

COMMONWEALTH OF PENNSYLVANIA

MILK MARKETING BOARD

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IN RE: OVER-ORDER PREMIUM
CALCULATION HEARING

BEFORE: Richard Kreibel, Chairman
Barbara Grumbine,
Consumer Member
Luke Brubaker, Member

ALSO

PRESENT: Douglas L. Eberly, Esquire
Chief Counsel
Keith Bierly, Secretary

LOCATION: Agriculture Department
Building, Room 202
2301 North Cameron Street
Harrisburg, PA 17110-9408

HEARING: Tuesday, February 16, 2010
9:18 a.m.

WITNESSES: David DeSantis, Carl D.
Herbein, CPA, Todd Rutter,
Frank Chrastina, Earl Fink,
Dennis J. Schad

Reporter: Adrienne Johnson

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DIRECT EXAMINATION: TODD RUTTER

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2 CHAIRMAN:

3 Thank you. You may proceed.

4 DIRECT EXAMINATION

5 BY ATTORNEY YOVIENE:

6 Q. Mr. Rutter ---.

7 ATTORNEY YOVIENE:

8 He's sworn in; correct?

9 CHAIRMAN:

10 Yes.

11 BY ATTORNEY YOVIENE:12 Q. Okay. Mr. Rutter, would you
13 please state your name and business
14 address for the record?15 A. Todd Rutter, 2100 North George
16 Street, York, PA, 17404.

17 Q. Okay.

18 ATTORNEY YOVIENE:19 We noticed Mr. Rutter as a lay
20 witness. He has brought testimony to
21 read into the record.22 CHAIRMAN:

23 You may proceed.

24 BY ATTORNEY YOVIENE:

25 Q. Please proceed with reading

1 your testimony.

2 A. Okay. Mr. Chairman, I fully
3 appreciate the rough year that the
4 farmers of this country had in 2009,
5 and I also fully understand the
6 political pressure that is being
7 applied to the Board to be the Holy
8 Grail for the dairy farmer industry.
9 Unfortunately, history tells us very
10 clearly when political motives
11 interfere with market balances, bad
12 things always happen. I think the
13 state-mandated, state-subsidized
14 ethanol debacle's effect on the price
15 of corn is an example that the farmers
16 who have to buy that corn for their
17 feed can clearly relate to.

18 Milk prices are already
19 approximately 60 cents per gallon
20 retail more than they were last
21 summer. So the market has already
22 begun to correct itself. So I ask you
23 not to cave to political pressure, but
24 to let the market dictate the prices.

25 For your information, Rutter's

1 currently buys and receives milk from
2 Pennsylvania independent farmers, from
3 Pennsylvania co-op farmers, from
4 Maryland independent farmers and from
5 Maryland co-op farmers. And we sell
6 milk in Pennsylvania and out of state.
7 So once again, here we are with a
8 proposal that squarely hits Rutter's
9 business model.

10 I can't help but notice that
11 the proposal specifically hits those
12 of us with an out-of-state milk
13 supply. It's as if the Petitioners
14 expect us to take amounts we were
15 paying out-of-state producers and just
16 hand it Pennsylvania producers.

17 Mr. Chairman, all you would do
18 if this calculation is changed is
19 create a new shell game that we and
20 other dealers would have to play. I
21 have to remain competitive for my
22 entire milk supply and have no desire
23 to increase the overall cost of that
24 milk supply.

25 If the cost of our Pennsylvania

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1 supply is increased, we'll be forced
2 to look for ways to offset that
3 increase to keep the overall cost of
4 our supply the same. I will first see
5 if I have any ability to offset this
6 mandate through the amount being paid
7 for my co-op supply or my out-of-state
8 independent milk supply. If any
9 change to those pricing structures
10 makes me uncompetitive and unable to
11 maintain those supply lines, I will be
12 forced to come back to the
13 Pennsylvania supply and look for
14 alternative ways to offset the
15 increased premium.

16 Processors already absorb a lot
17 of costs associated with receiving
18 milk that are not currently passed on
19 to the producers or co-ops. Maybe
20 that will have to change if this
21 proposal goes through. Hauling and
22 quality bonus are two top-of-mind cost
23 centers that would have to be
24 reevaluated for Pennsylvania
25 producers.

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1 We'd also go on a mission to
2 sign up as many out-of-state producers
3 as we could get and then release an
4 equal volume of Pennsylvania milk from
5 our milk supply. And I'd be foolish
6 not to now engage in the business
7 project to explore and understand the
8 issues and benefits of creating a
9 Maryland distribution company and
10 facility and then divert all of my
11 Pennsylvania sales through it. This
12 could possibly negate my entire
13 Pennsylvania over-order premium
14 obligation completely.

15 In conclusion, Mr. Chairman,
16 Rutter's does not have any objection
17 to the Board trying to figure out how
18 to get more money to Pennsylvania
19 farmers, but do it in a way that keeps
20 us competitive for our entire milk
21 supply or let the state make payments
22 directly to the farms or create some
23 special tax plan for them. If you
24 make my company uncompetitive, which
25 this proposal clearly does, you can be

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1 sure that we will find some way to get
2 that competitiveness back. And in
3 that case, no one wins, and all the
4 Board has done is played another round
5 of the shell game.

6 CHAIRMAN:

7 Any other Direct?

8 ATTORNEY YOVIENE:

9 He's available for Cross
10 Examination.

11 CHAIRMAN:

12 Anyone want to Cross Examine?
13 Kevin?

14 ATTORNEY LUTKINS:

15 No, I don't have any questions
16 right now.

17 CHAIRMAN:

18 Anybody? Mr. Bell?

19 ATTORNEY BELL:

20 I'll give a shot, Mr. Chairman.

21 CROSS EXAMINATION

22 BY ATTORNEY BELL:

23 Q. This certainly is not a
24 detailed balance sheet, but just a
25 general statement of your business,

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MR. BRUBAKER:

Do you think if it was reformulated or if we did a reformulation, that your Pennsylvania producers would get less than they're getting now?

A. I think they would get more on mandated premium, but they may get less --- they may get less in other areas that would negate some of that increase.

MR. BRUBAKER:

Thank you.

CHAIRMAN:

Okay. Next witness.

ATTORNEY YOVIENE:

I'd like to call Frank Chrastina.

FRANK CHRASTINA, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

CHAIRMAN:

You may proceed.

DIRECT EXAMINATION

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1 BY ATTORNEY YOVIENE:

2 Q. Mr. Chrastina, would you just
3 please state your name and business
4 address for the record?

5 A. Okay. My name is Frank
6 Chrastina. I am general manager of
7 Dean Dairy Products, Sharpsville,
8 Pennsylvania. Business address is
9 1690 Oneida Lane, Sharpsville,
10 Pennsylvania.

11 ATTORNEY YOVIENE:

12 And Mr. Chairman, the
13 Pennsylvania Association of Milk
14 Dealers noticed Mr. Chrastina as a lay
15 witness. And he has brought testimony
16 to read into the record.

17 ATTORNEY BELL:

18 May I ask a question? And I
19 think it's fairly clear from what I
20 can see from Mr. Chrastina's
21 statement. He's going to testify
22 specifically to his belief of the
23 effects to Dean Sharpsville; is that
24 correct? And nobody else?

25 ATTORNEY YOVIENE:

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1 I think the testimony speaks
2 for itself.

3 ATTORNEY BELL:

4 Well, since I haven't had a
5 chance to fully review ---.

6 ATTORNEY YOVIENE:

7 It says ---.

8 ATTORNEY BELL:

9 Mr. Chrastina has testified in
10 the past.

11 ATTORNEY YOVIENE:

12 It says, it will adversely
13 affect a number of our Pennsylvania
14 plants, but the rest of his testimony
15 is about his Sharpsville plant.

16 ATTORNEY BELL:

17 Okay.

18 ATTORNEY YOVIENE:

19 Does that help you?

20 ATTORNEY BELL:

21 It does. Thank you.

22 CHAIRMAN:

23 Any other questions or
24 objections? Proceed.

25 BY ATTORNEY YOVIENE:

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1 Q. Mr. Chrastina, would you please
2 proceed with reading of your
3 statement?

4 A. Okay. Well, first of all, I've
5 worked in the dairy industry for 52
6 years in various capacities, including
7 operations manager, sales manager and
8 recently serving as general manager
9 for the past ten years. And you'll
10 notice accounting is not in there.

11 Dean Foods opposes the
12 Petitioner's proposal to change the
13 existing over-order premium formula.
14 It will adversely affect a number of
15 our Pennsylvania plants. As proposed,
16 the proposal would double
17 Sharpsville's mandated premiums and
18 increase Sharpsville's total premiums
19 by approximately 40 percent. We will
20 not be able to recover this. It is
21 irrelevant that that premiums are
22 built into the wholesale prices
23 because we are already paying out more
24 than those premiums that are built
25 into the wholesale price to compete

1 for our milk supply.

2 Moreover, our major accounts
3 are in service contract or tolling.
4 When major customers see a significant
5 raw milk cost increase, they have the
6 options to look elsewhere. We simply
7 will not be able to stand by and
8 accept a premium increase of that
9 magnitude because our customers will
10 not stand by and accept avoidable cost
11 increases. In the past, one of my
12 largest and most significant customers
13 has bid out portions of our business
14 when our raw milk costs became
15 uncompetitive. I simply cannot allow
16 that to happen again.

17 The Sharpsville plant is
18 located only one mile from the Ohio
19 border. This is one of the factors
20 that makes it relatively easy for our
21 customers to look to alternative
22 suppliers with competitive raw milk
23 costs from out-of-state. We have only
24 seen this happen in the past with
25 Save-A-Lot, Aldi and Costco, as they

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1 currently are importing milk from out-
2 of-state plants into Pennsylvania.

3 Fortunately, it also gives ---
4 fortunately, it also goes --- gives me
5 the opportunity to avoid this premium
6 if it, in fact, is implemented.
7 Sharpsville is currently in the
8 process of becoming less reliant on
9 cooperative milk and developing an
10 independent supply. Our goal is to
11 have about as many independents as we
12 had before we began relying on a
13 cooperative supply eight years ago.
14 That would be approximately 600
15 producers.

16 Under normal circumstances, I
17 would expect that more than half of
18 those producers would be Pennsylvania
19 producers. This was a case when we
20 had an independent supply before.
21 However, since this hearing was
22 granted, our efforts have shifted from
23 soliciting Pennsylvania independents
24 to soliciting Ohio independents. This
25 is not what we want to do, as it has

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1 been my intention to re-sign all the
2 Pennsylvania producers that we had
3 before.

4 Based on my knowledge of the
5 out-of-state milk supplies that are
6 available, I believe that we will be
7 able to develop a largely out-of-state
8 milk supply if the proposed premium
9 increase is implemented.

10 Alternatively, my large customers have
11 out-of-state warehouses, and they have
12 expressed a willingness in the past
13 when the mandated premiums were
14 uncompetitive to take deliveries out-
15 of-state. This, too, would be an
16 option that we would have to consider
17 in order to remain competitive and
18 maintain our customer relationships
19 should this additional premium be
20 adopted.

21 I do urge the Board to reject
22 this proposal. You have overseen a
23 system that has helped enhance
24 premiums to dairy farmers while
25 balancing the need to keep

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1 Pennsylvania's Class I dealers
2 competitive. Obviously, some think
3 the system is not perfect, but my
4 worry is that the more you ask of it,
5 the more it will backfire. As much as
6 Sharpsville wants to be loyal to
7 Pennsylvania dairy farmers, the
8 additional burden would force our hand
9 to leaving more than 300 Pennsylvania
10 dairy farmers without the opportunity
11 to serve a nearby Class I plant.
12 Thank you very much for the
13 opportunity to provide my point of
14 view.

15 CHAIRMAN:

16 Okay. Direct?

17 BY ATTORNEY YOVIENE:

18 Q. Mr. Chrastina, in the short
19 run, if this proposal goes into effect
20 and you haven't been able to develop
21 an out-of-state milk supply, are you
22 concerned that you would lose
23 accounts?

24 A. In the short run, yes. It
25 would certainly give our major