Arbitration Case Number 1711

Plaintiff: Pickrell Co-op Association, Pickrell, Neb.

Defendant: Farmland Grain Division, Farmland Industries Inc., Kansas City, Mo.

Statement of the Case

On Jan. 20, 1993, the plaintiff, Pickrell Co-op Association, purchased from the defendant, Grain Merchandising and Management Inc. (GMMI)/Farmland Grain Division, 100,000 bushels of U.S. No. 1 soybeans basis (F.O.B.) Kansas City, UP transit for shipment October through November 1993.

The plaintiff's purchase was verified by two contracts. The first contract (number 43103), written by Farmers Commodities Corp. (FCC) on Jan. 20, 1993, stated the following terms: The buyer, Pickrell Co-op Association, and the seller, GMMI, for 100,000 bushels of U.S. No. 1 soybeans at a basis of plus 1/2 cents SX, F.O.B. KC UP transit for shipment October/November 1993. The second contract (number 697) written by GMMI on Jan. 20, 1993 revealed the same terms as FCC contract number 43103, except that it also established a cash price of $5.985 per bushel. Contract number 697 included a remark, *"Priced at board of $5.98...."*

The plaintiff/buyer, Pickrell Co-op Association, did not write a contract confirmation for either transaction represented by FCC contract number 43103 or GMMI contract number 697. Therefore, the committee was required to rely upon the written contracts, as submitted.

The Farmland, GMMI and FCC relationship in this case was explained to the arbitration committee in Farmland's arguments: *"Farmland first states that GMMI, one of the parties to the underlying contracts at issue in this case, was an Iowa corporation and a 50/50 joint venture between Farmland and Farmers Commodities Corporation ('FCC'). On Feb. 1, 1993, in preparation for the liquidation and dissolution of GMMI, Farmland purchased from GMMI and took title to all of GMMI's open grain contracts and inventory."*

On March 23, 1993, Farmland issued sale contract number S79851 to confirm GMMI's previous contract number 697, as a sale of 100,000 bushels of U.S. No. 1 soybeans to Pickrell Co-op Association at a cash price of $5.985 per bushel.

In early November 1993, Farmland applied 45,733 bushels of soybeans to its sale contract number S79851. At this time, Farmland refused to deliver additional soybeans on contract number S79851 because of a dispute that had developed on another contract with Pickrell Co-op Association.

The other contract in dispute was Farmland purchase contract number P79848 for 100,000 bushels of U.S. No. 1 soybeans at a cash price of $5.75 per bushel. Farmland contract P79848, written March 23, 1993, replaced GMMI contract number 697 written Jan. 20, 1993.

The dispute involving Farmland contract number P79848 was not the issue presented by the plaintiff in this case, and,

therefore, required no comment other than the fact that Farmland used the existence of this contract as a reason to discontinue applying shipments to Farmland sale contract number S79851. It was Farmland's intention to offset purchase and sale contracts.

The argument presented indicated that between November and Dec. 23, 1993, discussions continued between Pickrell Co-op Association and Farmland. Pickrell Co-op Association requested delivery of soybeans against its purchase (Farmland sale contract number S79851) and Farmland continued to refuse to do so. At some point during November-December 1993, (the precise time was not clearly specified by either party), Farmland instructed Pickrell Co-op to buy-in the balance (54,266 bushels) of contract number S79851.

It appeared to the arbitrators that Pickrell Co-op finally executed a buy-in on Dec. 23, 1993 to complete its obligation. The only evidence presented to the arbitrators to establish a buy-in was FCC confirmation number 43312, written Dec. 23, 1993 between the seller, Farmland Grain Division, and the buyer, Pickrell Co-op Association. This confirmation number (43312) specified 54,766 bushels of U.S. No. 2 soybeans at $7.1125 per bushel, F.O.B. Kansas City with term of spot shipment and cancellation. It specified in remarks that $53,859.62 was due Farmland Grain Division.

The evidence and facts submitted in this case required the arbitrators to reconstruct events based upon the contractual information presented. Both parties presented more arguments and information on the disputed Farmland purchase contract number P79848 than on the disputed Farmland sale contract number S79851, the latter of which was at issue in this case. Farmland answered the plaintiff's claim, but did not counterclaim in its response.

The plaintiff, Pickrell Co-op Association, claimed $53,850 in damages, plus interest, from the buy-in date of Dec. 23, 1993.

The Findings

The arbitrators focused on FCC contract number 43103 and GMMI sale contract number 697 of Jan. 20, 1993, reconfirmed on March 23, 1993 by Farmland sale contract number S79815. These were the contracts examined because the plaintiff, Pickrell Co-op Association, filed its claim on the dispute involving this transaction.

The arbitrators found that both parties in this case failed to follow NGFA Trade Rule procedures that pertain to executing contracts and attempting to resolve disputes. The facts showed that the plaintiff failed to mail a confirmation at any time during this transaction. Second, both parties neglected to follow NGFA Grain Trade Rule 6(a) by failing to confirm trades with a contract or by failing to confirm discrepancies with the broker contracts. Therefore, the arbitrators followed NGFA Grain Trade Rule 6(c) and the contractual evidence presented to determine the outcome of this case.

On Jan. 20, 1993, GMMI issued sale contract number 697 to Pickrell Co-op Association for 100,000 bushels of U.S. No. 1 soybeans at a cash price of $5.985 per bushel. This sale was confirmed a second time on March 23, 1993 with Farmland contract number S79851. Farmland recognized the validity of this contract when it applied 45,733 bushels in early November. Farmland's refusal to apply the remaining 54,267 bushels created an incomplete shipment situation. Pickrell Co-op Association stated that Farmland insisted the 54,267-bushel balance should be bought-in, an assertion that was not challenged in Farmland's response.

Pickrell Co-op Association executed a buy-in on Dec. 23, 1993 for 54,267 bushels at cash price of $7.1125 per bushel. The buy-in resulted in a market difference of $1.1275 per bushel ($7.1125 minus $5.985 equals $1.1275). for a total amount of $61,186.04.

Farmland refused to pay this amount ($61,186.04). However, it did pay Pickrell Co-op Association $7,334.91 to settle the buy-in on contract number S79851. Farmland refused to pay the balance of $53,851.13 because it claimed an offset against Pickrell Co-op Association on contract number P79848. In arguments presented by both Pickrell Co-op Association and Farmland regarding the dispute over contract number S79851, the parties repeatedly discussed issues relating to contract number P79848. Contract number P79848 was first executed on Jan. 20, 1993, with no reference to contract number S79851. Then Pickrell Co-op Association delivered 50,000 bushels against contract number P79848 with the balance of 50,000 bushels canceled on Oct. 18, 1993, as evidenced by FCC contract number 43252. Documents and information presented revealed contract number P79848 was closed by both parties with agreeable terms and conditions, although there may have been trading and accounting errors by both parties.

The Decision

The arbitrators found in favor of the plaintiff, Pickrell Co-op Association.

In reaching its decision, the arbitrators gave much thought and discussion to Farmland's arguments regarding its desire to offset $53,851.13 against a receivable involving another contract. But the committee decided not to recognize the offset because contract number P79848 was totally satisfied and closed by both parties on Oct. 18, 1993, approximately three to four weeks prior to the dispute involving S79851. The contract was satisfied by mutual agreement and the arbitrators had neither the ability nor the authority to open a contract after

it was completed and closed as defined in NGFA Grain Trade Rule 43. The arbitrators were responsible only for resolving the dispute involving contract number S79851.

The Award

The arbitrators awarded Pickrell Co-op Association $53,851.13, plus interest at 5 1/2 percent from Dec. 23, 1993 until paid.

Submitted with the consent and approval of the arbitration committee, whose names are listed below:

Philip Hageman, *Chairman*
Parrish & Heimbecker Inc.
Brown City, Mich.

William Bluml
West Central Cooperative
Ralston, Iowa

Steve Campbell
ADM/Growmark
Decatur, Ill.

Arbitration Appeals Decision
Arbitration Case Number 1711

Appellant: Farmland Grain Division, Farmland Industries Inc., Kansas City, Mo.
Appellee: Pickrell Co-op Association, Pickrell, Neb.

It was the unanimous decision of the Arbitration Appeals Committee that prudent procedures of trade documentation were lacking by all parties (including the broker) in this case.

In the Arbitration Appeals Committee's judgment, more than one NGFA Grain Trade Rule was violated by the disputing parties. But it was our finding that NGFA Grain Trade Rule 43, specifically, was purposely breached by the defendant-appellant (Farmland) by actions taken on one contract (Kansas City contract) in an attempt to create an offset for the amounts allegedly owed by the plaintiff-appellee (Pickrell) on another disputed contract (the Lincoln contract).

Whether the amount involved in the latter-mentioned dispute (arising from the Lincoln contract pricing discrepancy) commands plenary action on its own merits through a separate arbitration is a decision to be made by the disputants, not by the Arbitration Appeals Committee.

Decision

After individually reviewing the pleadings in the original arbitration, the decision of the arbitration committee and the briefs filed in this appeal, the Arbitration Appeals Committee unanimously affirmed the original decision of the arbitration committee.

Submitted with the consent of the Arbitration Appeals Committee, whose names are listed below:

Tommy D. Couch, *Chairman*
Ohio River Grain Partnership
Cincinnati, Ohio

Scott Hackett
General Mills Inc.
Minneapolis, Minn.

Thomas J. Hammond
Columbia Grain Inc.
Portland, Ore.

Robert W. Pegan
Central States Enterprises Inc.
Heathrow, Fla.

Wellington White
O.H. Kruse Grain andMilling Co.
Ontario, Calif.