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GRIEVANCE BOARD

UNITED STATES DEPARTMENT OF AGRICULTURE

IN RE:

UPPER MIDWEST

Docket No. AO-361-A35

MILK MARKETING ORDER

DA-01-03

Hearing held on the 26th day of June 2001

at Radisson Hotel South & Plaza Tower

7800 Normandale Boulevard

Bloomington, MN

TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE JILL CLIFTON

APPEARANCES:

GREGORY COOPER, GINO TOSI, WM. RICHMOND, MARVIN BESHORE,
JOHN VETNE, ESQUIRE, RICHARD LAMERS, CHARLES ENGLISH,
SYDNEY BERDE, VICTOR HALVERSON, NEIL GULDEN, ROBERT E.
VANDER LINDEN, RODNEY CARLSON, CURTIS KURTH, DENNIS
TONAK, BILL DROPIK, KELLY KRUG, ROBERT HORTON, CARL
CONOVER, JIM HARS DORF, BILL HUGHES, JAMES HAHN, PETER
HARDIN

1 ***

2 [Witness sworn]

3 ***

4 ADMINISTRATIVE LAW JUDGE: Thank you, you may
5 be seated.

6 MR. HAHN: Thank you.

7 ADMINISTRATIVE LAW JUDGE: And you may
8 proceed.

9 ***

10 JAMES HAHN,

11 having first been duly sworn, according to the law,
12 testified as follows:

13 MR. HAHN: Land O'Lakes, Inc. Continues to
14 support the Federal Order program and promotes the
15 concept of efficient and orderly marketing. LOL also
16 believes pooling should be based on performance and is
17 not in favor of restricting access to pooling to benefit
18 a select few. Fewer restrictions provide for market
19 efficiencies resulting in the least cost to serving the
20 fluid market. The USDA is to be commended in the
21 adoption of the Class I pricing surface as a result of
22 Federal Order Reform. This one change has allowed for
23 more liberalized pooling, which is a means of gaining
24 access to Class I proceeds on a wider basis, but access
25 can only be gained through performance. Participants

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1 must be willing to serve the market or in other words to
2 perform. The net impact of Federal Order Reform has
3 been positive for Upper Midwest producers. Class I
4 utilization has increased from 14-and-a-half percent in
5 January 2000 to 20.7 percent in May 2001. This
6 evolutionary process benefits local producers whose milk
7 is pooled on other Orders as well as producers whose
8 milk remains pooled on Order 30. The Orders will
9 equilibrate. Utilization will tend to come together as
10 the needs of the various Orders are met based on
11 performance provisions. Milk of producers should
12 continue to be allowed to move freely to meet market
13 conditions. Upper Midwest organizations must be willing
14 to share local utilization if they expect to share in
15 Class I proceeds and other areas or risk the loss of
16 credibility. Proponents of proposal #1 are seeking to
17 restrict the pooling of milk produced in California on
18 the basis that it is sharing in a marketwide pool.
19 California does not have a marketwide pool. Proceeds
20 from fluid and soft use are paid to producers on the
21 basis of quota equity and not distributed marketwide.
22 Overbase or non-quota milk is priced based on
23 manufacturing values. Only recently did California
24 institute a number of \$1.70 per hundredweight based on
25 19-and-a-half cents per pound of solids non-fat on the

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1 skim side to limit the spread between quota and overbase
2 milk. Furthermore, adoption of this proposal would
3 prohibit Federal Order pooling of milk regulated under a
4 State Order with bona fide marketwide pooling. The
5 North Dakota State Order and Pennsylvania Milk Marketing
6 Board currently are considering changing their
7 provisions to incorporate marketwide pooling. Other
8 pricing programs such as the Northeast Compact and
9 various over order pricing agencies such as Upper
10 Midwest Marketing Agency would appear to be threatened
11 should this proposal be adopted. The PMMB Class I State
12 Mandated Price is \$1.65 per hundredweight, yet the
13 challenge of double dipping goes unheard. The very
14 nature of the marketing system in place in old Order 68
15 promotes the type of pooling practices being questioned
16 at this Hearing. Premium levels fall short of
17 procurement costs, producer premiums paid by LOL to its
18 members serving the Minneapolis market have averaged
19 \$1.81 per hundredweight for the first five months of
20 this year. This is an increase of 47 cents per
21 hundredweight compared to the same period of 2000. The
22 additional premiums are due to Federal Order pooling on
23 adjoining Orders, which obviously benefits all local
24 producers. However, premiums announced by UMMA averaged
25 \$1.27 per hundredweight for 2000 compared to \$1.12 per

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1 hundredweight for 2001...

2 ***

3 [Off the record]

4 [On the record]

5 ***

6 MR. HAHN: ...who effectively retain the
7 entire announced premium. This system promotes a
8 distant set up to ship to fluid handlers beyond the
9 minimum performance level of 10 percent or an incentive
10 to attach additional volumes of producer milk to
11 subsidize the costs or losses of serving the fluid
12 market. The real issue facing this industry is not
13 California milk. The impact of pooling reserve supplies
14 is similar whether that reserve is located in Pine
15 Island, Minnesota, Melrose, Minnesota, or Orland,
16 California. Regardless of location, the performance
17 criteria must be met to provide for pooling eligibility.
18 The subsidy received relating to shipping costs is
19 comparable. The solution to this dilemma is not
20 artificial restrictions but to address performance
21 requirements. Increasing shipping percentages to serve
22 the fluid market will provide all the equity that is
23 necessary. Those handlers shipping a minimum
24 requirement will be forced to either ship twice as much
25 volume or reduce the volume of milk pooled. Producers

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1 should be indifferent as to where that reserve supply is
2 located since the impact is the same. It is LOL's
3 contention that they have the right to pool milk based
4 on performance. The address of the producer should be
5 irrelevant. As for double dipping, now the pooling
6 proceeds is paid to LOL members in California. Pooling
7 revenue is used to subsidize the losses of serving the
8 fluid market. Premiums paid to Orland members were 85
9 cents per hundredweight and 77 cents per hundredweight
10 in August and September '99 respectively based on cheese
11 yield. These months immediately preceded pooling on the
12 Upper Midwest Order. Premiums for comparable months of
13 2000 were 51 cents per hundredweight and 72 cents per
14 hundredweight when approximately 68 percent of the milk
15 on that particular payroll was pooled. Proponents of
16 Proposal #1 would suggest that the Market Administrator
17 recognize the existence of the California State Order
18 for purposes of excluding producer milk. However, in
19 the event a fluid plant located in California has route
20 distribution in a Federal Order Marketing Area, Federal
21 Order provisions dictate the use of Federal Order
22 pricing for purposes of compensatory payments rather
23 than the California regulated Class I price. For
24 purposes of industry accommodation, LOL is willing to
25 withdraw support for Proposal #2. However, LOL strongly

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1 supports the premise that overbase milk be eligible for
2 pooling in the Upper Midwest Order. Additionally LOL
3 contends that overbase pooling and restricting of the
4 pooling of quota milk embodies the principles set forth
5 by proponents of Proposal #1. And if I could make one
6 other comment?

7 ADMINISTRATIVE LAW JUDGE: You may.

8 MR. HAHN: In addressing questions relating to
9 Mr. Cooper earlier, the producer payroll report at
10 Orland lists each month the volume of quota milk
11 assigned at the milk of each producer that is paid by
12 LOL and we can very easily define the volume of quota
13 milk and non-quota milk to each producer. That is not
14 an issue. And that concludes my statement. Thank you.

15 ADMINISTRATIVE LAW JUDGE: Thank you. Cross
16 examination of Mr. Hahn? Yes, Mr. English?

17 ***

18 BY MR. ENGLISH:

19 Q. Mr. Hahn, before you were employed by
20 Land O'Lakes you worked for a number of years for the
21 Market Administrator's Office in Order 30

22 A. That is correct.

23 Q. Okay. Were you ever employed by the
24 California Department of Food and Agriculture?

25 A. No, I was not.

1 Q. Have you attended California Department
2 of Food and Agriculture Hearings regarding their pooling
3 and pricing program?

4 A. No, I have not.

5 Q. Were you here earlier today to hear the
6 testimony of the witnesses from the California
7 Department of Food and Agriculture?

8 A. Yes, I was.

9 Q. Did you hear the statement from Mr.
10 Horton that the pooling system provides the sharing
11 among producers the value from all milk uses?

12 A. Yes, I did.

13 Q. But does that not conflict with your
14 statement that overbase milk is priced based on
15 manufacturing values?

16 A. I don't believe that it does. In my
17 opinion there is not a marketwide pool of the revenues
18 in California, it's a two-tiered system and the Class I
19 and soft product revenues are paid primarily to the
20 quota holders.

21 Q. Are you aware of two-tier systems that
22 have existed in the past in Federal Orders?

23 A. Not really, no. I'm not very familiar
24 with those.

25 Q. If there were such two-tier systems that

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1 existed in Federal Orders at the same time there were
2 provisions preventing the double pooling of milk and
3 there was no exception for the milk that was basically
4 in the second tier Federal Orders, wouldn't that tend to
5 mean that the Federal Order milk still couldn't double
6 pool?

7 A. Milk that was regulated by Federal
8 Orders. That is correct.

9 Q. Regardless of whether it had a two-tier
10 price. Correct?

11 A. Right. We're talking about multiple
12 Federal Orders I assume?

13 Q. Yes.

14 A. Right. That's correct.

15 Q. Is there a difference then between that
16 two-tier pricing in Federal Orders that assuming for a
17 moment it existed in the past and the state system?

18 A. Well, I think there's a great deal of
19 differences. As Mr. Conover suggested it's a difference
20 of statute.

21 Q. You testified that none of the money --
22 Let's see now. -- you pool -- approximately how much
23 milk does Land O'Lakes pool on the Upper Midwest Order
24 from California?

25 A. That's proprietary information.

1 Q. Would it be fair to say that it's a
2 significant portion of the portion that is -- Without an
3 exact number, sir. -- is it a significant portion of
4 what is being pooled on Order 30?

5 A. No.

6 Q. You say none of the pooling proceeds is
7 paid to Land O'Lake members in California. You imply,
8 but never quite say. Are all the dollars being paid
9 then to dairy farmers of Land O'Lakes in the Upper
10 Midwest?

11 A. Not at all. I stated very emphatically
12 that the revenues received from pooling are used to
13 subsidize the losses used to service the fluid market.

14 Q. Where?

15 A. Where?

16 Q. Yes, the losses in the fluid market
17 where?

18 A. In Woodbury, Minnesota. The Dean plant
19 at Woodbury.

20 Q. And is 100 percent of it going for the
21 purpose of compensating for losses for serving a plant
22 at Woodbury?

23 A. And at Thief River Falls. The Thief
24 River Falls plant is also a customer of LOL and that's
25 also a Dean plant that we service.

1 Q. Was it also pooled on California?

2 A. It was regulated by the California
3 marketing program, yes.

4 Q. But in other words for clarity of this
5 record, it was included and participated in the pool
6 of...

7 A. Yes.

8 Q. ...California?

9 A. I would make a distinction because only
10 about 6 percent of that milk is quota milk and so very
11 little of that milk drew quota value. And so it's
12 really a, you know, a differentiation of the word
13 pooling.

14 Q. And again you said...

15 A. That's being pooled by the State of
16 California.

17 Q. And again you said you were able to
18 differentiate quota from overbase milk but were you here
19 earlier today for the testimony of the CFDA that said
20 you can't differentiate quota in overbase milk?

21 A. Well, they are making distributions to
22 Land O'Lakes based on quota held by its members and that
23 corresponds with the payroll information that we have on
24 our database.

25 Q. But to the extent that you have a

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1 proposal that would allow the pooling of -- I take it if
2 6 percent of the milk was quota that means that the rest
3 was overbase. So that means everything else is going to
4 get to be pooled under your Proposal #3. Correct?

5 A. If it met the performance requirements.

6 Q. But it's true that if it met the
7 performance requirements it could be pooled on Order 30?

8 A. That is correct.

9 Q. Okay. You heard the testimony of the
10 witnesses for the California Department of Food and
11 Agriculture that you can't segregate the milk as a quota
12 in overbase milk. If you had three tankers of milk, you
13 wouldn't know which one of those was quota and you
14 wouldn't know which overbase. Correct?

15 A. I don't think it's necessary to segregate
16 the milk, it's a matter of simple subtraction in terms
17 of what is the total volume of milk and how much of it
18 holds quota value.

19 Q. I'm confused by your statement that in
20 the event a fluid plant located in California has a
21 route disposition in a Federal Marketing Order, Federal
22 Order provisions dictate the use of Federal Order
23 pricing for purposes of compensatory payments. It seems
24 to imply that somehow that doesn't acknowledge the
25 existence of the California State Order. Is that what

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1 you're trying to say?

2 A. Not at all. Not at all. What I'm trying
3 to say is the fact that you have a partially regulated
4 distributing plant located in California that is making
5 route sales in a Federal Marketing Area. When the
6 Market Administrator determines a compensatory payment
7 applicable to that plant, the Market Administrator is
8 going to use Federal Order pricing, not the California
9 mandated pricing that that plant is regulated by. And
10 so there is no incentive for that plant to reduce the
11 Class I price under the Federal Order system to compete
12 for sales in a Federal Order because the Market
13 Administrator is going to use the Federal Order pricing
14 not the California State Pricing Program.

15 Q. How does that relate to this question of
16 the California pool allowing, in this instance without a
17 change in the regulation, basically drawing money from
18 two different pools?

19 A. Well, the point in including that in my
20 testimony was merely that we're talking here in the
21 Upper Midwest market we're talking about Federal
22 regulations and the Market Administrator has Federal
23 regulations to abide by, not the California statutes.
24 I'm not trying to evade your question, I'm not sure I
25 understand what the question is.

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1 Q. Well, isn't the point that USDA has
2 already adopted provisions in 1000.76 that recognize the
3 existence of a marketwide pooling program like
4 California's?

5 A. I'm not sure that they do. I don't...

6 Q. Okay. I didn't think you did. Thank
7 you.

8 A. I don't know.

9 ***

10 ADMINISTRATIVE LAW JUDGE: Yes, Mr. Vetne?

11 ***

12 BY MR. VETNE:

13 Q. Mr. Hahn, good afternoon.

14 A. Good afternoon.

15 Q. The milk that you've testified to that is
16 pooled by LOL in Order 30 but stays in California, to
17 what kind of plant, plant or plants, is that milk
18 delivered or diverted to within the State of California?

19 A. To a cheese processing plant.

20 Q. Only to a cheese processing plant?

21 A. Yes.

22 Q. Okay. And for that milk when it stays in
23 California, if the Class 4-B price is less than the
24 overbase price LOL receives a payment even on overbase
25 milk from the California pool. Is that correct?

1 A. I believe that's correct.

2 Q. With respect to I guess it's Altadena in
3 California that has just route distribution in the Upper
4 Midwest?

5 A. Yes.

6 Q. A distributing plant that's partially
7 regulated. When the Market Administrator looks at the
8 Federal Order price to determine a compensatory payment
9 for Altadena, is it not true that one of the regulatory
10 options Altadena may and probably does avail itself of
11 is to demonstrate to the Market Administrator that it
12 has paid at least as much for milk as the Federal Order
13 would require if it were fully pooled?

14 A. I would believe that's one of their
15 options, yes.

16 Q. Okay.

17 A. And the key point there is, is what the
18 Federal Order would require based on the Federal Order
19 pricing, not the California pricing.

20 Q. Right. But less us -- if Altadena, in
21 complying with State Order pricing, paid for it's Class
22 I and Class II and its plant blend equaled or exceeded,
23 the plant blend under the State Order, equaled or
24 exceeded Federal Order obligations, it would because of
25 compliance with the State Order also have no additional

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1 compensatory payment obligation under the Federal Order?

2 A. Yes, I would expect that the Market
3 Administrator would take a look at what would be the
4 total blended value paid to those producers on the value
5 of milk that was distributed to the marketing area and
6 make a determination of whether that exceeded the Order
7 obligation. That's correct.

8 Q. Distributed in the market...

9 A. Was equal to or exceeded.

10 Q. Okay. Are you aware that when what's
11 called the Wichita Plan is applied that the Market
12 Administrator looks not just at the value of milk
13 distributed in the marketing area, but the value of milk
14 in all uses at the partially regulated plant?

15 A. I believe that's correct, yes.

16 Q. Okay.

17 A. I'm not as familiar with it as you are.

18 Q. I'm learning still. Do you know whether
19 Altadena, well, Altadena supplied at all by Land
20 O'Lakes?

21 A. No.

22 Q. Are your...

23 A. Not yet.

24 Q. If Federal Order milk from Land O'Lakes -
25 - Not Federal Order milk. -- if a California producer

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1 whose milk is pooled in a Federal Order diverts milk to
2 Altadena or another California distributing plant
3 partially regulated, is it not true that on Federal
4 Order milk shipped to a partially regulated plant that
5 the Federal Order allocates and grabs the Class I
6 utilization first of that partially regulated plant to
7 complete...

8 A. I believe you can divert and request a
9 Class IV, I believe that's true. I'm not sure of that,
10 John.

11 Q. Well, in that case, that's all I have.
12 Thanks.

13 A. Okay.

14 ***

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
16 Vetne.

17 MR. VETNE: Just to expand on that -- never
18 mind. I'm thinking of qualifying shipments out of a
19 supply plant. Forget that.

20 ADMINISTRATIVE LAW JUDGE: Mr. Lamers?

21 ***

22 BY MR. LAMERS:

23 Q. Good afternoon, Jimmy. And you had
24 stated that the pool receipts being acquired through the
25 pooling provisions between the California and Wisconsin

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