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2001 JUL 31 P 12:00

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UNITED STATES DEPARTMENT OF AGRICULTURE RECEIVED

IN RE:

UPPER MIDWEST

Docket No. AO-361-A35

MILK MARKETING ORDER

DA-01-03

BREIF IN SUPPORT OF EXHIBIT 33 AND IN OPPOSITION TO
EXHIBIT 5 AND ALL PROPOSALS RELATIVE TO THE
ABOVE CAPTIONED HEARING

The reason for opposition to the above is that MARKET WIDE POOLS CAN
NOT SOLVE DISORDERLY MARKETING CONDITIONS

There are two major causes to the disorderly marketing presently occurring under the Federal Order System. First, are the artificially high Class I differentials and secondly, the market wide pools.

Testimony in this hearing points to the truth of the above and also supports the content of the reply of Exhibit 33 and the proposals which were DENIED in exhibit 5.

To quote Elvin Holon Tr. 385,17 thru 386,4; "The common fault through all of the recordings is the inability of the milk supply to be able to service the market in the manner that treated all producers equitable. The superior negotiating position of milk buyers, distance to the market, which party would pay for balancing the market, and how would the variations in the supply and demand be handled, always tripped up dairy farmers in their marketing efforts. Furthermore, each attempt to improve on past efforts seemed to fail when one or more of the suppliers would opt of the added cost of serving the market and obtain a higher return for themselves, but at a lower price than the market had established."

This is indicative of the price that the "market had established" as being artificially high.

Then at Tr.387,2,8 Elvin states, "Market-wide sharing of the classified use value of milk among all producers in a marketing area is one of the most important features of a Federal Milk Marketing Order. It insures that all producers

supplying handlers in a marketing area receive the same uniform price for their milk regardless of how their milk is used.”

If this is true, why this hearing???? The whole market-wide pooling system concept does not work because it is based on artificially high Class I prices and that producers all receive the same price regardless of how their milk is used is an untruth and the system is failing. Somebody will always find a way to get around performance requirements, especially those which can not be enforced. This is why we have paper pooling. **Only milk sold directly to the fluid Class I market should partake in the Class I price.** If fluid plants want to receive supply plant milk as opposed to direct ship and they want the ability to be furnished milk on demand, they then must pay for that service. The market wide pool does not dispense freedom and justice for all and what is worse, it provides the mechanism for extended unfair trade practices which the Secretary is supposed to prohibit rather than accommodate. We can not say there is a burden of handling excess supplies when the manufacturing prices under the orders have make allowances which return cost of production, marketing of the product and return on investment. Let us look at the record.

ABUSES SEEN IN THE RECORD

First, let the record be clear. The producer settlement fund pays money only to handlers. It is the handlers who buy milk from producers in a competitive market and it is only handlers who buy and sell milk and move it in the market place.

What we have are handlers moving milk into whatever order area which gives them the greatest PPD returns so as to give themselves a competitive price advantage in the procurement of producer milk. Engaged in the practice of “double dipping” in California milk are DFA, Land O’Lakes and the National Farmers Union. Tr. 482,22, to 24.

Testimony of Wisconsin Secretary of Agriculture, Jim Harsdorf Tr.253, 20 thru 254, 17, as concerned about equity among handlers, that it is “normal business practice that one handler would charge another (handler) for being pooled (under an order) so as to get money out of the pool.

Money derived from pool are moved within the Co-operative according to their own designation. Tr. 412, 20 thru 413, 16. All producers do not receive equal shares from the pool. Co-operative plants jockey for position to obtain the most money for their plants. Questions as to distribution of the money received from the pool are not answered because of proprietary information. This means that pool funds do not necessarily have to be paid to producers and can be diverted to subsidize sales that are below cost. This alone should disqualify the use of market wide pools.

This is also seen in the testimony of Jim Hahn, Tr. 282,23 thru 293,16. What Jim has testified to is that money derived from the pool for California milk pooled on Order 30 is used to offset losses derived in the sale of milk to Class I fluid plants as described above. This in turn gives the buying plant (Deans) a competitive advantage in the cost of their milk used for Class I sales.

Entities are pooling California milk in order to gain a competitive advantage. Hollon, Tr. 431, 16 thru 432, 14. Milk is also pooled from Order 30 area on other orders for the same reason.

Plants pay fees to be included in a plant "unit" so as to be able to have their milk qualified for pooling. This has been taking place under Federal Order 30 for a long time. See Reinke, Tr. 511,1 thru 517,11. As most often, the unit qualifying group is associated with a Class I fluid plant, this means that the fluid plants are deriving these qualifying fees which in turn lowers the procurement cost of Grade "A" milk. This gives the larger Fluid plant a competitive advantage in the cost of Class I milk over smaller fluid plants who are not big enough to qualify milk to be used for manufacturing under the unit system. This provides for **UNFAIR COMPETITION in the handling thereof** which is operated under the market wide pools.

Co-operatives plants are allowed to move milk from one order marketing area to another so as to generate more money for their plants and place plants competing with themselves at a competitive disadvantage. This is **ALSO UNFAIR COMPETITION.**

LEGAL ARGUMENT

- A. All of the above constitutes disorderly marketing which does not comply with the purpose of the Act.
- B. The AMAA under TERMS COMMON TO ALL ORDERS, (7) (A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.
- C. The AMAA under BOOKS AND RECORDS 608c (8d) (1) is charged with the responsibility of obtaining ---"such information as he finds necessary to determine whether or not there has been any abuse of the privilege of exemptions from the antitrust laws." This is in conjunction with the prohibition of unfair methods of competition and unfair trade practices.

DISCUSSION

The primary and overriding concern here is the prohibition of unfair trade practices. Unfair Trade practices have been occurring for years under the market-wide pools and the above testimony shows the administration how it happens. And the above testimony, with no uncertainty is evidence of how the

pools are being used for competitive advantage. The Administration takes the view point that the Order only sets minimum prices and anything beyond that is not the Secretary's responsibility. Sec. (7) (A) does not provide for that view point. The selling of pool qualifying facilities to qualify milk in excess of fluid needs under the requirements of the Orders is abuse, disorderly marketing and extortion. This alone should disqualify the use of marketwide pooling.

This also shows how the co-operatives are abusing the privilege of the exemptions from the anti trust laws, and using those exemptions for unfair competitive advantages. This also is prohibited.

CONCLUSION

As seen in exhibit 33, the only logical "fix" is a reduction of the Class I differentials and an individual handler pool nation wide which is provided for in the AMAA. Reducing the Class I differentials by \$1.50, will reduce the disparity between the Class prices for the same Grade of milk and the fluid market would be able to obtain all the milk it needs. It would also minimize the subsidization which is taking place for the price of milk used for manufacturing.

Also of concern here, is that we need to regain the integrity of the AMS and to administer legislation which provides liberty and justice for all. I believe in our system of government and I also believe the AMS can be of assistance in the preservation of the integrity of the market and can be of great assistance by continuing to provide statistical data.

Respectfully,



7-27-01

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