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

AND

IN THE MATTER OF AN APPEAL TO THE  
BRITISH COLUMBIA MARKETING  
BOARD FROM A DECISION, DATED APRIL 7, 1986  
OF THE BRITISH COLUMBIA  
VEGETABLE MARKETING COMMISSION

BETWEEN:

B.C. FOOD PROCESSORS ASSOCIATION

APPELLANT

AND:

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION

RESPONDENT

REASONS FOR DECISION

Appearances: B.C. Food Processors Association  
R. Meermans, Fraser Valley Food Limited  
D. Kitson, Royal City Foods Limited  
H. Wiens, Westvale Foods Limited  
J. Swanson, Snowcrest Packers Limited  
V. Giesbrecht, Empress Foods Limited

APPELLANT

British Columbia Vegetable Marketing  
Commission  
J. Harris Chairman  
G. Wright, Vice-Chairman  
R. Towsley, Secretary Manger

RESPONDENT

Date of Hearing

May 15, 1986

("the Board") is an appeal by the Appellant, B.C. Food Processors Association from a decision made April 17, 1986 of the Respondent the B.C. Vegetable Marketing Commission settling the terms of the Broccoli and Cauliflower contracts for 1986, and, specifically, the terms of price and payment.

2. The Appeal was filed with the Board on April 29, 1986 and was heard in Vancouver on May 15, 1986.
3. Both the Appellant and the Respondent 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.
4. The Appellant states that the issues before the Board are:
  - (a) did the Respondent follow the rules and procedures set out in its Order Regulating the Marketing of Regulated Product for Processing or Manufacture, dated October 26, 1983 (Marketing Order), attached as Appendix I, and the Commission Crop Negotiation Policy, (Negotiation Policy) dated October 26, 1983, amended December 15, 1985, attached as Appendix II, in settling the terms of the 1986 Broccoli and Cauliflower contracts?  
and, secondly,
  - (b) if the Commission had transgressed its Marketing Order and Negotiation Policy, that the Board should correct the settlement of the terms of the 1986 Broccoli and Cauliflower contracts made by the Commission by:
    - (i) approving the processors' final offer packages as to price and payment in respect of both regulated products for 1986, or
    - (ii) confirming the terms of the 1986 Broccoli and Cauliflower Contracts as being those of the 1985 Broccoli and Cauliflower Contracts.



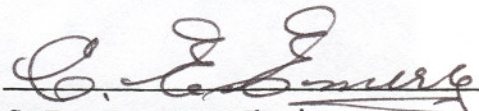
5. The Board considers these two issues to be within its jurisdiction and for them to be relevant to this appeal.
6. The Respondent answers that it followed the procedures set out in the Negotiation Policy and therefore that the Appellant's appeal should fail.
7. The Board finds that:
  - (a) the British Columbia Vegetable Marketing Commission ("Commission") is established under the British Columbia Vegetable 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 Marketing Order;
  - (d) the Marketing Order authorizes a negotiation process for the settlement of contract terms by the processors and producers;
  - (e) the Negotiation Policy sets out the negotiation process contemplated by the Marketing Order;
  - (f) the first phase of the negotiating process, namely the settlement of non-compensation matters is not at issue in this appeal;
  - (g) the second phase of the negotiating process, namely the settlement of price and terms of payment did not result in an agreement being reached within the deadlines set out in the Negotiation Policy;

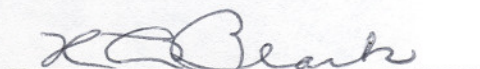
- (h) the Producers and Processors submitted their final offer packages with respect to price and terms of payment in accordance with subparagraph (b) of paragraph 3, Procedure, of the Negotiation Policy;
  - (i) the Producers Final Offer Packages are attached as Appendix III;
  - (j) the Producers' Final Offer Packages are unclear;
  - (k) In accordance with the Negotiation Policy, a Tribunal charged with responsibility to make a recommendation as to which of the final offer packages of the Processors and the Producers the Commission should accept, was properly constituted;
  - (l) the Tribunal reluctantly made a recommendation to the Commission that the Producers' Final Offer Packages be accepted. (The Board agrees with the Tribunal's observation that the procedure lacks flexibility and thus precludes judgment in the decision making process);
  - (m) all terms of the 1986 Broccoli and Cauliflower contracts other than the terms of price and of payment have been initialled by the Processors and Producers as those in the 1985 Broccoli and Cauliflower contracts.
8. The Board finds that the Respondent did not accept the Tribunal's recommendation to accept the Producers' Final Offer Packages as written for the 1986 Broccoli and Cauliflower contracts.
9. The Board finds that the Respondents' rewriting of the Producers' Final Offer Packages amounts to a rejection of the Producers' Final Offer Packages.

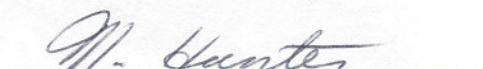


10. The Board, however, does not accept the Appellant's submission that the rejection of the Producers' Final Offer Packages must result in the acceptance of the Appellant's Final Offer Packages.
11. The Board detected a note of discontent on the Appellants part in respect to the Negotiation Policy but concludes that inasmuch as they have tacitly accepted the procedure without recent objection, that it must be considered operative until a change is negotiated or the procedure is appealed.
12. Having considered all of the evidence and submissions at the hearing of this appeal the Board has determined that the 1986 Broccoli and Cauliflower Contracts should contain all the terms and conditions of the 1985 Broccoli and Cauliflower Contracts, except that the price to be paid for Broccoli and Cauliflower as set out in the respective contracts should be the producers' final offer price for each, as recommended by the Tribunal, and the words and lines in the producers' final offer packages (Appendix III) are to be inserted in the respective 1986 Broccoli and Cauliflower Contracts exactly as they appear in Appendix III.
13. In accordance with this Board's Rules of Appeal, the whole of the Appellant's deposit shall be forfeit.

Dated this 19<sup>th</sup> day of July, 1986 in Victoria, British Columbia.

  
C.E. Emery, Chairman

  
H.L. Black

  
M. Hunter