980016

SF-0006-05 (4/88) Document6

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT OF AGRICULTURE

DATE: December 15, 1997

TO: Senator Dallas Sams, Chairman, Senate Agriculture and Rural Development Committee
Representative Steve Wenzel, Chairman, House Agriculture Committee

FROM: Perry Aasness, Assistant Commissioner

PHONE: (612) 296-4435

SUBJECT: Agricultural Marketing and Bargaining Task Force Report

Please find attached the final report of the Agricultural Marketing and Bargaining Task Force Report. The task force was authorized by 1997 Laws of Minnesota, Chapter 142. The task force was charged with making recommendations on modifications to the Agricultural Marketing and Bargaining Act, Minnesota Statutes, Section 17.691 to 17.701. The proposed changes to the law are attached as appendix A to the report.

If you have any further questions or concerns, please feel free to contact me.

1997 Minn. Laws Chap. 142 Sec. 1

AGRICULTURAL MARKETING AND BARGAINING ACT

TASK FORCE REPORT

1997 MINNESOTA LAWS CHAPTER 142

SUMMARY

The Minnesota Marketing and Bargaining Advisory Task Force has met four times to make recommendations on modifications to the Agricultural Marketing and Bargaining Act, Minnesota Statute 17.691-17.701. In the initial meetings, task force members outlined the concerns of the processors and growers. Presenters discussed the history of Minnesota's Agricultural Marketing and Bargaining Act and compared Minnesota's statute with other states. Proposed changes to the law and final recommendations were discussed at subsequent meetings. The Advisory Task Force was given a reporting deadline of December 15, 1997.

PROCESS

Four meetings were held by the Marketing and Bargaining Advisory Task Force. At the Task Force's initial meeting, an outline of the provisions of the current statute was given by Doug Spanier, legal analyst for the Department of Agriculture. Bob Hanna and Dean Ibberson, Task Force members from the Southern Minnesota Farm Crops Association, gave a background of the problems concerning the statute and formation of the task force. They outlined three issues which they felt were important: 1) the need for mandatory and binding arbitration between the processors and growers as a part of contract negotiations, 2) mandatory collection of association fees by the processors, and 3) full payment for "passed" acreage. Task Force members were informed that a state law already existed that dealt with the "passed" acreage issue, the Minnesota Wholesale Produce Dealer's Act, Minnesota Chapter 27. It was suggested that since the growers did not fully complete the procedures outlined in the current marketing and bargaining law, that the growers should complete the current process before proposing changes to that law.

Subjects discussed at subsequent meetings included a history of the Minnesota Marketing and Bargaining Act. Only one other contract dispute has occurred under the Act since its passage in 1973. Other subjects presented were the marketing and bargaining acts from other states and an explanation of the Wholesale Produce Dealers Act. In addition, Michelle Gullickson Moore, a task force member representing a dispute resolution organization presented information on the mediation and arbitration processes. On October 5, 1997, members of the Department of Agriculture, Senator Dennis Fredrickson, and a group of vegetable growers met in Sleepy Eye regarding their concerns about the current marketing and bargaining law.

At the third meeting the processor members of the task force submitted a proposal for changes to the marketing and bargaining act. Another meeting was held to continue discussing changes to the proposal. At the end of that meeting, two issues remained unresolved for two of the growers on the task force. First, the growers wanted some kind of negotiation process that would be binding on the growers and the processors. Second, the growers wanted mandatory collection of association fees by the processors. The first issue was subsequently resolved after several phone calls between the department and task force members. The other issue remained unresolved.

FINAL RECOMMENDATIONS

The Advisory Task Force agreed on making changes to the statute. (See Appendix A). The recommended changes to the statute includes the following:

1. Eliminating the accreditation requirement that associations obtain contracts with growers covering 50% of the quantity of a commodity produced in a bargaining unit area;

2. A structured procedure for negotiations between grower associations and processors, including mandatory mediation after two informational exchanges if either side requests mediation;

3. Binding arbitration of remaining issues if agreed to by the processors and the growers association after mediation is completed;

4. Required negotiation classes for both the association and the processor;

5. An advisory committee to monitor and review the effectiveness of the statute; and

6. Information submitted by a growers' association as part of the accreditation process shall be considered private data on individuals or nonpublic data. Current law provides only that the processor's list of growers be private.

The Advisory Task Force also has one recommendation that is not in the proposed changes to the law. It was recommended that the Department of Agriculture provide education to growers regarding the Marketing and Bargaining Act and the Wholesale Produce Dealer's Act, so that they are better informed.

At the time of this task force report, there remains two areas of concern that have not been resolved for two grower members of the task force. As stated earlier in the report, the first concern is the mandatory collection of association fees by a processor. The processors indicated during the task force meetings of their concerns of mandatory collection of fees, including: a) the administrative cost of collection through added computer programming, additional staff responsibilities, increased postage and supplies, lien questions, legal fees; b) responsibility for growers not paying or incorrect fee collection; c) liabilities resulting from fee collection; d) collecting fees for an organization that may or may not trust the actions of the processor; e) the length of time fees would need to be collected; and f) getting permission for payment reduction by individual growers. The proposal does allow collection of association fees by a processor to be a negotiable item each year during the bargaining process between processors and growers. In addition, the task force agreed to eliminate the artificial cap on fee collection in the existing law and allow growers to collect fees based on their desires.

An additional concern of the two grower members involves grower access to the processor's list of growers. Those grower members recommend that applicants for accreditation have access to the processor's list of grower/suppliers so that they would know whom to contact when forming an association and how many members they would need to satisfy the statutory requirements. The processors and other members of the task force feel the list of growers is proprietary information and should remain private because mandatory release could hurt competition and some grower/suppliers may not want the information released to a private organization such as an association of producers. These issues could be further explored in the advisory committee created in the task force proposal.

MEMBERS

See attached Appendix B

CURRENT LAW

Minn. Stat. 17.692

Since agricultural products are produced by numerous and often scattered individual producers, the marketing and bargaining position of individual producers will be adversely affected unless they are free to join together voluntarily in cooperative associations or other associations as authorized by law. Membership of a producer in such a cooperative association or other association can only be meaningful if a handler of agricultural products is required to bargain in good faith with an agricultural cooperative association or other association as the representative of the members of such association. Production and marketing of agricultural commodities constitutes a basic and essential industry. Agricultural producers do not now enjoy the opportunity, comparable to that of industrial workers and those in many other forms of enterprise or employment, to organize and bargain effectively. Neither is adequate government provision available to assure that the bargaining process shall be fair both to producers and handlers and in the public interest.

Minn. Stat. 17.693

Subdivision 1. For the purposes of sections 17/691 to 17.701, the terms defined in this section have the meanings given them.

Subd. 2. "Association" means an association of producers, or federation of cooperative association of producers engaged in producing, marketing, bargaining, shipping or processing functions of an agricultural commodity on behalf of its members who are producers of such agricultural commodity, which has been accredited by the commissioner.

Subd. 3. Repealed, 1996 c 310 s 1

Subd. 4. "Producer" means any person, who in any one calendar year within the previous two calendar years, produces or causes to be produced any agricultural commodity in quantity beyond the person's own family use, and who is able to transfer, during the calendar year, to a handler or an association a merchantable title to the agricultural commodity or provide management, labor, machinery, facilities, or any other production input, with the assumption of risk, for the production of the agricultural commodity under a written contract.

Subd. 5. "Agricultural commodity" includes all agricultural goods produced under contract for marketing as defined by the commissioner of agriculture. It does not include any commodity sold by a producer to another producer for the other's own exclusive use and not for resale. The kinds, types and subtypes of products to be classed together as an agricultural commodity for the purposes of sections 17.691 to 17.701 shall be determined by the commissioner on the basis of common usage and practice.

PROPOSED LAW

Section 17.692 is deleted and recreated to read as follows:

17.692 DECLARATION OF POLICY. Agricultural products are produced in Minnesota by many individual farmers, ranchers and handlers scattered throughout the state. The efficient production and marketing of agricultural products by farmers, ranchers, and handlers is of vital concern to their welfare and to the general economy of the State of Minnesota. 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. 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 and affects the welfare of the people of Minnesota. It is, therefore, declared to be the policy of this state and the purpose of this chapter to establish standards of fair practices required of handlers and producers in their dealings in agricultural products and to encourage settlement of disputes between handlers and producers of agricultural products.

Minn. Stat. 17.693

Subdivision 1. For the purposes of sections 17.691 to 17.702, the terms defined in this section have the meanings given them.

Subdivision 2. 'Association' **or 'Association of producers'** means any association of producers ~~or federation of cooperative association of producers engaged in producing, marketing, bargaining, shipping or processing functions of an agricultural commodity on behalf of its members who are producers of such agricultural commodity, which has been accredited by the commissioner.~~ **of agricultural commodities engaged in marketing, bargaining, shipping, or processing an agricultural commodity into agricultural products on behalf of its members who are producers of such agricultural commodity, which has been accredited by the commissioner.**

Subd. 3. Repealed, 1996 c 310 s 1

Subd. 4. "Producer" means any person, who in any one calendar year within the previous two calendar years, produces or causes to be produced any agricultural commodity in quantity beyond the person's own family use, and who is able to transfer, during the calendar year, to a handler or an association a merchantable title to the agricultural commodity or provide management, labor, machinery, facilities, or any other production input, with the assumption of risk, for the production of the agricultural commodity under a written contract.

Subd. 5. "Agricultural commodity" includes all agricultural goods produced under contract for marketing as defined by the commissioner of agriculture. It does not include any commodity sold by a producer to another producer for the other's own exclusive use and not for resale. The kinds, types and subtypes of products to be

CURRENT LAW

Subd. 6. "Hanaıe. means a person, other than an association, engaged in the business or practice of acquiring agricultural commodities from producers or associations for processing or sale; grading, packaging, handling, storing or processing agricultural commodities received from producers or associations; contracting or negotiating contracts or other arrangements with producers or associations with respect to the production of any agricultural commodity; or acting as an agent or broker for a handler in the performance of any function or act specified above. It does not include a producer who sells at a retail establishment which the producer owns and operates or who sells at a produce market, agricultural commodities
produced by the producer and agricultural commodities produced by another producer subject to value limitation established by the commissioner.

Subd. 7. Repealed, 1996 c 310 s 1

Subd. 8. "Marketing year" shall mean, generally, any time between the second day of February of the previous calendar year and the first day of February of the subsequent year, unless the commissioner shall determine an alternative time period for a specific agricultural commodity to be designated as its marketing year.

Minn. Stat. 17.694 Accreditation.
Subdivision 1. Any association accredited under this section may engage in bargaining as provided for under sections 17.691 to 17.701.

(1) An association desiring accreditation shall file with the commissioner in the form required by the commissioner. The request shall contain properly certified evidence that the association meets the standards for accreditation and shall be accompanied by a report of the names and addresses of member producers, the name of each handler to whom the member producer delivered or contracted to deliver the agricultural commodity during the previous two calendar years and the quantity delivered or acreage grown. A fee to cover the costs of the commissioner in processing the request shall be established pursuant to chapter 14, and paid by the association when the request is filed.

(2) The commissioner may require all handlers of an agricultural commodity produced in a bargaining unit area as individuals or through their trade association to file with the board within 30 days following such a request, a report, properly certified, showing the correct names and addresses of all producers of the agricultural commodity who have delivered the agricultural commodity to the handler during the two calendar years preceding the filing of the report and the quantities of the agricultural commodity received by the handler from each named producer during those periods. The information contained in the individual reports of handlers filed with the commissioner shall not be made public by the commissioner nor available to any person for private use.

PROPOSED LAW

lassed together as an agricultural commodity for the purposes of sections 17.691 to 17.70. .d be determined by the commissioner on the basis of common usage and practice.

Subd. 6. "Handler" means a person, other than an association, engaged in the business or practice of acquiring agricultural commodities from producers or associations for processing or sale; grading, packaging, handling, storing or processing agricultural commodities received from producers or associations; contracting or negotiating contracts or other arrangements with or on behalf of producers or associations with respect to the production of any agricultural commodity; or acting as an agent or broker for a handler in the performance of any function or act specified above. It does not include a producer who sells at a retail establishment which the producer owns and operates or who sells at a produce market, agricultural commodities
produced by the producer and agricultural commodities produced by another producer subject to value limitation established by the commissioner.

Subd. 7. Repealed, 1996 c 310 s 1

Subd. 8. "Marketing year" shall mean, generally, any time between the second day of February of the previous calendar year and the first day of February of the subsequent year, unless the commissioner shall determine an alternative time period for a specific agricultural commodity to be designated as its marketing year.

Minn. Stat. 17.694 Accreditation.
Subdivision 1. Any association accredited under this section may engage in bargaining as provided for under sections 17.691 to 17.702.

(1) An association desiring accreditation shall file with the commissioner in the form required by the commissioner. The request shall contain properly certified evidence that the association meets the standards for accreditation and shall be accompanied by a report of the names and addresses of member producers, the name of each handler to whom the member producer delivered or contracted to deliver the agricultural commodity during the previous two calendar years~~, and the quantity delivered or acreage grown~~. **The association information on individuals submitted to the Commissioner shall be private data on individuals as provided in Section 13.02 subdivision 12. The association information that is not data on individuals is nonpublic data under Section 13.02 subdivision 9.** A fee to cover the costs of the commissioner in processing the request shall be established pursuant to chapter 14, and paid by the association when the request is filed.

(1A) The Commissioner shall notify all handlers named in the request for accreditation of an association of producers. Such notice shall be sent to the handlers named in the request via first class mail within ten days of the Commissioner receiving the request for accreditation. The Commissioner shall maintain records indicating the date of mailing.

(2) The commissioner may require all handlers of an agricultural commodity produced in a bargaining unit area

CURRENT LAW

Subd. 2. In determination of accreditation, the commissioner shall determine whether bargaining shall be appropriate by plant, processor, or company. This determination shall be the unit area for the bargaining provisions of sections 17.691 to 17.701 as is applicable to associations and handlers. In making a determination, the commissioner shall define as appropriate the largest bargaining unit area in terms of the quantity of the agricultural commodity produced, the definition of the agricultural commodity, geographic area covered and number of producers included as is consistent with the following criteria:

(a) The community of interest of the producers included;

(b) The potential serious conflicts of interests among members of the proposed unit;

(c) The effect of exclusions on the capacity of the association to effectively bargain for the bargaining unit as defined;

(d) The kinds, types and subtypes of products to be classed together as agricultural commodity for which the bargaining unit is proposed;

(e) Whether the producers eligible for membership in the proposed bargaining unit meet the definition of "producer" for the agricultural commodity involved;

(f) The wishes of the producers;

(g) The pattern of past marketing of the commodity.

Subd. 3. An association shall be accredited only if it complies with the following:

(a) The association meets the requirements of the Capper-Volstead Act, United States Code, title 7, section 291-2.

(b) The association has submitted a copy of its bylaws which provide that: Each member of the association shall have one vote in all votes of the membership of the association; that officers or directors shall be elected by a majority of the members voting or by delegates representing a majority of the membership; and that all elections shall be by secret ballot.

(c) The association would have marketing and bargaining contracts for the current or next marketing year with more than 50 percent of the producers of an agricultural commodity who are in the bargaining unit area and these contracts would cover more than 50 percent of the quantity of that commodity produced by producers in that bargaining unit area. The commissioner may determine the quantity produced by the bargaining unit area using information on production in the prior year, current marketing information, and projections on production during the current marketing year. The commissioner shall exclude from the quantity of the agricultural commodity contracted by producers with producer owned and controlled processing cooperatives and any quantity produced by handlers. An association whose main purpose is bargaining but which processes a surplus into a form which is not the subject of bargaining is not a processing cooperative. The contracts with members shall specify the agricultural commodity and that the members have appointed the association as their exclusive agent in negotiations with handlers for prices and other terms of trade with respect to the sale and marketing of the agricultural commodity and obligate the members of the association to dispose of their production or holdings of the agricultural commodity through or at the direction of the

PROPOSED LAW

as individuals ~~or through their trade association~~ to file ~~with the board~~ within 30 days following such a request, a report, properly certified, showing the correct names and addresses of all producers of the agricultural commodity who have delivered the agricultural commodity to the handler during the two calendar years preceding the filing of the report~~, and the quantities of the agricultural commodity received by the handler from each named producer during those periods.~~ The information contained in the individual reports of handlers filed with the commissioner shall not be made public by the commissioner nor available to any person for private use.

Subd. 2. In determination of accreditation, the commissioner shall determine ~~whether~~ **the appropriate** bargaining ~~shall~~ **unit to** be ~~appropriate~~ by plant, ~~processor, or company.~~ **but may define the bargaining unit by processor or company if there is a history of identical contracts offered to producers on a processor or company-wide basis**. This determination shall be the unit area for the bargaining provisions of sections 17.691 to 17.702 as is applicable to associations and handlers. In making a determination, the commissioner shall define as appropriate the ~~largest~~ bargaining unit area in terms of the ~~quantity of the~~ agricultural commodity produced, the definition of the agricultural commodity, geographic area covered and number of producers included as is consistent with the following criteria:

(a) The community of interest of the producers included;

(b) The potential serious conflicts of interests among members of the proposed unit;

(c) The effect of exclusions on the capacity of the association to effectively bargain for the bargaining unit as defined;

(d) The kinds, types and subtypes of products to be classed together as agricultural commodity for which the bargaining unit is proposed;

(e) Whether the producers eligible for membership in the proposed bargaining unit meet the definition of "producer" for the agricultural commodity involved;

(f) The wishes of the producers;

(g) The pattern of past marketing of the commodity.

Subd. 3. An association shall be accredited only if it complies with the following:

(a) The association meets the requirements of the Capper-Volstead Act, United States Code, title 7, section 291-2.

(b) The association has submitted a copy of its bylaws which provide that: Each member of the association shall have one vote in all votes of the membership of the association; that officers or directors shall be elected by a majority of the members voting or by delegates representing a majority of the membership; and that all elections shall be by secret ballot.

(c) The association would have marketing and bargaining contracts for the current or next marketing year with more than 50 percent of the producers of an agricultural commodity who are in the bargaining unit area ~~and these contracts would cover more than 50 percent of the quantity of that commodity produced by producers in that bargaining unit area. The Commissioner may determine the quantity produced by the bargaining unit area using information on production in the prior year, current marketing information, and projections on production during the current marketing year. The Commissioner shall exclude from the quantity of the agricultural commodity contracted by producers with producer owned and controlled processing cooperatives and any quantity produced by handlers~~. An association whose main purpose is

CURRENT LAW

association.

Subd. 4. Within 60 days of the filing date of the request for accreditation by an association, the commissioner shall determine whether the association shall be accredited. If the commissioner determines that insufficient evidence was filed by the association, the commissioner may permit the association to file an amended request for accreditation within 30 days following the determination and notification of the association. The commissioner shall then determine, within 30 days of the filing of the amended request, whether the association shall be accredited. An association which is denied accreditation after filing of an amended request may not file another request for accreditation for a period of one year.

Subd. 4a. Within 30 days of a decision by the commissioner denying accreditation to an association, the association may request a hearing before the commissioner. The commissioner shall then conduct a hearing to determine whether the association shall be accredited. This hearing shall be governed by the provisions of sections 14.57 to 14.60. If the commissioner, after this hearing has been held, determines that the association should not be accredited, the association may appeal this decision in accordance with sections 14.63 and 14.69. Only an association denied certification after such hearing may appeal under this chapter.

Subd. 5. Accreditation of the association by the commissioner shall be effective upon receipt by the association of the notice of accreditation from the commissioner.

Subd. 6. The commissioner shall consider revocation of accreditation upon any of the following conditions:

(a) Upon receipt of a request from an accredited association for its own disaccreditation.

(b) Upon receipt of a petition requesting that the accredited association be disaccredited and bearing the signatures of at least ten percent of the producers of an accredited association in the bargaining unit. Following the receipt of a petition bearing the signatures of at least ten percent of the producers of an accredited association in a bargaining unit the board shall order the commissioner to initiate a referendum among the members of the accredited association and if in the referendum a majority of the producers, producing 50 percent of the commodity approve, the association accreditation shall be revoked by the board.

PROPOSED LAW

ıargaining but which processes a surplus into a form which is not the subject of bargaining ɔt a processing cooperative. The contracts with members shall specify the agricultural commodity and that the members have appointed the association as their exclusive agent in negotiations with handlers for prices and other terms of trade with respect to the sale and marketing of the agricultural commodity and obligate the members of the association to dispose of their production or holdings of the agricultural commodity through or at the direction of the association.

Subd. 4. Within 60 days of the filing date of the request for accreditation by an association, the commissioner shall determine whether the association shall be accredited. If the commissioner determines that insufficient evidence was filed by the association, the commissioner may permit the association to file an amended request for accreditation within 30 days following the determination and notification of the association. The commissioner shall then determine, within 30 days of the filing of the amended request, whether the association shall be accredited. An association which is denied accreditation after filing of an amended request may not file another request for accreditation for a period of one year.

Subd. 4a. Within 30 days of a decision by the commissioner denying accreditation to an association, the association may request a hearing before the commissioner. The commissioner shall then conduct a hearing to determine whether the association shall be accredited. This hearing shall be governed by the provisions of sections 14.57 to 14.60. If the commissioner, after this hearing has been held, determines that the association should not be accredited, the association may appeal this decision in accordance with sections 14.63 and 14.69. Only an association denied certification after such hearing may appeal under this chapter.

Subd. 5. Accreditation of the association by the commissioner shall be effective upon receipt by the association of the notice of accreditation from the commissioner.

Subd. 6. The commissioner shall consider revocation of accreditation upon any of the following conditions:

(a) Upon receipt of a request from an accredited association for its own disaccreditation.

(b) Upon receipt of a petition requesting that the accredited association be disaccredited and bearing the signatures of at least ten percent of the producers of an accredited association in the bargaining unit. – **Within ten days** following the receipt of a petition bearing the signatures of at least ten percent of the producers of an accredited association in a bargaining unit,~~the board shall order~~ the Commissioner ~~to initiate~~ **shall order** a referendum, **to take place at least seven days but not more than twenty days, after the order** among the members of the accredited association and if in the referendum ~~a majority of the producers, producing 50 percent of the commodity~~ **fifty percent of association members** approve, the association accreditation shall be revoked by the ~~board~~ **commissioner**. **The commissioner shall have representatives of the department present at the referendum vote to conduct the referendum and take action to prevent unfair practices by the association of producers or handlers to obstruct or influence voting. Tabulation of the vote shall be the responsibility of the department. The department may promulgate rules governing any referendum for repeal of accreditation. A request for a revocation of accreditation may occur only during the first three months of the marketing year.**

CURRENT LAW

Subd. 7. The accredited association shall represent all member producers who are in the bargaining unit area and it shall act as exclusive sales agents for the bargaining unit area in negotiations with handlers. The association may not assess, bargain for, or claim to represent those producers who choose not to be represented by the association or choose not to have a bargaining committee bargain for them.

17.695 Marketing and bargaining committee.
Subdivision 1. After accreditation of the association, the association shall establish and authorize a marketing and bargaining committee to negotiate, as the association's exclusive agent, with handlers for the sale and marketing of the agricultural commodity for which the association was accredited.

Subd. 2. This committee shall be comprised of members of the association elected by the association in a secret ballot election, except that the association may contract with legal counsel who shall, at the discretion of the association, be eligible for membership on the committee.

Subd. 3. The production of the agricultural commodity shall comprise a significant portion of the total producing operation of each committee member.
Subd. 4. Members who have any quantity contracted with a producer owned and controlled processing cooperative are not eligible to serve on a marketing and bargaining committee for such a commodity.

17.696 Unfair practices of handlers and associations.
Subdivision 1. Producers of agricultural commodities are free to join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage in any of the following practices, defined as unfair practices:
(a) To coerce a producer in the exercise of the right to join and belong to or to refrain from joining or belonging to an association or to refuse to deal with a producer because of the exercise of the right to join and belong to an association.

(b) To discriminate against a producer with respect to price, quantity, quality or other terms of purchase, acquisition or other handling of agricultural products because of membership in or contract with an association.

(c) To coerce or intimidate a producer to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a handler.

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

(e) To make or circulate unsubstantiated reports about the finances, management or activities of associations or other handlers.

(f) To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of sections 17.691 to 17.701.

PROPOSED LAW

Subd. 7. The accredited association shall represent all member producers who are in the bargaining unit area and it shall act as exclusive sales agents for the <u>members of the accredited association in the</u> bargaining unit area in negotiations with handlers. The association may not assess, bargain for, or claim to represent those producers who choose not to be represented by the association or choose not to have a bargaining committee bargain for them.

17.695 Marketing and bargaining committee.
Subdivision 1. After accreditation of the association, the association shall establish and authorize a marketing and bargaining committee to negotiate, as the association's exclusive agent, with handlers for the sale and marketing of the agricultural commodity for which the association was accredited.

Subd. 2. This committee shall be comprised of members of the association elected by the association in a secret ballot election, except that the association may contract with legal counsel who shall, at the discretion of the association, be eligible for membership on the committee.

Subd. 3. The production of the agricultural commodity shall comprise a significant portion of the total producing operation of each committee member.
Subd. 4. Members who have any quantity contracted with a producer owned and controlled processing cooperative are not eligible to serve on a marketing and bargaining committee for such a commodity.

17.696 Unfair practices of handlers and associations.
Subdivision 1. Producers of agricultural commodities are free to join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage in any of the following practices, defined as unfair practices:
(a) To coerce a producer in the exercise of the right to join and belong to or to refrain from joining or belonging to an association or to refuse to deal with a producer because of the exercise of the right to join and belong to an association.

(b) To discriminate against a producer with respect to price, quantity, quality or other terms of purchase, acquisition or other handling of agricultural products because of membership in or contract with an association.

(c) To coerce or intimidate a producer to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a handler.

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

(e) To make or circulate unsubstantiated reports about the finances, management or activities of associations or other handlers.

(f) To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of sections 17.691 to 17.702.

CURRENT LAW

(g) To refuse to bargain with an association with whom the handler has had prior dealings or with an association whose producers in the bargaining units have had dealings with the handler prior to July 1, 1973.

Subd. 2. An association shall not engage nor permit an employee or agent to engage in the following practices, defined as unfair practices:

(a) To enter into a contract which discriminates against a producer represented by that association.

(b) To act in a manner contrary to the bylaws of the association.

(c) To coerce or intimidate a handler to breach, cancel or terminate an agreement or marketing contract with an association or a contract with a producer.

(d) To make or circulate unsubstantiated reports about the finances, management or activities of other associations or handlers.

(e) To conspire, combine, agree or arrange with another person to do or aid or abet the doing of any practice which is in violation of sections 17.691 to 17.701.

17.697 Bargaining defined; notice of commencement of negotiations; mediation procedure.

Subdivision 1. As used in sections 17.691 to 17.701, "bargaining" means the mutual obligation of a handler and an association or their designated representatives to meet at reasonable times and confer and negotiate in good faith. Negotiations may include all terms relative to trading between handlers and producers of the agricultural commodity such as:

(a) prices and terms of sale
(b) quality specifications
(c) quantity to be marketed by acreage or weight
(d) transactions involving products and services utilized by one party and provided by the other party
(e) check off procedures pursuant to assessments levied by the association, not to exceed one-half of one percent of the gross value of the producers annual production contract are collected by handlers from proceeds to producers within the bargaining unit and paid to the association.

Subd. 2. The association shall notify the commissioner of the commencement of negotiations.

Subd. 3. (a) If no agreement is reached at the expiration of ten days after service of such notice to the commissioner, the association may, at any time thereafter, petition the commissioner to assume supervision over the dispute, except as provided for by clause (e).

PROPOSED LAW

(g) To refuse to bargain with an association with whom the handler has had prior dealings or with an association whose producers in the bargaining units have had dealings with the handler prior to July 1, 1973.

Subd. 2. An association shall not engage nor permit an employee or agent to engage in the following practices, defined as unfair practices:

(a) **To coerce a producer in the exercise of the right to join and belong to or to refrain from joining or belonging to an association or to refuse to deal with a producer because of the exercise of the right to join and belong to or refrain from joining an association**.

(b) To enter into a contract which discriminates against a producer represented by that association.

(c) To act in a manner contrary to the bylaws of the association.

(d) To coerce or intimidate a handler to breach, cancel or terminate an agreement or marketing contract with an association or a contract with a producer.

(e) To make or circulate unsubstantiated reports about the finances, management or activities of other associations or handlers.

(f) To conspire, combine, agree or arrange with another person to do or aid or abet the doing of any practice which is in violation of sections 17.691 to 17.702.

Section 17.697 is deleted and recreated to read as follows:

Section 17.697 INFORMATIONAL EXCHANGES; DISPUTE RESOLUTION.

Subdivision 1. As used in sections 17.691 to 17.702, "informational exchange" means the mutual obligation of a handler and an association or their designated representatives to meet at a mutually agreed upon time in conformance with this chapter and confer and provide information about their expectations for the upcoming marketing year. The informational exchange must be a serious, fair, and reasonable attempt to reach agreement by acknowledging or refuting the reason points brought up by either party with respect to the terms and conditions of contract relative to trading between handlers and producers of the agricultural commodity. The topics may include, but are not limited to the following:

(A) prices and terms of sale
(B) quality specifications
(C) quantity to be marketed by acreage or weight
(D) transactions involving products and services utilized by one party and provided by the other party
(E) check-off procedures pursuant to assessments levied by the association whereby a

CURRENT LAW

(b) The commissioner shall then set a time and place for conference with the parties to present facts representing each party's case and hearing arguments. The commissioner shall take such steps, in accordance with rules promulgated under sections 17.691 to 17.701, as the commissioner deems expedient to affect a voluntary, amicable and expeditious adjustment and settlement of the differences between the handler and the association.

(c) At any time prior to 15 days before the first day of the marketing year in dispute, if an agreement on the issues in dispute between the association and the handler has not been reached, the handler may elect not to purchase, directly or indirectly, any quantity of the agriculture commodity produced by the association during that marketing year; or, the affected producers may elect not to sell, directly or indirectly, any quantity of the agricultural commodity produced by the association during that marketing year; or, the affected producers may elect not to sell, directly or indirectly, any quantity of the agricultural commodity to the handler during that marketing year.

(d) If either party makes an election, the other party is not under an obligation to continue bargaining with the party so electing for terms during the marketing period in dispute. Both parties may, however, engage immediately in bargaining for the following marketing year.

(e) If the petition requesting the commissioner to assume supervision over a dispute is presented 15 days or less before the marketing year in dispute, then the commissioner shall exercise discretionary authority, according to rules promulgated under sections 17.691 to 17.701, in determining which disputes are arbitrable before the start of the marketing year in dispute.

PROPOSED LAW

portion of the producers annual production payment under a contract are collected by handlers from producers within the bargaining unit and paid to the association on some other arrangement.

Subd. 2. The handler and an association of producers or their designated representatives shall meet at least two times for informational exchanges prior to sixty days before the beginning of the marketing year. Provided, however, that neither party shall be required to disclose proprietary business or financial records or information. Both parties shall inform the department in writing of the time of both informational exchanges at least ten days prior to the first meeting. Verification of completion of training in negotiation, as described in sec. 17.699, must be included with the notification sent to the Commissioner.

Subd. 3. After the conclusion of the second informational exchange and no agreement is reached, negotiations may continue between the parties at mutually agreed upon times. Mediation may be requested in accordance with this chapter by any party.

Subd. 4. The parties may reach agreement for a contract during the informational exchanges. However, the obligation to meet for informational exchanges does not require either party to agree to a proposal, to make a concession, or to enter into a contract.

Subd. 5. If an agreement is not reached during the informational exchanges, then, negotiations shall be considered to continue and either party may request mediation as provided in this chapter. Negotiations may continue without mediation and an agreement may be reached without the use of mediation. Negotiations must be a serious, fair, and reasonable attempt to reach agreement by acknowledging or refuting with reason points brought up by either party with respect to the terms and conditions of a contract relative to trading between handlers and producers of the agricultural commodity. A request for mediation will require both parties to the negotiation to complete the mediation process described in this chapter, but does not obligate either party to agree to a proposal, to make a concession, or to enter into a contract. However, the parties shall be required to perform according to any agreement reached at the conclusion of the mediation process.

Subd. 6. An association of producers or a handler may request mediation only within ten days after the second informational exchange meeting. Written notice requesting mediation must be mailed to the Commissioner and postmarked within ten days of the second informational exchange, with a copy to the non-requesting party, and the notice for mediation shall contain the last offer made by the party requesting mediation. Within three days after receiving the request for mediation, the Commissioner shall require the non-requesting party to provide reasons for rejecting the last offer made by the requesting party and revisions to the last offer that might be required to reach an agreement. The non-requesting party will have five days from the date of the postmark to provide a response to the Commissioner and also provide a copy of the response to the requesting party. The Commissioner will inform the American Arbitration Association or a comparable dispute resolution organization who will make available a list of at least three qualified mediators, but not more than six, for the parties to select one individual to mediate the dispute. Qualified mediators are those who have met the training requirements of Rule 114.12 of the Minnesota General Rules of Practice for the District Courts, and are familiar with this Act, and have served as mediator in at least three other commercial disputes, or have commensurate experience. The handler and the association may agree on a mediator or, failing agreement, the Commissioner may select the mediator from the list provided by allowing each party to strike one mediator and choosing one from the remaining names on the list.

Subd. 7. The AAA mediation rules shall be followed during the mediation process. If there is a conflict between those rules and this statute, the statute will prevail. Any information shared in the mediation process or offers to settle are to be considered confidential and shall not be used against either party in any other proceeding court action, or dispute resolution process unless otherwise discoverable from outside of the mediation process.

Subd. 8. The mediation process shall conclude within twenty days after the mediator has been notified by the department of his or her selection. If the mediator feels that additional time may result in an agreement between the parties, the mediator may extend the mediation process for an additional five days. However, the mediation must conclude, under any circumstance, no later than fifteen days prior to the start of the marketing year, unless the parties agree to a different date, but no later than the first day of the marketing year.

Subd. 9. All costs for retaining a mediator and proceedings during the mediation process shall be shared equally by both parties.

Subd. 10. The Commissioner has the subpoena authority to compel participation in the mediation process for either party after the informational exchanges.

Subd. 11. Any final, written agreement reached during the mediation procedure shall be enforceable under the law and the courts of this state. The parties are not required to reach an agreement, but they are required to proceed through the mediation process as outlined in this chapter.

Subd. 12. If an agreement is not reached during the mediation process, and upon written consent by both parties, binding arbitration as set forth in this chapter may be used to create a contract or resolve the dispute.

Subd. 13. The parties shall each notify the Commissioner after the end of the mediation period, if an agreement has not been reached, of their desire to use binding arbitration to settle the dispute. An Arbitrator must be selected as provided in subdivision 18. The notification must include 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.

Subd. 14. For all matters submitted to arbitration, the arbitrator may choose between the final offers of the parties or fashion a different solution between, but not exceeding, the final offers of the parties. If the parties reach an agreement on the matters under arbitration before the arbitrator issues a decision, they may submit a joint final offer that 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 district court for the county in which the failure occurs. The arbitrator may use other information in addition to that provided by or elicited from the parties. The arbitrator shall issue a decision within ten days of the commencement of arbitration and that decision is 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.

Subd. 15. Within five days after the arbitrator's decision, the handler shall prepare a contract that must include all terms agreed to by the parties in bargaining or awarded in arbitration and shall present the contract to the association of producers who must accept the terms of the contract within five days of its presentation.

Subd. 16. The Commissioner, in consultation with the American Arbitration Association or comparable dispute resolution organization, shall establish a list of arbitrators who are qualified by education, training, and experience to carryout the responsibilities of an arbitrator under this section.

Subd. 17. All costs of arbitration must be borne equally by the parties. The arbitrator shall submit a statement of charges and expenses to the parties and to the Commissioner. Each party shall pay the arbitrator directly.

Subd. 18. The arbitrator must be selected by the Commissioner. The commissioner shall submit a list composed of the names of three persons knowledgeable in the marketing of the agricultural commodity from which the arbitrator must be chosen. Qualified arbitrators are those who have met the training requirements of Rule 114.12 of the Minnesota General Rules of Practice for the District Courts, are familiar with this Act, and have served as an arbitrator in at least three other commercial disputes, or have commensurate experience. The selection must be made by the association representative and the handler representative, each striking one names from the list. If two names remain, the Commissioner decides which one is the arbitrator.

17.698 Basis for mediation and bargaining decisions.

All decisions of mediation and bargaining which result from section 17.697 shall be based upon the following factors:

(a) Prices or projected prices for the agricultural commodity paid by the competing handlers in the market area or competing market areas.

(b) Amount of the commodity produced or projections of production in the production area or competing

Section 17.698 FACTORS TO BE CONSIDERED IN MEDIATION AND ARBITRATION

All decisions of mediation and ~~bargaining~~ arbitration which result from section 17.697 ~~shall be based upon~~ must consider the following factors:

(A) Prices or projected prices for the agricultural commodity paid by competing handlers in the market area and competing market areas.worldwide.

CURRENT LAW

marketing are

(c) Relationsh... veen the quantity produced and the quantity handled by the handler.
(d) The producers cost of production including the cost which would be involved in paying farm labor a fair wage rate and providing them with adequate housing.
(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) Kind, quality or grade of the commodity involved.
(j) Stipulation of the parties.
(k) Such other factors which are normally or traditionally taken into consideration in determining prices, quality, quantity and the costs of other services involved.

17.699 Time limit upon decisions.

The commissioner shall announce findings of fact and decisions in all cases in which the commissioner has assumed supervision during the year previous to the marketing year in dispute by the fifteenth day of the marketing year in dispute. To expedite decisions, the commissioner may engage the services of the bureau of mediation services, whose recommendations shall be considered in the final determination.

PROPOSED LAW

(B) Amount of the commodity produced or projections of production in the production area and competing market areas worldwide.
(C) Relationship between the quantity produced and the quantity handled by the handler.
(D) The producers cost of production including the cost which would be involved in paying farm labor a fair wage rate and providing them with adequate housing.
(E) The efficiency of farm operations of similar size and the projected prices of alternative agricultural commodities grown in the market area.
(F) The cost of production of similar sized handlers.
(G) The average consumer prices for goods and services, commonly known as the cost of living.
(H) The component of the agricultural commodity that makes up the producers income.
(I) The impact of the award on the competitive position of the handler in the marketing area and competing areas **worldwide.**
(J) The impact of the award on the competitive position of the agricultural commodity in relationship to competing commodities.
(K) A fair return on investment.
(L) Kind, quality or grade of the commodity involved.
(M) Stipulation of the parties.
(N) Such other factors which are normally or traditionally taken into consideration in determining prices, quality, quantity and the costs of other services involved.

Delete: Section 17.699 TIME LIMIT UPON DECISIONS

This section would become obsolete upon passage of new legislation.

CREATE A NEW SECTION 17.699 to read as follows:

Section 17.699. NEGOTIATION CLASSES REQUIRED. Upon accreditation of an association of producers, at least two members of bargaining teams from both the association and the handler named in the application must attend instructional classes covering negotiation, mediation, arbitration, and facilitation approved by the Commissioner. The instruction period must be at least three hours. The informational exchanges may not commence unless certificates of completion are on file with the Commissioner. After an association has been accredited for a period exceeding one year, the association and the handler must have at least one member of their bargaining team in informational exchanges or negotiations complete training in the previous year of at least three hours in negotiation, mediation, arbitration, and facilitation, as described in this section, before the dates for informational exchanges are determined. Verification of training must accompany the notification to the Commissioner that informational exchanges are scheduled.

17.70 Violation Procedure - no changes
17.701 Rules - no changes

Section 17.702 ADVISORY COMMITTEE. The Commissioner shall establish an Agricultural Marketing

CURRENT LAW	PROPOSED LAW
	<u>and Bargaining Advisory Committee to monitor and review the implementation and effectiveness of the Agricultural Marketing and Bargaining Law, Minn. Stat. Sections 17.692-17.702. The Commissioner shall appoint three producer representatives and three handler representatives to the committee. The Commissioner or the Commissioner's representative shall chair the committee. The committee shall meet at least once within two years of establishment. Additional meetings shall be held upon request by the Commissioner. The committee shall issue a status report to the Commissioner on the activities conducted under the Marketing and Bargaining statute. The Committee shall expire on June 30, 2002.</u>

FOR IMMEDIATE RELEASE: Tuesday, July 15, 1997
CONTACT: Karen Whiting, Public Information Officer 612/297-1597
Gail Ryan, Assistant Department Counsel 612/296-3378

Members Appointed to Ag Marketing and Bargaining Task Force

Thirteen newly appointed members of the Agricultural Marketing and Bargaining Task Force were announced today by Commissioner Gene Hugoson of the Minnesota Department of Agriculture (MDA). Created by legislation passed in the 1997 Legislative Session, the task force will make recommendations on modifying the Agricultural Marketing and Bargaining Law. These recommendations must include a system to resolve disputes between an accredited grower's association and a canning processor.

"We look forward to working with the task force," said Commissioner Hugoson. "The MDA welcomes suggestions and recommendations that will create a more effective procedure for managing the bargaining process between producers and processors."

Task force members were appointed in specific agricultural sectors as prescribed by the law. Task force appointments become effective July 25, 1997 and expire June 30, 1998.

Accredited Agricultural Producer Associations (2)
Robert Hanna, Morton, MN
Dean Ibberson, Sleepy Eye, MN

Statewide Farm Association (1)
Herb Halvorson, Hanska, MN

Statewide Farm Organization Representing Growers and Processors (1)
Thomas Cashman, Mankato, MN

Food Processing Industry (4)
Randy Baum, Glencoe, MN
Gary L. Braun, Sycamore, IL
John D. Exner, Madison, WI
William Arendt, Plainview, MN

Potato Growers Association (1)
Cynthia Haskins, East Grand Forks, MN

Representative with Education and Experience in Mediation and Arbitration (1)
Michele Gullickson Moore, Minneapolis, MN

MN Department of Trade and Economic Development (1)
Paul Moe, St. Paul, MN

Representative from a Higher Education Institution with Education and Experience in Agricultural Economics (1)
Steven J. Taff, St. Paul, MN

Representative of the Minnesota Commissioner of Agriculture and Task Force Chair (1)
Perry Aasness, St. Paul, MN