the agricultural commodities produced by the members of such accredited associations shall be deemed not to violate any antitrust law of the United States. Nothing in this Act, however, is intended to permit handlers to contract, combine or conspire with one another in bargaining with accredited associations.

SEC. 2. The Agricultural Fair Practices Act of 1967 is amended as follows:

(1) Section 2 is amended by striking the last three words in the second paragraph thereof, "in agricultural products", and by substituting the following words therefor: "with producers of agricultural products and their cooperative associations."

(2) Section 3(a) is amended by inserting a comma after the word "person" in the first line thereof and by inserting the following after said comma and before the word "engaged": "other than an association of producers."

(3) Section 4 is amended by striking the word "knowingly" on the first line thereof.

(4) Section 4(a) is amended by striking the words "or to refrain from joining or belonging to" from the second line thereof.

(5) Section 4(c) is amended by striking the words "or a contract with a handler" from the third line thereof.

(6) Section 4(e) is amended by striking the words "or handlers" on the second line thereof.

(7) Section 5 is amended by striking the whole thereof.

SEC. 3. The Agricultural Adjustment Act of 1933, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended 7 U.S.C. § 608c is amended as follows:

Section 8c (2) is amended by inserting after the third sentence ending with the words "Southwest production area." The following: "Notwithstanding any of the commodity, product, area, or approval exceptions or limitations in the foregoing sentences hereof, any agricultural commodity or product (except canned or frozen products) thereof, or any regional or market classification thereof, shall be eligible for an order, exempt from any special approval required by the preceding sentences hereof, if after a referendum of the affected producers of such commodity the Secretary finds that a majority of such producers voting in such referendum favor making such commodity or product thereof, or the regional or market classification thereof specified in the referendum, eligible for an order: *Provided, however,* That such referendum shall not be required for any commodity or product for which an order otherwise is authorized under the preceding sentences of this subsection (2) and for which no special approval or area limitation is specified therein."

