Hastings Law Journal

Volume 13 | Issue 2 Article 8

1-1961

Agricultural Insurance--Indemnification for Loss Due to Labor Dispute

Laurence L. Angelo

AGRICULTURAL INSURANCE —
Indemnification for Loss Due to Labor Dispute

By LAURENCE L. ANGELO*

DURING THE months of September and October California farms employ about 600,000 domestic farm workers to tend and harvest the state's many and varied farm products. This number decreases to a low of approximately 350,000 during the months of March and April. (Not included in these figures are 60,000 Mexican braceros annually employed in this state.)[1] In the last ten years the American labor movement has looked with interest upon these laborers as a new source of organizational strength.

The year 1960 saw this state hit by ninety-nine agricultural strikes, most of them being called to force the farmer to recognize the union as a legal bargaining agent for the workers.[2] Among the most bitter and costly of these labor disputes was the Podesta cherry strike called by the AFL-CIO's Agricultural Workers Organizing Committee (AWOC) against the San Joaquin County ranch of Fred Podesta, Sr. This forty day strike caused an estimated 200,000 dollar loss in gross return from the cherry crop and an actual economic loss to Podesta of about 88,400 dollars.[3]

The farmer, as an employer, is in a unique position when compared to his counterpart in industry. When hit by a strike or other labor trouble a farmer cannot close down and wait. He cannot attempt to outlast the union by living off inventories. He must cultivate, trim or harvest, whichever the case may be, or face the inevitable loss of a year's work and profit.

Prior to the recent acceleration in union organizing efforts[4] the farmer could afford to give little thought to such a prospect as crop loss due to a labor dispute. If threatened by a strike, he could recruit new workers who would cross the picket lines when offered higher wages. Often Mexican nationals could be utilized and would work without the added incentive of a higher wage offer.

---

* Member, Second Year class.

1 Letter from Bert W. Levit, Attorney for the Agricultural Exchange Corporation, to R. H. Cook of the California Insurance Department, June 30, 1961, on file in the law offices of Long & Levit, San Francisco.

2 Sacramento Union, January 2, 1961, p. 8, col. 2.

3 The California Farmer, July 2, 1960, p. 15, col. 1.

4 According to Mr. Norman Smith, Secretary of the Agricultural Workers Organizing Committee, the AWOC began an extensive effort to organize California's domestic farm labor force two years ago.

Today, this method of averting the effects of a strike is becoming less and less available to the farmer due to three recent developments. First, the unions, primarily the AFL-CIO, have cut into the labor pool by organizing the workers. To date their efforts have been nominal. For example, in the last two years the AWOC has signed only 12,000 dues paying members with only 3,500 presently in good standing.[5] This figure seems insignificant when compared to the total farm labor complement of California, but is important when one considers that today many farm workers, although not union members, are in sympathy with the union cause and will not pass through a picket line as they may have done in the past.[6] Secondly, because of such feeling, the farmer has had to turn to the cities to get the employees necessary to maintain his labor supply during a strike. Such employees are often unskilled in farm work, thus reducing operating efficiency during harvest time.[7] Thirdly, the California Department of Labor will not certify the use of Mexican nationals or refer local labor to the farmer when he is involved in a recognized labor dispute with a union.

Such developments have led agricultural management to search for other means of loss prevention and protection, perhaps the most promising of which is insurance.

On July 20, 1961, the Agricultural Interinsurance Exchange was certified by the State Commissioner of Insurance to issue policies insuring farmers of this state against losses resulting from labor disturbances preventing or interfering with the production, transportation or processing of their crops.[8]

The Agricultural Interinsurance Exchange (AIE) is a reciprocal insurer,[9] formed according to the provisions of the California Insurance Code;[10] and directed by a Board of Governors consisting of eleven men

---

[5] Interview with Mr. Norman Smith, Director and Secretary of the Agricultural Workers Organizing Committee, in Stockton, California, August 11, 1961.

[6] Interview with Mr. Norman Smith, *supra* note 5.

[7] During the Podesta cherry strike, mentioned previously, 1,000 people came into the orchard over the Memorial Day weekend to pick cherries. Most of this number came in answer to a public appeal made by Mr. Podesta and were inexperienced city dwellers from the nearby cities of Stockton and Modesto. As a result of their efforts 1,600 boxes were picked over the weekend, an amount which 150 experienced pickers could have done in the same period of time. The California Farmer, July 2, 1960, p. 5, col. 1.

[8] Many influential farm associations, such as the Council of California Growers, Associated Farmers, Inc., and the Northern California Growers, are furnishing support and encouragement to this insurance program.

[9] "A reciprocal exchange is an unincorporated aggregation of individual firms, or corporations called subscribers, who exchange contracts of insurance through an attorney in fact who issues the contracts and manages the exchange. Each subscriber signs a subscriber's agreement, under which the attorney in fact is given authority to represent the subscribers in insuring all other subscribers. The attorney in fact may be an individual, partnership or corporation." MOWBRAY & BLANCHARD, INSURANCE, ITS THEORY AND PRACTICE IN THE UNITED STATES, 306 (1955).

[10] CAL. INS. CODE §§ 1280-1540.

elected by the policyholders. Board members must be either policyholders or agents of policyholders. This board controls the insurance program and fixes the insurance rates.[11]

The Agricultural Exchange Corporation (AEC), a separate organization, is the attorney in fact of the AIE and conducts the Exchange's insurance business under a contract approved by the Insurance Commissioner.[12] Although not represented on the Board of Governors, the AEC carries out the policies formulated by the Board.

The Policy

Basic Coverage

"The basic coverage of the policy is against loss of costs [up to seventy-five per cent] incurred to produce a specified crop, the loss being caused by a labor disturbance that interferes with production of the crop up to the point of its shipment from the farm. The insured costs are called 'charges and expenses.' . . ."[13]

"Labor disturbances," "labor dispute" and "charges and expenses" are defined by the policy as follows:

1. Labor disturbance: "Any or all the following occurrences, if due to a labor dispute whereby the production of the specified crop[14] is prevented or impeded:
   (a) Any act or refusal to act by employees engaged for work to be performed on the described premises;
   (b) Any interference with employees or prospective employees engaged or to be engaged for work to be performed on the described premises;
   (c) Any act by employees or third persons which directly destroys or damages physical property on or adjacent to the described premises."
2. Labor dispute: "A bona fide dispute, not caused by collusion of the insured and a labor organization, or between the insured and his employees or prospective employees, concerning wages, hours, or working conditions, or concerning representation of such employees or prospective employees by a labor organization."
3. Charges and expenses: "All charges and expenses (including but not limited to taxes, interest and rent, but excluding depreciation, legal fees, litigation expense, and any salary paid to an individual insured or to a partner) actually paid, incurred, or accrued before commencement of the policy term, or during the policy term and necessary . . . to bring the specified crop to maturity, to harvest it,

[11] Form letter from Roger C. Levit, Executive Vice President of the AEC, August 23, 1961, on file in the law offices of Long & Levit, San Francisco.

[12] Letter from Bert W. Levit, attorney for the AEC, to Mr. Phillip Mark, June 5, 1961, on file in the law offices of Long & Levit, San Francisco.

[13] AGRICULTURAL EXCHANGE CORPORATION, INSURANCE AGAINST LOSS FROM LABOR DISTURBANCES, ANALYSIS OF COVERAGES, 1 (1961).

[14] The specified crop being the crop designated in the policy as being insured.

> and to make it ready for shipment . . . including any processing . . . except canning, drying or freezing."

In addition to this basic coverage provided for by the policy, the insured will be reimbursed for one hundred per cent of all expenditures designated as "extraordinary." This term refers to expenditures made or incurred, in order to prevent or minimize loss, of a kind or type that would not have been necessary had there been no labor disturbance.

Exclusions

The basic objective of this type of insurance, as with all other types, is to indemnify the insured against loss and not to provide him with a method of obtaining profit. Therefore, this policy will not protect the farmer against a loss of profits. (To prevent the farmer from seeking another insurer to cover his profits, the policy includes a "prohibition of other insurance" clause stipulating that "no other insurance against consequential loss caused by labor disturbances, including insurance for loss of profits, is permitted. This entire policy shall be void if the insured now has or shall procure any such other insurance. . . . ")

Further, unless otherwise provided for by endorsement, "the policy does not cover any loss due to interference with transportation of the crop or with canning, freezing or processing operations off the farm, nor canning, freezing or drying process on the farm although other on-the-farm processing is covered."[15]

Limits of Liability

By virtue of the terms of the policy the liability of the insurer to the insured will not exceed the smallest of the following amounts:

(1) The face amount of the policy. This should be seventy-five per cent of the estimated charges and expenses.

(2) Seventy-five per cent of the amount of charges and expenses lost by the insured as the result of a labor disturbance.

(3) If the face amount of the policy is less than seventy-five per cent of the total cost of production, recovery of losses will be reduced in the same proportions.[16]

(4) Seventy-five per cent of the amount which the insured would have received, either by contract or on the open market, had there been no labor dispute.

Obligations of the Insured

Eligibility for such insurance is not made to depend upon the farmers economic size or the location of his farm. This policy is available to both incorporated and unincorporated farms. However, the insured must meet certain requirements prior to issuance of the policy and come under certain obligations after such issuance in order to

[15] COUNCIL OF CALIFORNIA GROWERS, SUMMARY OF COVERAGE, 1 (1961).

[16] The purpose of this clause is to impose an automatic penalty upon the insured for his failure to carry the required amount of coverage. It is commonly called an "average" clause and is often used in insurance contracts.

maintain the right of indemnification in case of loss. (The "other insurance" clause having already been mentioned will not be discussed here.)

When applying for insurance the prospective insured must warrant that:

(1) At the time the application is being made there exists no labor disturbance relating to the described premises or to the specified crop, that no such labor disturbance has been threatened and that the applicant has no reason to believe that such a labor disturbance will occur, except as stated by the applicant.

(2) He, the applicant, has not sustained any loss from or been involved in any labor disturbance during the last twenty-four months, except those so specified.

(3) He does and will pay not less than the prevailing wage rate in the area in which the crop is to be produced for each class of farm labor used and work performed.

(4) He has read and understands the rules of the AIE and will abide by them.[17]

Such warranties are required in order to prevent the introduction of the "poor risk" to the membership of the AIE. Since the organizational structure of the AIE is in the form of a reciprocal, such restrictions of the possible poor insurance risk will benefit each individual member by keeping both assessments and premiums at a minimum.

In addition to such warranties, the insured "must use due diligence (a) not to precipitate or provoke a labor disturbance by substandard wages or conditions or in any other way, (b) to harvest and dispose of the crop, and (c) to minimize loss and cooperate with the Exchange to that end."[18] Further, any fraud, concealment, or misrepresentation by the insured will invalidate the policy.

Finally, the insured must promise that prompt notice will be given to the Exchange of any loss covered by the policy, allow the Exchange salvage and subrogation rights and promise payment of the insurance premium which runs from a high of four dollars per hundred dollars of insurance for asparagus to a low of one dollar per hundred dollars for such crops as cotton, grain and flax.

Effect on Labor-Management Relations

Strike insurance is not new to the business community. Such insurance is prevalent in the newspaper, airline and railway industries.[19]

---

[17] Such understanding is facilitated by an explanation of the policy and its coverage given to the insured by the AEC agent prior to issuance of the policy; he also receives a printed copy of the rules as a part of the power of attorney and application he must sign.

[18] AGRICULTURAL EXCHANGE CORPORATION, INSURANCE AGAINST LOSS FROM LABOR DISTURBANCES, ANALYSIS OF COVERAGES, 3 (1961).

[19] Ostrin, *Strike Insurance*, 190 NATION 249 (1960).

The AIE farm strike insurance represents an insurance first in that no other state has yet initiated such a policy in agriculture.[20]

Needless to say, the unions are not elated by the prospect of such insurance. Industrial unions have charged that the use of strike insurance by management "repudiates good faith collective bargaining," allows a form of reverse secondary boycott and is illegal.[21] Management denies such accusation by comparing strike insurance to the union's own strike fund. Because it is a first, the effect of the AIE policy upon labor-management relations between the farmer and the union is difficult to predict.

The farmer will surely be placed in a better bargaining position by the acquisition of such protection. But to say that his policy represents a weapon of union destruction in the hands of the farmer is distortion. It must be remembered that the policy will not indemnify the farmer for lost profits and covers only seventy-five per cent of lost costs of production; that the policy's "other insurance" clause will prevent the farmer from insuring against the loss of his profits; and that the warranties made by the applicant will do much to keep out the farmer who may be inclined to use such protection as a weapon for union sabotage. Further argument against a possible charge of "union busting" in regard to the purpose or use of this insurance is provided by the provision requiring the farmer to use due diligence to avoid precipitation or provocation of a labor dispute.

An interesting opinion concerning the AIE insurance plan was voiced by Mr. Norman Smith, Director and Secretary of the Agricultural Workers Organizational Committee. Mr. Smith, a veteran union organizer, stated:[22]

> This insurance will not have any great effect upon labor management relations. It may aid the farmer if the union uses "hit and run" strike tactics, but the AIE will not have enough resources to cover an industry-wide strike of any sustained length. The issuance of this insurance was for publicity purposes just as it was in 1949. They (the AIE) tried it then and it failed and it will fail again this time.[23]

Mr. Smith continued by stressing his belief that neither the AEC or AIE is capable of policing all the policyholders in order to insure that they are honoring their warranties.

---

20 Business Week magazine reported that "In 1956, sugar plantation employers in Hawaii united in a mutual support program to distribute long term strike losses evenly among growers covering forty-four plantations." But this program is more in the nature of a fund rather than an insurance venture. Business Week, June 28, 1958, p. 95, col. 1.

21 Ostrin, *Strike Insurance*, 190 NATION 249 (1960).

22 Interview with Mr. Smith in Stockton, California, August 11, 1961.

23 According to Bert W. Levit, attorney for AEC, a similar insurance plan was proposed in 1949 by the Associated Farmers of California, but was never consummated because of insufficient interest by the farmers of this state. Mr. Levit attributed this lack of interest to an easing of labor problems at that time.

Naturally, the representatives of the California farmer do not concur with the thoughts of Mr. Smith. Mr. Charles Gibbs, speaking as Executive Secretary of the Associated Farmers of California, made the following comment concerning the use and purpose of this insurance:[24]

> The farmer is most vulnerable at harvest time. This is when the union will most often strike. The farmer will borrow on his future crop in April or May. Such loans are on a short term basis. If he loses his crop, the financing of the next year's crop is threatened. This insurance is just a protective measure to prevent such loss.

Mr. Gibbs gave little merit to Smith's comment concerning the possible ineffectiveness of such insurance in the event of an industry-wide strike. "First of all, he [Smith] will never have enough pickets to carry on such a strike. Secondly, even if he had the pickets, the state [meaning the public] would never put up with such a strike."[25]

Mr. E. Pym Jones, President of Agricultural Exchange Corporation also took issue with the expressions of Mr. Smith. "It is physically impossible to have an industry-wide strike in agriculture which would be catastrophic."[26]

Mr. Jones went on to state, "Our endeavor is in no way anti-union or anti-labor. We will not insure a man who stirs up labor trouble." To substantiate this argument he pointed to (1) the warranties required of the insured and the protection they afford and (2) that prior to any sale of such insurance to the farmer, the selling agent must provide the AEC with supplemental data concerning that farmer and an unqualified recommendation by the agent of said farmer as an insured. Such precautions, according to Mr. Jones, will keep the possible agitator of labor trouble from obtaining this insurance.[27]

Mr. Jones characterized the farmer's response to the insurance as good, adding that from July 20, 1961, (the date of certification) to August 21, 1961, (the date of the interview) 200 policies have been issued. This, he felt, indicated "ready acceptance of such insurance."[28]

Conclusion

"Truth," wrote Wendell Phillips, "is one forever absolute, but opinion is truth filtered through the moods, the blood, the disposition of the spectator." Being the first of its kind, what effect this insurance will

---

[24] Interview with Mr. Gibbs in San Francisco, California, August 31, 1961.

[25] Interview with Mr. Gibbs, *supra* note 24.

[26] Interview with Mr. Jones, San Francisco, California, August 21, 1961.

[27] This supplemental data will include such things as (1) whether the agent dealt directly with the applicant, (2) the length of time the agent has known the applicant, and (3) other business the agent has transacted with the applicant.

[28] Mr. Charles Gibbs also commented on subscriber interest: "Response by the farmer has been good, but would have been better if the insurance had been brought out in May as was planned. As it is, this insurance came out too late to benefit many of this year's crops."

have upon the agricultural community must be predicated upon opinion—a fair predicate at best. However, certain conclusions may be drawn in relation to this new area of insurance.

The unions, although definitely opposed to such a plan, made no effort to prevent the issuance of such policies and have accepted the plan as another element to be "reckoned with" in labor-management relations.

Such protection, as provided by this policy, will afford the farmer a stronger position from which to bargain with the union, but will not strengthen him to the extent that he will be able to "run roughshod" over such negotiations.

There seems little evidence that this insurance program will be abandoned as farmer response and applications have exceeded even the most optimistic estimates.