



AgEcon SEARCH

RESEARCH IN AGRICULTURAL & APPLIED ECONOMICS

The World's Largest Open Access Agricultural & Applied Economics Digital Library

This document is discoverable and free to researchers across the globe due to the work of AgEcon Search.

Help ensure our sustainability.

Give to AgEcon Search

AgEcon Search

<http://ageconsearch.umn.edu>

aesearch@umn.edu

*Papers downloaded from **AgEcon Search** may be used for non-commercial purposes and personal study only. No other use, including posting to another Internet site, is permitted without permission from the copyright owner (not AgEcon Search), or as allowed under the provisions of Fair Use, U.S. Copyright Act, Title 17 U.S.C.*

No endorsement of AgEcon Search or its fundraising activities by the author(s) of the following work or their employer(s) is intended or implied.

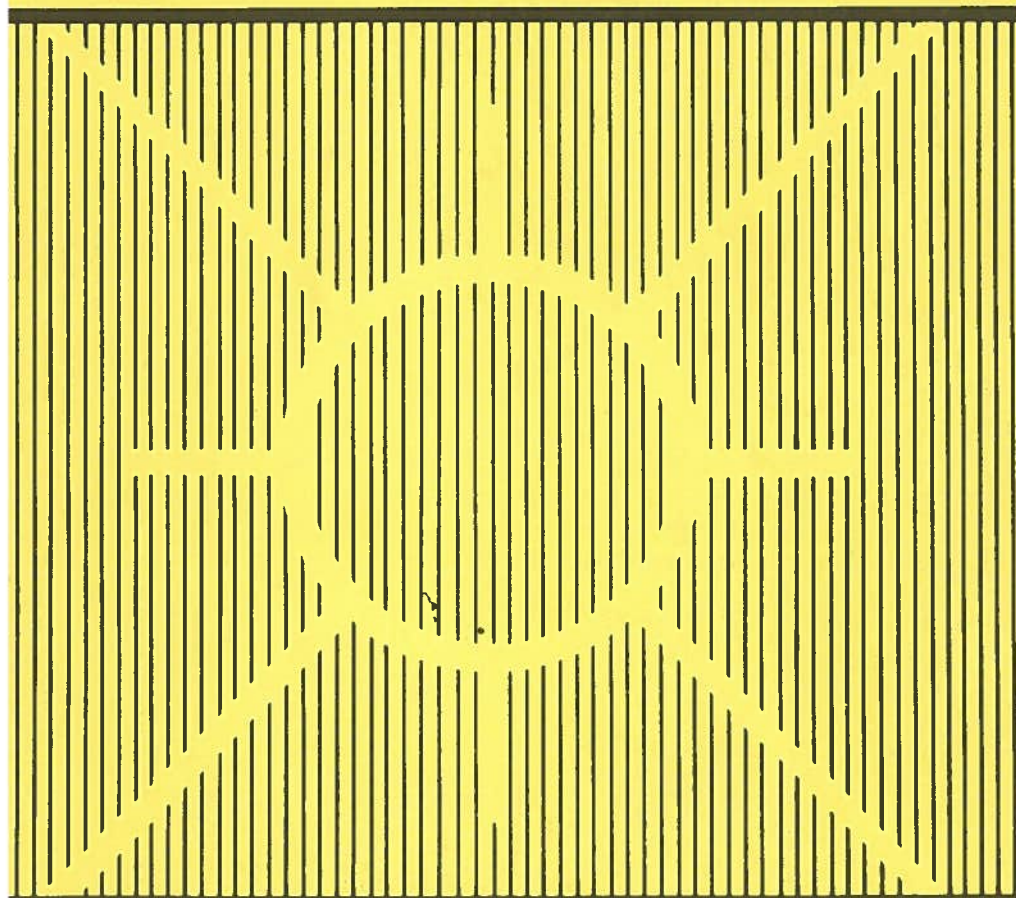
lies of the
nization and
trol of the U.S.
d System

Project 117
ograph 4

EMBER 1978

AGRICULTURAL COOPERATIVES AND THE PUBLIC INTEREST

Proceedings of a North Central Regional Research Committee 117 Sponsored Workshop St. Louis, Mo., June 6-8, 1977



Agricultural Experiment Stations of Alaska, California, Cornell, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, South Dakota and Wisconsin

Published by the Research Division, College of Agricultural and Life Sciences, University of Wisconsin-Madison.

STATUS OF NONTRADITIONAL COOPERATIVES

Eric Thor

Agricultural Economist, University of California, Berkeley

INTRODUCTION

For 75 years or more, the mainline farmer-owned cooperatives have been involved in commodity marketing—including packing, first stage processing, farm supply and service cooperatives.

In addition to the mainline cooperatives there have been nontraditional cooperatives organized to perform special functions for a specific group.

An example of a nontraditional cooperative is a cooperative association organized to provide its members with economic information on supply, demand and appraisal of the affect these factors have on price and a recommended market strategy.

The problems nontraditional cooperatives are facing regarding what functions they may perform and who may be a member, are graphically illustrated in the two cases which follow. The first case concerns the *Central California Producers' Cooperative*, and the second case details the situation of the *National Broiler Marketing Association*.

CENTRAL CALIFORNIA LETTUCE PRODUCERS

Lettuce is a highly perishable crop. The production of summer lettuce is geographically concentrated in the Salinas Valley of California. So that a relatively high quality of product may be maintained during shipment and in the retail store, the crop must be harvested within a four-or five-day period after it reaches maturity.

The marketing of lettuce has for many years been extremely disorganized. The demand for lettuce tends to be fairly rigid. A small increase in shipments has often caused a great decrease in the grower's price. Similarly, a short supply in the market has often brought a substantial increase in the price a grower receives.

It is common for: 1) growers to plant and ship *more lettuce* than will bring a reasonable price to the grower, and 2) on the other hand, growers often under-plant and ship *less lettuce* than consumers would normally buy at a price that would be profitable to the grower. There is not a system to balance supply and demand. The result is a continual fluctuation in the price growers receive for summer lettuce.

In 1972 a group of grower-shippers, engaged in producing and shipping lettuce, reasoned that by exchanging production and market information, and marketing within agreed upon guidelines, they could level out the high and low prices that were resulting from both over-and-under shipments. They also reasoned that an exchange of information could increase production efficiency, encourage orderly marketing and reduce the waste that occurred from over-planting. They also believed that the result would be beneficial to both the grower and the public.

In May of 1973, twenty-two grower-shippers organized a cooperative and en-

tered into a Cooperative Marketing Agreement. The membership included nine corporations that were engaged in growing and marketing lettuce.¹ Under the terms of the agreement, the members would exchange information regarding the actual and expected status of their lettuce production and agree to: (a) the inspection of condition, quality and quantity of their crops, (b) make no discounts or concessions in lieu of brokerage, (c) sell lettuce within the limits of ceiling and floor prices established by the cooperative, (d) not ship lettuce unless it had been sold or consigned prior to shipment, and (e) report delinquent accounts and chronic complainers to the cooperative. Members also agreed that lettuce sold by them should be shipped in master containers identifying the product as sold by a member of the cooperative. Once in operation, the board of directors of the cooperative was to evaluate the information and recommend a pricing policy.

The cooperative began operations in May, 1973. During the 1973 marketing season, some 31,262,000 cartons of lettuce were shipped from the Salinas, California area by members of the cooperative. The cooperative publicized its organization through a series of advertisements in *The Packer*, a trade newspaper. In addition, during periods of unusually large supplies of lettuce, the cooperative would sponsor special programs to increase the sale and consumption of lettuce. The cooperative had no business dealings with, and did not provide information to, persons who were not members of the organization. The cooperative did not employ any personnel or have any payroll whatsoever during 1973. The cooperative's income to cover costs came from membership fees and assessments.

In 1974, a group of Northern California food retailers joined together as Northern California Supermarkets, Inc., and filed suit against the cooperative. They charged the Central California Lettuce Producers' Cooperative and nine of its members (the corporations) with combining and conspiring to fix the price of lettuce shipped in interstate commerce from the Salinas Valley, in violation of Section 1 of the Sherman Act.

The cooperative argued that it was a nonprofit producers' cooperative association without capital stock, incorporated under the provisions of Chapter 1, Division 20, of the Agricultural Code of the State of California, was operating for the purpose of providing mutual self-help in producing and marketing farm products for its members and was exempt from charges.

It was left to the Court to determine if the defendants were in violation of the Clayton Act, and the Capper-Volstead Act, and/or the Cooperative Marketing Act of 1926.

In January, 1976 the United States District Court of Northern California gave an opinion: it stated that Section 6 of the Clayton Act, and the Capper-Volstead Act, both exempted the activities of the cooperative as challenged in the complaint.

NATIONAL BROILER MARKETING ASSOCIATION

The broiler industry is similar to the lettuce industry in that it swings from periods of market glut and low prices to periods of short supply and high prices. In 1970 a group of broiler producers met in Atlanta, Georgia, to discuss what could be done to bring market stability to the industry.² The group concluded

that producers would be able to increase profits if the supply of broilers was kept more in line with demand. The producers organized a cooperative for the purposes of: (1) collecting and disseminating information to members regarding supply and demand, and (2) providing a recommendation on what the "true value" of broiler products should be. The cooperative was not to become involved in marketing members' products. Each member was to make his own decisions and do his own marketing.

The procedure used for obtaining information included: (1) gathering economic information from public and private reports on markets and supplies of broilers, and also economic information on competing products, and (2) information over the telephone from members on the following: supply in coolers, hours processing plants operated, live supply of broilers, sales positions, future activity and market tone.

After the staff had gathered the information and evaluated it, a market committee of members studied and discussed the information prepared by the staff, and made the recommendation to members on what they believed the "true value" of the product was for the specific period.

The committee also made recommendations to members on whether to follow or make adjustments to the production guidelines published by the United States Department of Agriculture.

By mid-1971, individual farmers and corporations representing more than 50% of United States broiler production, had become members of the cooperative. The number of members was 54 and the 1971 production of the members was 3.9 billion pounds.

NBMA was incorporated under the provisions of the Cooperative Marketing Act of the State of Georgia. The articles of incorporation gave the association broad powers to engage in any activity involving or relating to the buying, receiving, grading, processing, packaging, storing, financing, shipping, marketing or distributing agricultural products produced by its members.

In 1973, the U.S. Department of Justice brought suit against NBMA accusing the cooperative of interfering with the normal market flow of broilers and stated that the cooperative was not exempt, under the Capper-Volstead Act, because some of the members (corporations) were not broiler producers.

The cooperative argued that their members were producers and that the cooperative was exempt under the Capper-Volstead Act. The United States District Court for the Northern District of Georgia held the opinion that the integrated broiler companies were, indeed, producers of agricultural products, and the cooperative was exempt under the Capper-Volstead Act.

In the spring of 1977, the United States Court of Appeals for the Fifth Circuit reversed the United States District Court for the Northern District of Georgia and held that integrated broiler companies are not "farmers" eligible to form a cooperative under the Capper-Volstead Act.

The Court of Appeals was unimpressed by the substantial interest the integrators had in the broilers. The integrators retain title to the chicks, supply fuel and veterinary services, decide the number and timing of chick placements and the age and size at which the birds will be marketed. In fact, the Court acknowl-

edged that the only major function performed by the contract growers is raising the broiler chicks to maturity. Nevertheless, it accepted the government contention that Congress clearly meant to "limit the benefits of the Capper-Volstead Act to persons that own or operate farms. Whatever else farming may mean, an irreducible minimum must be either husbandry of animals or crops or farm ownership."

The opinion concludes:

"NBMA's position that the Capper-Volstead Act should be brought up-to-date to take account of the complex structure of modern agriculture, rests on fundamental misconceptions of the Congressional purpose revealed in the language and legislative history of the Act and of the judiciary in a democratic society.

"The language and legislative history of Capper-Volstead make quite clear that Congress had no purpose to shelter from the laws of free competition the whole spectrum of agricultural enterprise. We may be certain that even in 1922 the agricultural economy had begun to evolve into the intricate thing it now is, yet Congress carefully limited the benefits of the Act to 'farmers', and the legislative history reinforces our inclination to give the word its ordinary meaning."

Legal counsel for NBMA indicates that the association will ask the Supreme Court to review this decision.

The purpose of both of these cooperatives is providing mutual help to members in improving the production planning and marketing of their farm product. The information developed and the market practices recommended were intended to more nearly fit production with consumer demand, and to encourage orderly marketing.

The achievement of these goals should be beneficial to both producers and consumers. The reduced cost which could result from increased production and marketing efficiency would be shared. The two nontraditional cooperatives discussed above face two problems that the mainline farmer-owned cooperatives do not: 1) Is the association a farmer-owned cooperative? 2) Do the members qualify as farmers?

A common definition of a farmer-owned cooperative is this: "A cooperative is an economic association for self-help."³ In a practical sense, it is a voluntary organization of persons joining together for the purpose of providing services at cost to its members and to other patrons.⁴

The membership of a cooperative affects which functions the association can perform. If a cooperative is going to assist in developing a more orderly marketing system for products such as lettuce or broilers, it is necessary that the major participants in the industry be members of the cooperative, and that the association qualifies as a cooperative under the Capper-Volstead Act.

In order that the cooperative may qualify for the benefits established by the Capper-Volstead Act, the members must be "producers of agricultural products."⁵ The problem which some of the non-traditional cooperatives are facing is, "who qualifies as a producer of agricultural products?" For example, do corporations, engaged in farming along with other enterprises, qualify as producers of agricultural products?

The Farmer Cooperative Service publication, "Information 100" points out that there seems to be no classic rule of law that prohibits corporations from becoming members of cooperatives. The publication points out that in a number of states, a cooperative can be a member of another cooperative.⁶

SUMMARY

The major problem as I see it, is not whether the producer is a corporation or not, but who controls the cooperative. If there is one member, one vote, then the corporation speaks as an individual farmer.

The status of nontraditional cooperatives is not clear. In short, the question remains, "Who can be a member and what functions can they perform?" This question needs to be resolved because it affects both the farmer and the consumer.

A further resolution by the Courts on the two cases outlined above may establish a precedent for others to follow.

NOTES

- ¹ Admiral Packing Company, Green Valley Produce Co-op, Growers' Exchange, Inc., Let-U-S-Pak, Pacific Lettuce, Royal Packing Co., Salinas Marketing Cooperative, The Grain Co., United Brands, Inc.
- ² Membership included the following companies: Cargill, Central Soya, Con-agra, Gold Kist, Heublein, F.M.C. Services, Ralston Purina, Tyson, Wilson Co., Pillsbury Co., Fielddale, Marshall Durbin, Pilgrim, Valmac Ind., O.K. Foods, Purnell's Pride.
- ³ Farmer Cooperatives in the United States, FCS Bul. 1
- ⁴ Farmer Cooperative Service, U.S. Dept. of Agriculture (1965)
Legal Phases of Farmer Cooperatives; "Information 100" Farmer Cooperative Service; U.S. Dept. of Agriculture.
- ⁵ *Capper Volstead Impact on Cooperative Structure*; "Information 97"; p. 11.
Farmer Cooperative Service; U.S. Dept. of Agriculture.
- ⁶ *Legal Phases of Farmer Cooperatives*; "Information 100" U.S. Dept. of Agriculture.