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## DEPARTMENT OF EDUCATION

### Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of arbitration panel decision under the Randolph-Sheppard Act.

**SUMMARY:** The Department gives notice that on July 11, 2001, an arbitration panel rendered a decision in the matter of *David Ramsey, et al. v. New Hampshire Department of Education, Division of Vocational Rehabilitation, Bureau of Service for the Blind and Visually Impaired* (Docket No. R-S/99-4). This panel was convened by the U.S. Department of Education, under 20 U.S.C. 107d-1(a), after the Department received a complaint filed by the petitioner, David Ramsey, *et al.*

**SUPPLEMENTARY INFORMATION:** Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d-2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

#### Background

This dispute concerns a competitive bidding process for the operation of vending machines at the roadside rest areas located on the interstate highway system used by the State of New Hampshire. The State's use of this competitive bidding process allegedly prevented blind vendors from operating these vending machines in violation of the priority provisions of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395. The State was represented in this arbitration proceeding by the New Hampshire Department of Education, Division of Vocational Rehabilitation, Bureau of Services for the Blind and Visually Impaired, which is the State licensing agency (SLA).

A summary of the facts is as follows: In July 1985, the New Hampshire legislature enacted State legislation, RSA 230:30-a, which instituted a

competitive bidding process for anyone seeking to install and maintain vending machines at rest area locations along New Hampshire's interstate highway system.

The complainants, David Ramsey, *et al.*, claimed that blind vendors had a "right of first refusal" before any other entity was approached to operate vending facilities at rest area locations on the interstate highway system. The complainants maintained that the right of first refusal resulted from the Transportation Equity Act of the 21st Century (TEA-21), in 23 U.S.C. 111(b), which authorizes placement of vending machines at rest areas located on the interstate highway system. This authority also provides that the State shall give priority to vending machines operated by the SLA under the Act. The complainants further alleged that the State law, RSA 230:30-a, which authorized the bidding process for the placement of vending machines on the interstate highway system, was preempted by the TEA-21, which is a Federal law.

The SLA denied that there was a preemption issue and alleged that a conflict did not exist between State and Federal law in this case. The SLA further alleged that the Federal arbitration panel did not have jurisdiction concerning the issues raised by complainants. The SLA also maintained that the State implemented the priority provision under the TEA-21 by giving priority to blind vendors and awarding a vending contract to the SLA if it submitted the high bid or if the SLA tied for the high bid.

#### Arbitration Panel Decision

A majority of the arbitration panel concluded that RSA 230:30-a resulted in the awarding of contracts to private vendors, thus preventing blind vendors from competing since they lacked comparable resources. According to the panel, although RSA 230:30-a is silent regarding the priority or preference to blind vendors in the installation and maintenance of vending machines at interstate rest areas, no real priority was given to blind vendors on the basis of breaking a tie bid in favor of blind vendors. Thus, the panel rejected the SLA's interpretation of the meaning of priority under the TEA-21.

Accordingly, the panel agreed with the complainants that the purpose and fair interpretation of priority within section 111(b) of the TEA-21 required that the complainants receive an opportunity to operate vending machines before any private vendor was even invited to bid. Otherwise, RSA

230:30-a rendered the TEA-21 meaningless.

The panel further determined that, contrary to the SLA's position, the panel did have the authority to rule on these issues. The panel stated that the grievance procedure in 20 U.S.C. 107d-1(a) does not contain any limitation on the authority of an arbitration panel in deciding disputes between blind vendors and SLAs.

Concerning the issue of preemption of State law, the panel ruled that this case was not one in which State law simply supplemented Federal law as argued by the SLA. The panel determined that RSA 230:30-a clearly interfered with section 111(b) of the TEA-21, because it frustrated the purpose of Congress, which was to provide blind people with realistic economic and employment opportunities.

Finally, the panel ruled that the complainants were entitled to damages in the amount of full commissions payable from the time the complaint was filed on October 28, 1998. The panel instructed that the State pay to the SLA the commissions to be used to benefit the blind vendors. Legal fees were not awarded to either party.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

**FOR FURTHER INFORMATION CONTACT:** You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 3232, Mary E. Switzer Building, Washington, DC 20202-2738.

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