

Contract Farming Breeds Big Problems for Growers

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Contract farming and vertical integration in agriculture raise troubling issues. Some of those issues, including concerns about food safety, are very important to consumers. Some, including concerns about terrible conditions in processing plants, are very important to labor. Others, which focus on fraud, deception, and manipulation in the contracting arrangements, are very important to growers. This article focuses on the growers' concerns, with a special emphasis on the concerns of poultry growers.¹

Definitions

The term "contract farming" generally refers to situations in which a farmer raises or grows an agricultural product for a vertically integrated corporation. For example, tens of thousands of farmers nationwide are growing broilers under contract farming arrangements for major poultry-producing companies. Contract farming arrangements are also becoming common in other kinds of poultry production (such as eggs, turkeys and geese), in hog production, and in fruit and vegetable production.

There are two parties in a typical contract farming arrangement: the grower and the company. Generally, the grower provides the land, the buildings, the equipment, and the labor. The company provides the birds or animals, the feed, the medicine, and management directions.²

Unfairness Is Illegal

The types of difficulties that the growers encounter will be explained in detail below. As a background matter, though, it is important to understand that, in general, it is illegal for poultry companies to treat growers unfairly.

¹ For excellent descriptions of the consumer and labor problems referred to above, see "Ruling the Roost," *Southern Exposure*, Vol. XVII, No. 2 (Summer 1989) (Institute for Southern Studies, Durham, NC).

² This scenario is typical for a poultry or hog contract farming arrangement. It does not necessarily apply to a fruit or vegetable contract farming arrangement. Also, there are some hog "contracts" in which the grower owns the hogs. Those arrangements are usually made with a smaller, local company. Those arrangements are not being addressed in this article.

The courts have not yet had a chance to determine exactly which practices or conduct will be declared “unfair.” Poultry growers and their lawyers are working very hard now to break new ground in this area of law. Ten of the types of practices that may be declared legally unfair are listed below.

There are many laws on the books that can be used to protect growers. One of the most important laws is the federal Packers and Stockyards Act. 7 U.S.C. § 181, *et seq.* Also, there are additional federal laws,³ and some state laws,⁴ that can also be used to protect growers.

Ten Types of Unfairness

Poultry companies commonly subject growers to at least ten categories of practices that are arguably “unfair” under the Packers and Stockyards Act.

1. *Early Termination of Contract.* To begin a poultry operation, a grower is likely to make an investment of \$200,000 to \$400,000 to purchase the necessary buildings and equipment. The grower usually finances the investment by mortgaging his or her farm.

Despite this substantial capital investment, poultry companies usually make extremely short contractual commitments to growers. Most contracts commit for one flock (about seven and one-half weeks), or, at most, for one year.⁵ Notwithstanding oral representations that the contract “will certainly be renewed if all goes well,” companies sometimes terminate contracts in three years or less.

It would normally take a grower at least 15 years of poultry work to earn enough money to pay off the initial capital investment. When a grower’s contract is terminated early, he or she has nowhere to turn.⁶ The chicken houses are generally considered to be “single-use” buildings; most ex-growers are unable to find any other use for the buildings that can generate substantial income. Therefore, when the grower’s contract is terminated before the investment is paid off, the grower’s farm is at great risk of foreclosure.

³ For example, the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, *et seq.*, was invoked to protect poultry growers in *Baldree v. Cargill*, 758 F. Supp. 704 (M.D. Fla. 1990), *aff’d*, 925 F.2d 1474 (11th Cir. 1991).

⁴ For example, state laws regarding breach of contract, fraud, negligence, gross negligence, tortious interference, deceptive trade practices, breach of implied duty of good faith and fair dealing, and business opportunity sales could all be used to assert poultry growers’ rights.

⁵ The statement about the duration of “most” contracts is based upon an interview with Mary Clouse of the Rural Advancement Fund International (RAFI), who has collected copies of contracts from growers across the country.

⁶ Minnesota has a new state law that was designed specifically to address this problem. Minn. Stat. § 17.92, “Recapture of Capital Investment Required By an Agricultural Contract” (West Supp. 1992).

2. *Company Requires Grower to Make Improvements at Grower's Expense.* Most poultry-growing arrangements implicitly require that the grower must make any improvements requested by the company at the grower's expense. As a practical matter, the company representative generally tells the grower that if he or she refuses to make the requested improvements, the grower's contract will not be renewed.

It is not uncommon for these improvements to cost from \$5,000 to \$30,000. Sometimes the improvements are nonsensical, such as one company's requirement that the growers install expensive cooling systems where loss of birds due to heat has never been a problem. Growers suspect that the companies are using these requirements to undertake costly "research and development" concerning new products and procedures at the growers' expense.⁷ The financial burden imposed by these requirements compounds the difficulties described in problem #1 above.

3. *Manipulation of Inputs.* Growers are generally paid based upon the weight of the full-grown birds and the birds' feed conversion efficiency. The birds' weight and feed conversion efficiency is largely determined, though, by factors that are in the company's exclusive control. As described above, the company typically supplies all of the "inputs," including the baby chicks, the feed, and the medicine. The company also provides management direction, prescribing even minute details of the operation, such as when the curtains must be opened and closed and when the lights must be turned on and off.

Growers frequently complain that they receive bad inputs from the company and that those inputs cause poor weight and feed conversion results, which in turn yield low income. Some growers are able to document stories of baby chicks that are too sick to stand up, of fatal mistakes in the birds' medicine mixture, and of inappropriate feed formulas that impede the birds' weight gain. In all of these cases, the company's negligent or intentional manipulation of inputs caused loss of income for the growers.

4. *Unprofitable Contracts.* Poultry growers generally enter into contracts based upon oral representations by the company that the grower will earn substantial income. One company even gives potential growers a glossy pamphlet entitled "Partners In Profit," which contains sample grower income projections.

Despite these representations and projections, many contract arrangements simply do not yield a profit for the grower. Often, a contract is profitable for the

⁷ Another problem is that sometimes the company requires costly improvements just before the company cuts off a grower. A Durham, North Carolina, news weekly reported that Holly Farms required a group of 56 growers to make expensive improvements to their chicken houses just before terminating their contracts. See Yoeman, Bates, and Goldoftas, "Ruling the Roost—What's Bigger Than Tobacco, More Dangerous than Mining, and Foul to Eat?" *Independent Weekly*, Vol. VII, No. 20 (July 20-26, 1989).

- grower for the first year or two, and then the income stream takes a nose dive.⁸ By the third or fourth year, growers are often taking off-farm jobs or adding additional farm enterprises to pay for the chicken operation. Growers joke that chickens are a very expensive and unpleasant hobby; the bitter truth is that growers continue raising chickens even when the poultry operation becomes a substantial liability because the growers fear retaliatory foreclosure.
5. *Underweighing of Poultry.* Since the growers' income is based largely on the weight of the full-grown birds, accurate weighing is critical to growers. Many growers have complained that the weight which the poultry company records for their birds is significantly less than the actual weight. In one case, poultry growers alleged that the company underweighed their poultry by putting a forklift under the truck full of chickens while the truck was on the scales⁹ and by using false tare weights.¹⁰
 6. *No Payment.* Sometimes a company simply fails to pay a grower. On occasion, the company that fails to pay is a small subsidiary of a larger parent company; the small company files bankruptcy, and the parent company refuses to assume the smaller company's debts.¹¹ In any instances of nonpayment, growers have very powerful remedies under the Packers and Stockyards Act *if they file for their remedies on time.*¹²
 7. *False Rankings.* It is common for poultry growers' pay to be computed based upon a formula that factors in the grower's "rank." In this scheme, all growers who have birds picked up in the same week are put into a ranking group. The growers are ranked based upon a formula that usually focuses on the weight of the birds and the feed conversion efficiency. The "best" grower is ranked #1, and the "worst" grower is ranked #30, or #40, or whatever number signifies the last

⁸ There are many reasons for this. One common reason relates to equipment maintenance and replacement. Ammonia buildup in the poultry houses ruins metal equipment: electrical motors burn out, curtains deteriorate, and cables snap. Another reason for a cash-flow nosedive can be tax consequences of built-in changes in the financing arrangement. For example, one company structures part of the growers' income as payments on real estate debt. As those payments shift from representing interest payments to representing principal payments, tax consequences also shift, which in turn has a significant negative impact on the grower's net income.

⁹ *Baldree v. Cargill, supra.*

¹⁰ *Baldree v. Cargill.* Typically, a company weighs chickens by subtracting the *tare* weight (the weight of an empty truck) from the *gross* weight (the weight of the truck full of chickens) to obtain the *net* weight (the weight of the chickens).

¹¹ Minnesota has a new state law that is designed to address this problem. Minn. Stat. § 17.93, "Parent Company Responsibility for Contracts of Subsidiaries" (West Supp. 1992).

¹² There are very short time deadlines for filing for Packers and Stockyards Act protections in non-payment situations. For a description of these deadlines, see "Making Complaints Under the Packers and Stockyards Act," *Farmers' Legal Action Report*, Vol. 6, No. 1 (Winter 1991). If you need to know a deadline quickly, call the Packers and Stockyards Administration in your region or in Washington, DC.

place in the line. Growers who have a good ranking are paid a higher price per pound of chicken.

Growers complain that they are sometimes given false rankings. Some growers complain that they always end up at the bottom of the ranking list no matter how well they actually do. Also, growers complain that because they have no control over inputs, they have no control over how well they do.

8. *Retaliation for Complaining and/or Organizing.* When growers complain to the company about problems and unfair practices, they are often treated worse as a result. When growers organize to deal with systemic problems together, they fear retaliation. This type of retaliation is illegal.¹³ In one case, a federal court ordered a poultry company to reinstate a terminated grower who alleged that he was terminated because he is the leader of a poultry growers' organization.¹⁴
9. *Stuck With One Company.* Poultry growers in some areas complain that once they start raising chickens for one company, they can rarely switch to another company. When they apply to other companies in their geographic area, they are almost invariably turned down. It is as if there is an agreement between the companies providing that they will not contract with each others' growers.¹⁵

The other very important blacklisting problem is that growers who have had any disagreements with a poultry company seem to be on some kind of list of "known troublemakers." These growers are rejected by all poultry companies in their geographic area.

10. *Grading Problems.* One of the factors in the formula that determines how turkey growers are paid is the grade of the bird. Growers are reimbursed at a higher rate for Grade A birds and at a lower rate for Grade B birds. Growers report that grading is being done in an inaccurate manner, and that this is adversely affecting their pay. For example, one turkey grower explained that two trucks full of birds were taken out of one of his houses on a certain night. Those two trucks were taken to two different processing plants. Eighty-six percent of the birds from one truck were labeled Grade A, and only 34 percent of the birds from the other truck were labeled Grade A.

Conclusion

Poultry growers are now beginning to organize and to learn about and assert their rights. A National Contract Poultry Growers Association (NCPGA) was formed in

¹³ Retaliation for organizing is arguably a violation of the Packers and Stockyards Act (because it is an unfair practice) and of the Agricultural Fair Practices Act, 7 U.S.C. §§ 2301-06. See *Baldree, supra*.

¹⁴ In *Baldree v. Cargill, supra*, the court ordered Cargill to reinstate Arthur Gaskins, the president of the Northeast Florida Broiler Growers' Association.

¹⁵ These practices are difficult to prove. They may violate the anti-monopoly provisions of the Packers and Stockyards Act.

October, 1991, with chapters from all 13 of the major poultry producing states.¹⁶ This newsletter will continue to report about the status of growers' rights as growers continue to file lawsuits, organize, conduct legal education workshops, and draft model legislation to protect their rights.

¹⁶ For information about the NCPGA, call the Rural Advancement Fund International (RAFI), 919-542-1396.