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STATE OF MAINE
114TH LEGISLATURE
FIRST REGULAR SESSION

*Final Report
of the*

**STUDY COMMITTEE ON
THE AGRICULTURAL MARKETING
AND BARGAINING ACT**

December 1989

Members:

*Rep. Robert J. Tardy, chair
Sen. Donald F. Collins
Rep. John L. Lisnik
Rep. B. Carolyne T. Mahany
Rep. Susan J. Pines*

Staff:

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**STUDY OF THE MAINE AGRICULTURAL
MARKETING AND BARGAINING ACT**

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Executive Summary

This study was the result of action taken by the Joint Standing Committee on Agriculture during the 1st Regular Session of the 114th Legislature to address problems that occurred in the potato industry during the spring of 1989. The vehicle for the committee's efforts was L.D. 1624, An Act to Amend the Agricultural Marketing and Bargaining Law. An agreement between the 2 parties in conflict and the committee's amendment to L.D. 1624 left unanswered basic questions about the ability of the Agricultural Marketing and Bargaining Act to resolve contractual disputes between handlers and producers. The Legislative Council approved the formation of a study committee to examine the bargaining act.

The study committee's 5 meetings included discussion by all interested parties of a wide range of issues related to the agricultural marketing and bargaining act. Discussion focused on 2 elements of the mediation and arbitration process;

How to increase the incentive to reach an agreement before arbitration; and

What obligation to purchase a commodity from bargaining association members should be incurred by handlers when they sign a contract with a bargaining association.

The committee concludes that since the existing required mediation and final-offer binding arbitration process is a recent innovation, major changes in the Agricultural Marketing and Bargaining Act are not necessary. The experience of the past 2 years will hopefully lead to agreements between the parties prior to the arbitration stage. In the event arbitration can not be avoided the committee suggests the role of the mediator and arbitrator be clarified through rule-making and recommends legislation to require a written report from the mediator specifying which issues remain unresolved and should go to arbitration. The committee also recommends public members on the Agricultural Bargaining Board be prohibited from holding interests in organizations whose activities are subject to review by the board.

Origin of Study

This study was an outcome of actions taken by the Joint Standing Committee on Agriculture during the 1st Regular Session of the 114th Legislature to address problems that occurred in the potato industry during the spring of 1989.

In March of 1989, the Agricultural Bargaining Council, a qualified association of potato and pea producers, and McCains Foods Inc., a potato processor from Easton, entered into the required mediation and arbitration process established by 1987 amendments (P.L. 1987, c. 155) to the Agricultural Marketing and Bargaining Act (13 MRSA §1953 et.seq.). After failing to reach an agreement on all matters during mediation the parties each submitted a final offer to the arbitrator. Neither party included the tentative agreements reached during mediation in their final offer. The arbitrator selected the contract terms proposed by the Agricultural Bargaining Council. The Agricultural Bargaining Board prepared a contract based upon the arbitrator's findings which both parties signed. McCains subsequently refused to use the arbitrated contract and offered contracts with terms less favorable than the arbitrated contract to individual processors who were not members of the Agricultural Bargaining Council.

On May 22, the Joint Standing Committee on Agriculture held a public hearing on L.D. 1624, An Act to Amend the Agricultural Marketing and Bargaining Law. The committee received a suggestion for substantial amendments to the bill from the Agricultural Bargaining Council. These amendments and much of the original bill were opposed by McCains and Interstate Food Processing Corp.

During the committee's deliberations on L.D. 1624, the Agricultural Bargaining Council and McCains reached a agreement on the 1989 contract. Since arbitrated contracts are binding under the Agricultural Marketing and Bargaining Act (13 MRSA §1958-B, sub-§5, ¶A) the committee amended the Act to allow parties to amend arbitrated contracts by mutual agreement after they are signed (P. L. 1989, c. 201). The amendment also provided for automatic repeal of its provisions effective January 1, 1990.

While the immediate issue of contracts for 1989 had been resolved, the issue of whether the Agricultural Marketing and Bargaining Act works as intended remained. The committee requested a study be undertaken to examine the act's mediation and arbitration provisions (Appendix B). This study was approved by the Legislative Council and members were selected (Appendix C).

Agricultural Marketing and Bargaining Act

The Maine Agricultural Marketing and Bargaining Act of 1973 was enacted by P.L. 1973, c. 621. The Agricultural Marketing and Bargaining Act established a process for negotiations between the handlers and the producers of an agricultural product. The act requires that any handler of an agricultural product must negotiate with a qualified association of producers. A list of public laws amending the act is included as Appendix D.

Under the act, negotiations between producer associations and handlers take place with the oversight of the Agricultural Bargaining Board. The board is located in the Department of Agriculture, Food and Rural Resources. It has 5 voting members and 2 alternates appointed by the Governor and includes 3 public members and one member and one alternate each chosen from lists of names submitted by qualified associations of producers and by handlers of agricultural products. The board is charged with:

- * qualifying producer associations;
- * hearing and ruling on complaints that a party is refusing to bargain;
- * receiving mediator and arbitrator reports and preparing contracts based on the arbitrator's report;
- * hearing and ruling on complaints of unfair practices; and
- * asking the Superior Court for enforcement of its orders with respect to refusal to bargain or unfair practices.

Producer associations are qualified when the Agricultural Bargaining Board finds that the association:

- * is directly or indirectly producer-owned and controlled;
- * has signed membership agreements that authorize the association to represent its members;
- * has sufficient resources and management to carry out its mission;
- * for all agricultural products except blueberries, represents 51% of the producers or produced at least 1/2 of the volume of an agricultural product for a specific handler; and
- * is authorized to act as bargaining agent for its members in negotiations with handlers for prices and other terms of contracts.

Handlers are defined generally as any person acquiring agricultural products from producers for processing or sale who:

- * grades, packages, stores or processes the products; and
- * contracts or negotiates production or marketing contracts with or on behalf of producers; or
- * acts as an agent or broker for a handler for the above activities.

Handlers of potatoes are defined as anyone other than a consumer who buys or contracts to buy potatoes for any processing (see 7 MRSA §1012, sub-§14).

After its 1973 enactment, the Agricultural Marketing and Bargaining Act remained essentially unchanged until Public Laws 1981, chapter 274 established non-binding final offer arbitration for the potato industry. Under this approach if a contract was not agreed upon by March 15th, the parties chose an arbitrator who would in turn choose between their final offers by April 1st. The parties had until April 7th to sign a contract, not necessarily the contract favored by the arbitrator. If the parties did not sign a contract by April 7, then they were forbidden to bargain or sign any contract for potatoes before June 15th. In 1986, Public Law 1985, chapter 578 extended non-binding final offer arbitration from potatoes to all agricultural products.

In 1987, Public Law 1987, chapter 155 replaced non-binding final offer arbitration with the current process of voluntary mediation, required mediation and binding arbitration. In this process, parties may request a mediator at any time during their negotiations, but must use a mediator if no contract agreement has been reached 30 days before the contract date. For annual crops required mediation lasts for 3 days, unless extended by mutual agreement of the bargaining parties. Any matters unresolved at the end of required mediation go to arbitration. Each party is directed to prepare a contract containing the terms agreed upon during negotiations and mediation and making a final offer on the matters left unresolved. The arbitrator may hold hearings and issue subpoenas and has 10 days to decide between the contracts. The arbitrator's decision is binding on the parties. The Agricultural Bargaining Board prepares the final contract for signing by the parties.

Public Law 1989, chapter 201 allowed the parties to amend arbitrated contracts by mutual agreement after they are signed. This provision of the law will be automatically repealed on January 1, 1990.

Study Process

The subcommittee met 5 times during the summer and fall months; 3 times in August and twice in November. Meetings were held on August 8th and 9th in Presque Isle. Meetings were held August 28th, November 8th and November 29th in Augusta. A brief meeting to finalize the report was held on December 19.

In addition to the committee, each meeting included representatives of the potato processing industry, the Agricultural Bargaining Council, the Department of Agriculture, Food and Rural Resources and, with the exception of one meeting, a representative of the Agricultural Bargaining Board.

The study began with a review of the amendments to the Agricultural Marketing and Bargaining Act proposed during the 1st Regular Session of the 114th Legislature by the Agricultural Bargaining Council. The potato processing industry submitted various proposals.

The study process was one of raising and discussing issues with comments being submitted by processors and the Agricultural Bargaining Council, a qualified association representing potato and pea producers. Discussion focused on 2 elements of the mediation and arbitration process: how can incentives for parties to reach an agreement prior to arbitration be increased; and what obligation to purchase a commodity from bargaining association members should be incurred when a handler signs an agreement with a bargaining association.

The following questions and options were discussed:

Should appointees to represent the public on the Agricultural Bargaining Board be restricted in their connections to agriculture?

Why are there no rules clarifying the transition process from mediation to arbitration?

Should a party be allowed to "opt-out" of the negotiation, mediation or arbitration processes?

Does the timing of the bargaining, mediation and arbitration process for potatoes need adjustment?

Does current law unfairly restrict negotiations between handlers and non-ABC growers?

Would the use of a 3 member panel of arbitrators provide more equitable resolutions of disputed contracts?

Should parties be allowed to submit final offers for arbitration which do not include agreements reached in bargaining and mediation?

Should the mediation and arbitration process be combined so that one panel of mediators could fulfill both functions?

The establishment of a rebuttable presumption of an unfair practice by a handler who significantly alters the source of their commodity purchases from members of a bargaining association to non-members.

An expansion of the Agricultural Bargaining Board's ability to investigate the operations of handlers.

Findings and Recommendations

Finding: The Agricultural Marketing and Bargaining Act was significantly revised in 1987. Only 2 bargaining seasons have passed since the Legislature adopted required mediation and final offer binding arbitration.

General Recommendation: Drastic changes are not in order at this time. The committee feels that required mediation and final offer binding arbitration should be given an opportunity to work. Events of the past 2 bargaining seasons have been part of a learning process for all parties. The process may work more smoothly as a result of the experience gained by all parties and a clarification of the mediation and arbitration process through the adoption of rules by the Agricultural Bargaining Board and the statutory changes recommended below.

Finding: The transition between required mediation and arbitration has been poorly-defined. The committee finds that the quality and content of communications between the mediator, the bargaining board and the arbitrator have created confusion during contract disputes. Specifically, reports made verbally or incomplete reports have left arbitrators with inadequate information about the process preceding their involvement and has also resulted in confusion about the reasoning behind the arbitrator's decision.

Statutory Recommendation: Clarify the mediator's role and the mediation process. The committee recommends mediators be required to state in a written report what issues remain unresolved at the end of required mediation.

Statutory Recommendation: Provide arbitrators with criteria to use in their review. Arbitrators have not had any guidance on the criteria that should be utilized in reaching a decision. The committee recommends adoption of criteria utilized in the Michigan agricultural bargaining law.

Administrative Recommendation: Agricultural Bargaining Board should adopt rules. The Agricultural Bargaining Board should adopt rules as directed in 13 MRSA §1956, sub-§6 to further clarify the role of mediators and arbitrators.

Finding: Current law governing membership on the Agricultural Bargaining Board allows possible conflicts of interest by the 3 public members.

Statutory Recommendation: Prohibit public members of the Agricultural Bargaining Board from holding vested interests in agricultural activities under the board's jurisdiction. Amend 13 MRSA §1956, sub-§2 to prohibit public members of the Agricultural Bargaining Board from holding any vested interest in a production or processing unit or in any aspect of the industry subject to Agricultural Bargaining Board jurisdiction.

APPENDIX A
RECOMMENDED LEGISLATION



HP LR#2652
Ag Bargain Study
12/21/89
308nrg
Council Approved
Study

SECOND REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

AN ACT to Amend the Maine Agricultural Marketing
and Bargaining Act.

Be it enacted by the People of the State of Maine as follows:

Sec. 1 13 MRSA §1956, sub-§2 is amended to read:

2. **Membership.** The Maine Agricultural Bargaining Board established by Title 5, section 12004, subsection 3, shall consist of 5 members and 2 alternates, who shall be appointed by the Governor. One member and one alternate shall be appointed from a list of names submitted by agricultural producer organizations organized under this subchapter and chapter 81. One member and one alternate shall be appointed from a list of names submitted by processors of agricultural products. In appointing these members and alternates, the Governor shall seek to represent as many different agricultural products as possible and a member and the alternate for that member shall not be associated with the same agricultural product, unless suitable persons cannot otherwise be appointed. An alternate shall serve when for any reason the respective member is unable to serve. Three members shall be representatives of the public. No public member may hold any interest or stock or securities in any producer, dealer, processor or other person whose activities are subject to the jurisdiction of the board.

Sec. 2. 13 MRSA §1958-B, sub-§2 is amended to read:

2. **Required mediation.** Any matters remaining in dispute between the handler and a qualified association 30 days prior to the contract date, as defined in subsection 4, shall be submitted by the parties to required mediation. No later than 30 days prior to the contract date, the parties shall have mutually agreed on a mediator and on sharing the costs of mediation or shall have notified the board that the services of the State's Panel of Mediators will be needed. If services of the State's Panel of Mediators are used, the parties shall share all costs of mediation equally. Mediation shall continue for no more than 3 days for annual crops; all other commodities shall last no more than 5 days, unless the mediator earlier declares that resolution by mediation is not possible. Mediation may be extended by mutual agreement by the bargaining parties. At the end of the mediation period or upon the mediator's earlier declaration, the mediator shall promptly ~~prepare a report specifying all agreements reached in mediation and recommending that the parties either resume bargaining as to all matters remaining in dispute for a period of time not to exceed 2 days or that the parties submit all matters remaining in dispute to arbitration. The parties shall proceed according to the mediator's recommendation. If the parties are to resume bargaining, that bargaining shall commence on the day after the day on which the mediator makes his recommendation. Any matters remaining in dispute at the end of the specified bargaining period shall be submitted to arbitration~~ have 3 days to prepare a written report.

Prior to issuing a report, the mediator shall determine by mutual agreement of the parties, those issues which are no longer in dispute and need not be submitted to arbitration. The mediator's report shall also specify those issues that continue to be in dispute. In specifying the remaining disputed issues, the report may include the mediator's opinion as to the position of each of the parties. The report may include the mediator's opinion that one or more of the parties was not bargaining in good faith, or that one or more of the parties maintained consistently unreasonable positions on one or more issues.

The mediator's report may recommend the parties resume bargaining on all matters remaining in dispute for a period not to exceed two days. Any resumption of bargaining shall occur on the day following the mediator's recommendation to resume bargaining. Any matters remaining in dispute at the end of the specified bargaining period shall be submitted to arbitration.

The mediator shall provide a copy of the report to each of the parties at least one day before issuing the report to the arbitrator and the board.

Sec. 3. 13 MRSA §1958-B, sub-§5, the 1st ¶ and ¶¶A and B are repealed and the following are enacted in their place to read:

5. Arbitration. The parties shall notify the board and the commissioner at the commencement of required mediation and an arbitrator shall be selected as provided in paragraph D. One day after the mediator recommends arbitration or one day after the conclusion of the period of further bargaining, as provided in subsection 2, each party shall submit to the arbitrator its final offer, in which it shall identify all matters as to which the parties agree, with contractual language setting forth these agreements, and all matters as to which the parties do not agree, with contractual language setting forth the party's final offer for resolution of those disagreements.

A. For all matters submitted to arbitration, the arbitrator shall choose between the final offers of the parties. The arbitrator shall use the mediator's report prepared pursuant to subsection 2 to resolve any question as to whether a matter has been submitted to arbitration. If the parties reach an agreement on the matters under arbitration before the arbitrator issues a decision, they may submit a joint final offer which the arbitrator shall accept and render as the decision. The arbitrator may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence and issue subpoenas to compel the attendance of witnesses and the production of records. A person who fails to obey the subpoena of an arbitrator may be punished for contempt of court on application by the arbitrator to the Superior Court for the county in which the failure occurs. The arbitrator may utilize other information in addition to that provided by or elicited from the parties. The arbitrator shall issue a decision within 10 days of the commencement of arbitration and that decision shall be binding on the parties. If the parties reach an agreement on the matters in the arbitrator's decision prior to signing the contract, they may submit a joint final offer to the arbitrator. The arbitrator shall rescind the previous decision and accept and render the joint final offer as the decision.

B. Within 5 days of the arbitrator's decision, the board shall prepare a contract which shall include all terms agreed to by the parties in bargaining or settled by voluntary or required mediation or by arbitration and shall present the contract to the parties, who shall sign the contract within 2 days of its presentation.

Sec. 4. 13 MRSA §1958-B, sub-§5-A is enacted to read:

5-A. Criteria for arbitrator decisions. The arbitrator shall consider the following factors in making a decision pursuant to subsection 5.

A. Prices or projected prices for the agricultural commodity paid by competing handlers in the market area or competing areas;

B. Amount of the commodity produced or projections of production in the production area or competing market areas;

C. Relationship between the quantity produced and the quantity handled by the handler;

D. The producer's cost of production including the cost which would be involved in paying farm labor a fair wage rate;

E. The average consumer prices for goods and services, commonly known as the cost of living;

F. The impact of the award on the competitive position of the handler in the marketing area or competing areas;

G. The impact of the award on the competitive position of the agricultural commodity in relationship to competing commodities;

H. A fair return on investment;

I. The kind, quality or grade of the commodity involved;

J. Prior agreements of the parties; and

K. Other factors which are normally or traditionally taken into consideration in determining prices, quality, quantity and the costs of other services involved.

STATEMENT OF FACT

This bill is the result of a study on the Agricultural Marketing and Bargaining Act authorized by the Legislative Council.

Section 1 of the bill clarifies that no public member of the Agricultural Bargaining Board should have conflicting interests while serving on the board.

Section 2 adds a requirement that mediators issue a written report at the end of a mediation period which includes, when appropriate, a list of any unresolved issues which should go to arbitration.

Section 3 repeals and replaces existing language governing the arbitration process that was amended by P.L. 1989, c. 201. This action will serve to clarify some confusion created by an automatic repeal provision of P.L. 1989, c. 201 and a provision is added to establish the mediator's report as the final word on whether a matter is submitted to arbitration.

Finally, section 4 enacts criteria for arbitrators to use in making their decisions on unresolved matters.

APPENDIX B

LETTER FROM AGRICULTURE COMMITTEE STUDY REQUESTING STUDY

SENATE

R. DONALD TWITCHELL, DISTRICT 15, CHAIR
JUDY C. KANY, DISTRICT 17
JEROME A. EMERSON, DISTRICT 9

LARS RYDELL, LEGISLATIVE ANALYST
RUSSELL W. MARTELL, COMMITTEE CLERK



HOUSE

ROBERT J. TARDY, PALMYRA, CHAIR
JOHN A. ALIBERTI, LEWISTON
B. CAROLYNE T. MAHANY, EASTON
JOHN N. NUTTING, LEEDS
ROBERT E. HUSSEY, JR., MILO
WILFRED J. BELL, CARIBOU
WESTON R. SHERBURNE, DEXTER
SUSAN J. PINES, LIMESTONE
PAUL PARENT, BENTON
WALTER E. WHITCOMB, WALDO

STATE OF MAINE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
COMMITTEE ON AGRICULTURE

June 7, 1989

Speaker John L. Martin, Chairman
Legislative Council
Maine Legislature
Augusta, Maine 04333

Dear Speaker Martin:

Recent events in the potato industry and the committee's work prior to amending of the agricultural marketing and bargaining act in L.D. 1624 have raised a number of questions about the fairness and efficacy of the existing bargaining act. Time constraints prevented the committee from fully addressing these questions in our recent amendment. For this reason, the Joint Standing Committee on Agriculture requests that a 5 person committee be appointed to perform a comprehensive examination of the agricultural marketing and bargaining act.

We suggest the study committee be comprised of 3 representatives appointed by the Speaker of the House and 2 Senators appointed by the President of the Senate. We also suggest the appointed members not be limited to members of the Joint Standing Committee on Agriculture. In addition, we request staff support be assigned and we foresee a need for at least 5 meetings at an estimated expense of \$4,825. At least one meeting should be in Aroostook County.

As stated, the committee would undertake a comprehensive look at the bargaining act, but would focus on the required mediation or "final binding offer arbitration" process. Issues related to required mediation and other study issues are outlined on the attached page.

We hope the Council agrees that review of the agricultural marketing and bargaining act is important at this time and stand ready to answer any questions you may have with regard to this request.

Very truly yours,

R. Donald Twitchell
Senate Chair

Robert J. Tardy
House Chair

STUDY ISSUES

Subcommittee to Study the Agricultural Marketing & Bargaining Act

Issues related to the required mediation process:

Should the arbitrator decide all issues which have been under negotiation or only those issues which remain unresolved?

Should a negotiated agreement between the parties be allowed to supercede the arbitrator's decision once that decision has been reached, but before a contract is signed? After a contract has been signed?

Other issues brought to the committee's attention:

The make-up of the Agricultural Marketing and Bargaining Board;

Should conditions under which growers obtain seed potatoes from processors be limited;

Should a condition of "rebuttable presumption" be imposed on a party accused of unfair practices;

Contract reporting requirements for processors; and

The adoption of a fixed contract date to trigger the various preseason negotiation activities.

STUDY COSTS

Personal Services	
5 Legislators X \$55 Per Diem X 5 Meetings =	\$ 1,375
All Other	
5 Legislators X \$50 Meals & Travel X 5 Meetings =	\$1,250
Printing	1,900
Advertising	<u>300</u>
	\$3,450
TOTAL	\$4,825

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APPENDIX C

LETTER FROM LEGISLATIVE COUNCIL ESTABLISHING STUDY



REP. JOHN L. MARTIN
CHAIR

SEN. DENNIS L. DUTREMBLE
VICE-CHAIR

STATE OF MAINE

114th LEGISLATURE
LEGISLATIVE COUNCIL

SEN. CHARLES P. PRAY
SEN. NANCY RANDALL CLARK
SEN. CHARLES M. WEBSTER
SEN. PAMELA L. CAHILL
REP. DAN A. GWADOSKY
REP. JOSEPH W. MAYO
REP. MARY CLARK WEBSTER
REP. FRANCIS C. MARSANO

SARAH C. DIAMOND
EXECUTIVE DIRECTOR

July 6, 1989

Honorable R. Donald Twitchell, Senate Chair
Honorable Robert J. Tardy, House Chair
Joint Standing Committee on Agriculture
114th Maine Legislature

Dear Senator Twitchell and Representative Tardy:

The Legislative Council met last Saturday to establish budgets for the approved interim study requests. The Council has taken the following actions on requests from your Committee:

Agricultural Marketing &
Bargaining Act

APPROVED

5 member subcommittee

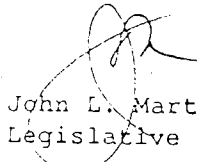
4 subcommittee meetings

1 full committee meeting

The Council's action on all study requests is based on the understanding that the subcommittee will have completed its work by December 1, 1989. This means that the report and any accompanying legislation must be ready to transmit to the Legislative Council on that date.

We appreciate your cooperation in moving quickly to organize the study and look forward to receiving your findings and recommendations. Please call me if you have any questions.

Sincerely,


John L. Martin, Chair
Legislative Council

cc: Martha Freeman, Director, Office of Policy & Legal Analysis

APPENDIX D

**LIST OF LEGISLATION AMENDING THE
AGRICULTURAL MARKETING AND BARGAINING ACT**

COMMITTEE WORKING DRAFT

LEGISLATIVE HISTORY OF THE MAINE AGRICULTURAL
MARKETING AND BARGAINING ACT OF 1973

- ENACTMENT
- P.L. 1973, c. 621
 - P.L. 1973, c. 788: Technical Amendment to §1959.
 - P.L. 1977, c. 564: Technical Amendments Removing Reference to the Executive Council.
 - P.L. 1977, c. 694: Conformed statute to Administrative Procedures Act.
 - P.L. 1981, c. 274: Established Non-binding Final Offer Arbitration for the Potato Industry.
 - P.L. 1983, c. 812: Established Conformity with Revised Compensation Policy for Boards.
 - P.L. 1985, c. 578: Extended Non-binding Final Offer Arbitration from Potatoes to Agricultural Products.
 - P.L. 1987, c. 155: Replaced Non-binding Final Offer Arbitration with Provisions for Voluntary Mediation, Required Mediation and Binding Final Offer Arbitration.
 - P.L. 1989, c. 201: Emergency Legislation to Allow the Amendment of Arbitrated Contracts by Mutual Consent After They are Signed. This Legislation is Repealed Effective January 1, 1990.



APPENDIX E

LEGAL MEMORANDUM RE. MICHIGAN CANNERS CASE

MARTHA E. FREEMAN, DIRECTOR
WILLIAM T. GLIDDEN, PRINCIPAL ANALYST
JULIE S. JONES, PRINCIPAL ANALYST
DAVID C. ELLIOTT, PRINCIPAL ANALYST
GILBERT W. BREWER
TODD R. BURROWES
GRO FLATEBO
DEBORAH C. FRIEDMAN
JOHN B. KNOX

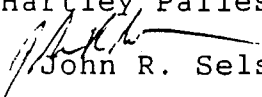


PATRICK NORTON
HARTLEY PALLESCHI
MARGARET J. REINSCH
PAUL J. SAUCIER
JOHN R. SELSER
HAVEN WHITESIDE
JILL IPPOLITI, RES. ASST.
BARBARA A. MCGINN, RES. ASST.
BRETA. PRESTON, RES. ASST.

STATE OF MAINE
OFFICE OF POLICY AND LEGAL ANALYSIS
ROOM 101/107/135
STATE HOUSE STATION 13
AUGUSTA, MAINE 04333

27 November 1989

TO: Hartley Palleschi

FROM:  John R. Selser

Subj: Michigan Cannery and Freezers Association, Inc. et. al.
v. the Agricultural Marketing and Bargaining Board, et. al.

The Michigan Cannery case started in the Michigan courts, went to the Supreme Court of Michigan, was remanded to a lower court, returned to the Supreme Court of Michigan for a decision by that court and was then appealed to the U.S. Supreme Court.

The facts of the case are as follows: The Agricultural Marketing and Bargaining Board accredited Michigan Asparagus Growers as the sole sales and bargaining representative under the Michigan Agricultural Marketing and Bargaining Act. The Michigan Cannery and Freezers Association brought an action in the Circuit court challenging the constitutionality of the Michigan law on three grounds: (1) conflict with the Federal Agricultural Fair Practices Act, (2) exceeding the police power of the state, and (3) exceeding the scope of its title. In addition, they complained of failure to comply with the Administrative Procedures Act.

The Michigan Supreme Court held that the act was Constitutional on all counts and that the appropriate administrative procedures had been complied with. The Michigan Cannery and Freezers Association appealed the alleged constitutional conflict with the Federal Agricultural Fair Practices Act to the U.S. Supreme Court.

The U.S. Supreme Court determined that the Michigan Agricultural Marketing and Bargaining Act was preempted by the Federal Agricultural Fair Practices Act and was therefore unconstitutional. The Michigan act, although not requiring every producer to join the association, did require (once the requirements for accreditation were met) all producers to pay a service fee to the association and to abide by the contracts

the association negotiated with the processors. The Federal Act intended to shield processors from coercion to join an association by both processors and producers. The Supreme Court determined that the Michigan Act was preempted by the Federal Act because the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

None of the courts in the Michigan Canner case addressed the situation where a handler refuses to sign contracts with individual members of the bargaining association after signing an agreement with the bargaining association.

241NRG