



A Rough Game

Poultry companies' contract system is keeping poultry farmers on a very tight leash

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JOURNAL REPORTER

Monday, June 21, 2004



A Mountaire employee unloads chicks into a chicken house at Lacy Cummings' farm near Pembroke. (Journal Photo by Ted Richardson)

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YADKINVILLE

The end came quietly for the Mounces, as two generations faced the loss of farmland that had been in the family since the 1800s.

Craig Mounce stood helplessly in the lobby of the Yadkin County Courthouse while his chicken house and his father's home and 32-acre farm were auctioned to Carolina Farm

Credit for \$265,500.

Saddled with \$305,000 in debt accumulated while building and upgrading his chicken houses, Lee Mounce, Craig's father, had nowhere to turn. He says that his contract to raise chickens for Perdue Farms was cut in 2001. Bankruptcy and foreclosure followed.

Critics of the industry say that farmers such as Mounce have few options to protect themselves in a contract system with chicken companies.

The U.S. Department of Agriculture has little authority in cases involving unfair or illegal practices involving contract chicken farmers. And farmers who think that they have been victimized by poultry companies that have cut contracts or demanded expensive upgrades to chicken houses have little recourse in the courts. Many give up their right to sue when they sign contracts that call for arbitration if a dispute arises.

Laws at the state and federal level are also vague. Recent efforts to overhaul laws that deal with the poultry industry and how they deal with contract chicken farmers have stalled or failed outright.

"There's no cop on the beat for poultry growers," said Steve Etko, the legislative coordinator for the Campaign for Contract Agriculture Reform, a farm-lobbying group.

Not all farmers are upset with the system, however. Many say that raising broiler chickens on eight-week contracts or growing flocks for eggs on 12-month contracts is a steady source of income that helps take some of the unknown out of farming.

The National Chicken Council says that contract growing provides farmers with a guaranteed market and allows them to avoid risk.

"Well, it's a cash-flow income," said Lacy Cummings, a contract farmer with Mountaire Farms of North Carolina who has 12 chicken houses on his farm near Pembroke. "It's easy. You know what you can make each flock. It's stable."

A farmer who stood by Mounce during the auction last month scoffed at the notion that most chicken farmers are part-timers.

"You invest a half-million dollars, that's not side money," he said.

Most farmers he knows - even ones who have been in the business for years - are one contract away from being in the same situation as the Mounces. Even if farmers have row crops and other commodities, the loss of a chicken contract could drag the whole farm down with it.

Proposed legislation

There have been some attempts at reform in the industry in the past three years.

While the USDA's Grain Inspection, Packers and Stockyard Administration (GIPSA) oversees chicken companies' relationships with contract growers, it lacks the same authority in the chicken industry that it holds over the beef and pork industries.

The division can conduct poultry investigations and issue warnings, but it must refer cases of potentially unfair or illegal activity to the U.S. Justice Department and persuade lawyers busy with terrorism and other cases to pursue farm complaints.

And the federal Packers and Stockyard Act contains language that defines a poultry grower as someone caring for live poultry for slaughter. Egg producers are not covered.

"It's something they recognize within GIPSA is they don't have any teeth," Etko said.

Three spokesmen for GIPSA referred questions to other agency workers who didn't return calls.

A bill introduced last year and now pending before the House Agriculture Committee would amend the law to cover breeder-hen growers. It would also grant GIPSA the same administrative enforcement authority over chicken that it has over red-meat industries.

Many chicken farmers give up their right to sue by signing contracts that require arbitration if a dispute arises. But arbitration is expensive, often costing thousands of dollars just to file, a fee that many cash-strapped farmers can't afford. It also limits

rights of discovery and the right to compel evidence, making it more difficult to prove a case.

Pushing their case into the courts or arbitration may not have helped the Mounces. They say that they poured nearly \$1 million into their three houses over the years, counting construction loans, interest payments and improvements. They said that a week before Perdue officials told them in 2001 that their contract was not going to be renewed, they had borrowed money to install new fans - at the company's request.

Privacy issues don't allow the company to talk more specifically about the Mounces' situation, said Tita Cherrier, a spokeswoman for Perdue. They should have been aware of their ranking through information provided at the end of every flock, she said.

The Mounces dispute that they were ever told about their ranking.

"We didn't find out until the contract was cut that they even had a ranking system," Craig Mounce said.

When Perdue cut contracts with 95 farmers in North Carolina and Virginia farmers in August 2003, the company offered settlements to cover outstanding debts, Cherrier said.

But confidentiality clauses prevented growers from talking about what happened, said Laura Klauke, the director of contract agriculture reform for Rural Advancement Foundation International-USA, a private, nonprofit farmers advocacy group based in Pittsboro. Klauke said she talked to at least 12 of the 95 farmers.

"They were very scared," she said. Growers were given five business days to sign the settlements, Klauke said, and many signed before the deadline without seeking legal or financial counsel, because they were afraid Perdue would rescind the offer.

"The strong language of the confidentiality clauses has left growers voiceless and perpetuates a public lack of information about the unfairness embedded in the poultry contract relationship," she said.

A farmer's inability to go to court puts too much power in the hands of a poultry company, Klauke said.

The Fair Contracts for Growers Act, introduced in the U.S. Senate last year, would make it so that arbitration may be selected only after a dispute arises, preserving access to the court system for poultry farmers. Sen. John Edwards, D-N.C., is a co-sponsor of the bill, which has been referred to the Senate Judiciary Committee.

In North Carolina, a sweeping agricultural contract bill was introduced in the state Senate in 2001, but never made it out of the Commerce Committee. Sen. Eleanor Kinnaird, a Democrat who represents Chatham and Orange counties, sponsored the bill.

"Unfortunately, it got killed dead," she said. Kinnaird blames powerful lobbies and business interests of the poultry companies.

Among its provisions, the bill would have affected how companies deal with growers required to make capital investments of \$100,000 or more. If the bill had passed, it would have barred companies from cutting contracts without giving 90 days' written notice and required companies to reimburse the grower for the remaining useful life of the structure, machinery or equipment, provided the grower was acting in good faith. Exceptions included situation where the producer didn't deliver on the terms of the contract.

Kinnaird's bill also would have banned the tournament compensation system that pits growers against each other for pieces of a pool of money determined by the company. Critics say that the tournament system guarantees that some farmers will fail even if they do a good job. Companies say that tournaments simply reward the best performers.

Kinnaird said that most people don't understand how much jeopardy chicken farmers face if even one contract is cut. She doesn't see anything pending in the General Assembly to improve the situation for farmers.

"There's nothing now," Kinnaird said. "It's very sad. It died with that issue."

No need for reform

Lacy Cummings, 49, is so satisfied with his chicken-growing operation that he gives tours of his farm to prospective growers on behalf of the company.

Cummings, who has a capacity for 270,000 chickens, grows broilers for Mountaire Farms of North Carolina in 12 houses. He got into the business fairly recently, in 2000, but he has already raised more than 5 million chickens.

To farmers like Cummings, the system isn't broken and doesn't need fixing.

"I think it's a good venture," he said. "The three things to it, first is management; then, they got to be dedicated to the job, and then next is be loyal to the company."

Cummings is on a list of growers that Mountaire provides to people who are thinking about getting into chicken farming. He figures that he has given tours to about 30 prospective growers, and many of them have invested money for their own houses.

The stable income of chicken farming is attractive to Cummings. He continues to grow row crops such as tobacco and cabbage and counts on steady income from his broiler houses.

He agrees with the National Chicken Council when it says that chicken farming is merely a healthy part of a diversified farm.

"The system has worked well for 40 years and has kept tens of thousands of families on small farms who otherwise would have had to get out of agriculture altogether," the council says on its Web site. "Most companies have waiting lists of people who

want to become growers and lists of existing farmers who want to add capacity by building more grow-out houses."

More than 90 percent of chickens raised for human consumption are raised by independent farmers with contracts. Most of the other 10 percent are raised on company-owned farms. Less than 1 percent are raised by individuals with no ties to a major company.

Cummings said he talked to other farmers when he was thinking about getting into the business and doesn't worry about the short-term nature of the contracts.

"It never crosses my mind," he said. "They say as long as you do a good job, it's nothing you have to worry with, as long as you do your job. That never really bothered me. A contract ain't better than the one that signed it. If I don't hold up to what I'm supposed to do, I don't expect the company to hold up. They just expect you to follow the rules and regulations. They got a plan and you follow that, you're going to make money."

Cummings figures that the chicken companies must be making a profit, and they have to have chicken farmers to do that.

Jim Shepard, the live-operations manager for a local Mountaire complex, says that no one wants the farmer to grow a good bird more than he does.

"I don't want to see an empty house, and a good grower not have chickens," he said.

The Mountaire parent company in Delaware starts with broiler egg production at a Statesville operation that produces 4 million eggs a week. Mountaire of North Carolina includes a hatchery in Siler City, a feed mill in Candor and a processing plant in Lumber Bridge.

Shepard says that the company plans to spend some \$40 million to expand its North Carolina operations by 50 percent over the next two years or so.

"We're certainly not going to invest \$30 (million) or \$40 million and then go off with people in debt," he said. "We've got to have someplace to go to with these people with chickens."

Auction day

Craig Mounce said he was shocked in 2001 when a Perdue company driver told him that this would be the family's last flock. He called the regional office in Yadkinville to find out why.

"They told me if we had a good year we had nothing to worry about," Mounce said.

The Mounces borrowed more than \$12,000 for improvements to their chicken houses - the last loan in September for new fans - that they say the company wanted. Mounce said that 90 percent of his chickens were laying eggs and that the family farms had received numerous letters of commendation in the previous two years.

He thought that the operation was going well.

The next week Perdue said their contract would not be renewed, Mounce said. Company officials blamed a slow economy.

Company officials at the Yadkinville office didn't return several messages. Cherrier, the Perdue corporate spokeswoman, said that local officials might not have been aware of larger issues such as pending plant closings.

She said that the company never would have asked the Mounces to spend money if it had known the contract was going to be cut.

"If we were to be that kind of company, we would have a lot of growers that would say 'I'm not going to grow for Perdue Farms anymore,'" she said.

The Mounces were not able to land a contract with another company.

Lee Mounce decided not to attend the auction last month because it had been such an emotional week moving out of the house.

Neighbors saw the loading truck and rumors flew in the community about what had happened to the family.

As they prepared the property to be sold, Craig Mounce noticed that his father had stopped in the middle of mowing the yard. The elder Mounce was crying.

There was only one good thing about the situation, Lee Mounce told his son. "I won't live there as long as I've lived here," he said, comparing the rental home that he is moving to to the property where he had spent all of his 60 years.

When the auction day finally came, it arrived with thunderstorms that splattered huge drops of rain as Craig Mounce made his way to the courthouse. His eyes were red and wet.

Mounce stood in front of snack and soda machines as a lawyer from Carolina Farm Credit opened bidding at \$265,500 for 32 acres, including the house and farm.

Two people in the courthouse on other business walked through the middle of the proceedings, heading for the door. No one bid.

A fellow farmer stood by Mounce for moral support. Two men stopped to watch, and their faces expressed shock when they heard the asking price.

"Do I have any other bids?" said the lawyer. "Going once. Going twice. Sold to Carolina Farm Credit for \$265,500."

Mounce gasped. A single tear rolled down his cheek.

"Sorry about that," the lawyer said, not unkindly, as she left.

The Mounce case was not an isolated incident, according to a Farm Credit spokesman, citing several foreclosures over the last several years. But it's hard to know just how many farmers don't make it. The government doesn't track foreclosures and companies often won't say how many of their farmers went under. One farmer in Siler City sold his property at public auction himself, and then used the proceeds to pay off the loan. Others get help from family or the community.

The bank and the farmers agree that if a poultry company won't put chickens into the houses, the houses are practically worthless. The Mounces acknowledge that their property wasn't worth nearly what they owed since the chicken houses no longer produced income.

Through federal loan guarantees, taxpayers will help make up 90 percent of the difference between what a bank is owed and what it can get when a property is resold. The bank absorbs the rest of the loss.

Klauke, of the Rural Advancement Foundation, says that cases similar to the Mounces could be prevented with federal legislation prohibiting companies from capriciously canceling contracts without the farmer's having the right to recapture capital investment.

State solutions aren't effective, she said, because companies have defeated bills by threatening to go to another state where regulations would be more favorable.

Her organization trains clergy to spot signs of depression in farmers and in suicide prevention because the agency says the imbalance of power can leave farmers feeling as if they have no options.

"Your family is on the line and you're powerless to do anything to improve the situation," Klauke said. "It creates tremendous pressure on the farmer. You are powerless. To have a very independent farmer who keeps thinking if I work harder and I work harder, I'm going to solve this problem, and the harder he works, the deeper into the hole it gets him."

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