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6/6/89

IN THE MATTER OF THE NATURAL PRODUCTS  
MARKETING (BC) ACT

AND

IN THE MATTER OF AN APPEAL TO THE BRITISH COLUMBIA  
MARKETING BOARD FROM THE DECISION OF THE  
BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION  
DATED APRIL 19, 1989 CONCERNING THE PRICE FOR  
PROCESSING PEAS IN THE CROP YEAR 1989

BETWEEN:

FRASER VALLEY PEA GROWERS' ASSOCIATION

APPELLANT

AND:

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION

RESPONDENT

AND:

BRITISH COLUMBIA FOOD PROCESSORS ASSOCIATION

INTERVENOR/INTERESTED PARTY

REASONS FOR DECISION

Appearances: B.C. Pea Growers' Association  
Robert Savage, Spokesman  
Ken Savage, Member  
Hugh Reynolds, Member

APPELLANT

British Columbia Vegetable Marketing  
Commission  
James E. Harris, Chairman  
Charles (Chuck) Amor, General Manager  
George Wright, Vice-Chairman

RESPONDENT

B.C. Food Processors' Association  
D. H. (Doug) Kitson, Spokesman  
M. (Ron) Meermans, Member  
V. D. (Vic) Giesbrecht, Member  
David Chesman, Counsel

INTERVENOR/INTERESTED PARTY

Date of Hearing

April 27, 1989

Richmond, B.C.



1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by the British Columbia Pea Growers' Association ("the Appellant") from a decision made April 19, 1989 of the British Columbia Vegetable Marketing Commission ("the Respondent") setting the contract price for processing peas in the crop year 1989.
2. The Appeal was filed with the Board April 20, 1989 and was heard in Richmond April 27, 1989.
3. The British Columbia Food Processors Association requested and was granted by the Board Intervenor/Interested Party status and participated in the Appeal.
4. The Appellant, the Respondent and the Intervenor/Interested Party were given the opportunity to call and cross-examine witnesses, file documentary evidence, file written submissions and make oral submissions on the facts and the law.
5. The Appellant requested the Board to vary the 1989 contract price for processing peas for the following reasons:
  - a) Mr. William J. Hughes, tribunal member, was biased when he chose the processor's price over that put forth by the producer's; and
  - b) the decision of the tribunal was patently unreasonable since it did not properly consider the producer's position which was that average costs of production had gone up at least 13-23% from 1985 to 1989; that prices in other competing areas of supply such as western Washington, Alberta and Ontario had increased by 12-14% over the past year; and that the market price for processed peas would rise for the coming year, resulting in a windfall position for the processors.
6. The Respondent stated its decision concerning the setting of the 1989 processing pea price should be upheld for the following reasons:
  - a) there was no bias shown by the tribunal nor was there any question of conflict of interest involved at all;



- b) the Respondent provided a negotiating environment which was fair to both the processors and the growers and the Respondent carried out, in a proper manner, the review and acceptance of the tribunal's recommendation and then set the price for the 1989 pea contract; and
- c) any amendments of the price factors in the 1989 pea contract by the Board would set a precedent that would effectively destroy the credibility and ability of the present negotiation system. Furthermore, it encourages any party dissatisfied with the tribunal's decision to appeal to the Board and start negotiations over again.

7. The position of the Intervenor/Interested Party was that the Respondent's decision should be upheld for the following reasons:

- a) the tribunal showed no bias when it arrived at its decision to recommend the last offer of the processors instead of that of the pea growers of the province;
- b) the appropriate proceedings were followed throughout the proceedings leading up to this Appeal;
- c) the tribunal clearly understood its mandate, listened carefully to the positions taken by both parties, was well aware of arguments advanced by the growers in support of their final offer position and gave it full consideration before deciding not to accept the growers' offer and instead recommended adoption of the processors' final offer; and
- d) The Respondent acted within its jurisdiction ascribed to it pursuant to its statutory scheme under which prices are set for processing peas and carried out its responsibility in a proper manner.

8. After hearing the arguments, reviewing the submissions and considering the facts and the law, the Board finds that:

- (a) the British Columbia Vegetable Marketing Commission ("Commission") is established under the British Columbia Vegetable Marketing Scheme ("Scheme") B.C. Reg. 96/80;



- (b) by the provisions of that Scheme, the Commission is given authority over the parties to the contracts and the contracts in issue in this appeal;
- (c) in October 1983, the Commission enacted the Order regulating the marketing of regulated product for processing or manufacture ("the Order").
- (d) the Order authorized a negotiation process for the settlement of contract terms by the processors and producers; and
- (e) the negotiation policy sets out the negotiation process contemplated by the Order;

On the substantive issues under appeal, the Board finds the tribunal acted in a reasonable and proper manner and dismisses the Appellant's claim that the tribunal acted in a patently unreasonable manner arriving at the decision appealed from. The Board's reasons are as follows:

- a) the tribunal and the Respondent acted in a manner within their jurisdiction in reaching the decision appealed from;
- b) for the Appellant, there was full opportunity before the tribunal to make submissions, present evidence and make argument;
- c) the tribunal did what it was bound to do pursuant to the statute and submission guidelines. The tribunal accepted one of the two final offers before it. Inherent in such a system is that there is a winner and there is a loser. In this particular case, the Appellant lost its case before the tribunal;
- d) the tribunal, every step of the way, mandated by the negotiation policy, followed the negotiation policy;
- e) the tribunal, by its decision, indicates that it was well aware of and understood the facts as presented by the growers in their submission in favour of the final offer; and
- f) the Respondent on receiving the decision of the tribunal considered its recommendations, felt the proceedings had been carried out as best as



possible and unanimously accepted the tribunal's findings, using it as the basis for setting the terms and conditions for the 1989 pea contract pricing orders.

10. On the issue of bias of the tribunal, in the course of the appeal, the Appellant withdrew this as an issue before the Board.
11. The Board shares several of the concerns of the tribunal which were noted in its conclusions and are quoted below:

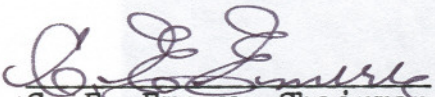
"The agricultural industry of B.C. is in a very precarious position. There are many reasons why the situation must be addressed. We talk about land and rental costs, provincial anomalies, municipal tax rates and the uncertain future of market conditions as the FTA moves into the agriculture world. On top of these uncertainties there is the spectre of the multinational giants who can, and will move with lightening speed when market factors dictate. Their moves, sometimes subtle, can bring disaster in short order."

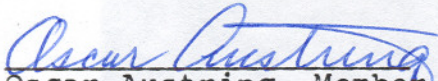
The Board considers it essential for the growers, processors and the Respondent to cooperatively develop and execute a vegetable processing industry strategy which can effectively meet the challenges of an increasingly globalized world market.

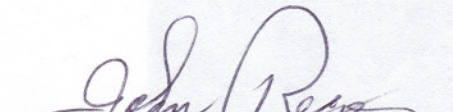
12. The Board detected a note of discontent on the Appellant's part in respect to the negotiation policy of the Respondent in this appeal and a similar note of discontent of the B.C. Food Processors Association in an appeal before this Board May 15, 1986 in which it appealed the decision of the Respondent in settling the terms of the brocolli, cauliflower contracts for 1986, and specifically the terms of price and payment. As a result of these observations, the Board recommends to the Respondent that it explore, with the various processing crop growers associations and with the B.C. Food Processors Association, a means by which the existing negotiating policy may be further perfected to permit the industry as a whole to better meet the challenges of a dynamic market in a rapidly changing economic environment.

13. This Board has had the opportunity to hear all of the evidence and submissions by the Appellant, the Respondent and the Intervenor/Interested Party. Based on these submissions the Board dismisses the appeal of the Appellant and upholds the position of the Respondent.
14. In accordance with this Board's rules of appeal, the whole of the Appellant's deposit shall be forfeited.

Dated this *6<sup>th</sup>* day of June, 1989 in Richmond, British Columbia.

  
C. E. Emery, Chairman

  
Oscar Austring, Member

  
John Reger, Member