

81-  
7/28/81

IN THE MATTER OF THE NATURAL PRODUCTS  
MARKETING (BRITISH COLUMBIA) ACT

AND

IN THE MATTER OF AN APPEAL TO  
THE BRITISH COLUMBIA MARKETING  
BOARD FROM AN ORDER OF THE  
BRITISH COLUMBIA VEGETABLE  
COMMISSION

BETWEEN:

Western Food Processors  
Association

Appellant

AND:

British Columbia Vegetable  
Commission

Respondent

Ian Donald, Esq.

Appearing for  
the Appellant

Don Gilmore, Esq.

Appearing for  
the Respondent

Members of the Board hearing  
the Appeal:

Chas.E. Emery -  
Chairman; E.Mona Brun,  
Martin Hunter, Nigel  
Taylor and Robert  
Reynolds - Members

Donald A. Sutton

Counsel for the  
Board

This appeal was brought on pursuant to the provisions  
of the Natural Products Marketing (BC) Act and was heard in  
Richmond, B.C. on Wednesday, the 13th of May, 1981.

The Appellant is appealing Section 4 and Section 6 of "An Order Regulating the Marketing of Regulated Product for Processing or Manufacture" enacted by the British Columbia Vegetable Marketing Commission on March 18th, 1981, which defines the procedure to be followed in establishing minimum prices.

In its argument, the Appellant reviewed past price setting procedures and results obtained when using arbitration as the final step in the price setting system. Emphasis was placed on the need to maintain a relationship that will permit both the processing industry and the growers to obtain a share of the market and on the need to have negotiations that are on an equal and fair footing with both parties in approximate balance. The Appellant stated that the newly instituted price setting procedure would upset the negotiating balance and may result in the Commission setting terms and prices in isolation from the market place. The position of the Appellant is that arbitration is an essential part of price setting and that the British Columbia Marketing Board should disallow the British Columbia Vegetable Marketing Commission order that enacts the new price setting system. Alternatively to this position, the Appellant argued that the Lieutenant Governor in Council had not delegated price setting powers to the Commission.

The Respondents argued that the negotiating system used by the Lower Mainland processors and the B.C. Coast vegetable Marketing Board was breaking down to the point where negotiations were frequently referred to arbitration which was seldom acceptable to both parties. In an effort to streamline the negotiating process, the Respondents prepared and instituted the procedure under appeal. It was argued that the new system of negotiation provided for a mediation process which considered only outstanding issues

and if mediation was unable to reach unanimous agreement, the mediator would make recommendation to the Commission along with providing a summary of subcommittee meetings and final proposals. The Respondent indicated this system provided continuity in the price setting process which was lacking under the old system advocated by the Appellant. After assessing the recommendations and summaries of the mediator, the Commission would make a decision on the unresolved issues and fix the minimum price or prices. The Respondent also argued that price setting was a power delegated to the Commission under the Act.

In assessing the evidence presented, the B.C. Marketing Board identified the need to closely examine the negotiating process. Under both systems presented, the initial negotiating committee is comprised of delegates representing the processing trade, delegates representing the commodity growers and a neutral chairman appointed by the Commission. This format essentially is a forum for an individual group of growers that grow a specific vegetable crop to negotiate directly with the processors. The role of the Commission appointee is to take a neutral position as chairman and not serve as bargaining agent for the growers. If agreement cannot be obtained at this point within specific time limits, the next step involves the appointment of a subcommittee comprised of one representative from the processors, one representative from the growers and an agreed to chairman who acts as mediator. This step is also common to both proposed systems.

Failing agreement at this point in the negotiating process the major issue under appeal begins at this point. The Appellant argued for the appointment of an agreed to arbitrator, or failing agreement, one appointed under the terms of the Arbitration Act, the decision of the arbitrator

to be final and binding for a period of one year. The Respondent has instituted a system in which the mediator makes recommendations to the Commission as well as submitting a report on committee meetings and final proposals of both parties. This recommendation, which is not binding, is assessed by the Commission and the price is set.

The Appellant stressed the importance of maintaining bargaining balance and an efficient negotiation process that proceeds quickly. The Board, in assessing the question of bargaining balance, identified that the consistency in which the Commission enacts the mediator's recommendations is critical to maintaining bargaining balance with the processors. If the Commission is inconsistent in accepting the mediation recommendations, negotiating balance may be lost. Conversely, bargaining balance may also be lost if the small group of growers, who are not always skilled at making formal presentations, are required to present their case to a third party arbitrator who is unfamiliar with the agriculture and does not have benefit of prior negotiations. If such an imbalance occurs, arbitration may become common practice and the importance of negotiation will diminish.

After assessing all the evidence as presented, this Board has determined that the appeal shall fail and the "Order Regulating the Marketing of Regulated Product for Processing or Manufacture" is upheld. The Board also orders the Commission to amend the order under appeal to include provision for communication of the mediator's report and recommendations to both parties at the time he reports to the Commission. In making this judgement, the Board recognizes the considerable effort both the Appellant and the Respondent have put forth to develop a price setting mechanism that is responsive to the needs of the market place and which affords ample opportunities for dialogue and communication.

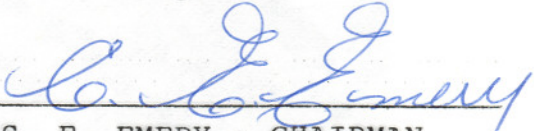
On the matter of price setting powers, this Board has determined that the Commission has been delegated the power to fix prices at which regulated product may be bought or sold in the Province by virtue of the provision of S.13(g) of the Natural Products Marketing (BC) Act which reads as follows:-

"(g) to fix the prices, maximum prices, minimum prices or both maximum and minimum prices at which the regulated product or a grade or class of it may be bought or sold in the Province or that shall be paid for the regulated product by a designated agency; and to fix different prices for different parts of the Province;"

In making this determination, the Board notes the revised Natural Products Marketing (BC) Act became effective the 17th day of May, 1980 as laid out in B.C. Reg.158/1980 filed the 29th day of April, 1980. The British Columbia Vegetable Marketing Scheme (B.C. Reg.96/80) was filed on the 21st day of March, 1980, which was prior to the enactment of the revised Act. Section 13 of the current Act was designated as Section 12 in the preceding Act.

The deposit lodged by the Appellant shall be forfeited in its entirety to the Minister of Finance.

DATED at Richmond, B.C., this 28<sup>th</sup> day of July, 1981.

  
CHAS. E. EMERY - CHAIRMAN  
BRITISH COLUMBIA MARKETING BOARD

A D D E N D U M

The British Columbia Marketing Board took note of the fact that the B.C. Vegetable Commission has made a commitment to the Minister of Agriculture to review its Order replacing arbitration with mediation during the month of November, 1981. It specifically requests that a report of the review be forwarded to it upon its completion.