

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 February 20, 2002, an arbitration panel rendered a decision in the matter of *Arthur Stevenson v. Oregon Commission for the Blind* (Docket No. R-S/01-08). 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 petitioner, Arthur Stevenson.

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 alleged that the Oregon Commission for the Blind, the State licensing agency (SLA), denied Mr. Arthur Stevenson, complainant, due process by refusing to grant him a State fair hearing concerning the operation and administration of the Oregon Randolph-Sheppard vending facility program in violation of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: Since 1986, complainant operated vending facilities in the Oregon Randolph-Sheppard vending facility program. In 1998, he was selected to operate a vending facility route in Multnomah County, Oregon. The vending route was comprised of vending machines that dispensed sodas and other beverages located in county buildings.

Later, after complainant began managing the Multnomah County vending route, he requested that the SLA place snack machines in the county buildings on his route. The complainant alleged that the SLA denied his request due to lack of funds to purchase the snack machines. Then, complainant alleged that he asked for, and the SLA agreed to pay him, a monthly amount as "fair minimum return" to assist in increasing his income. The SLA denied his request when complainant asked that the monthly amount be retroactive to April 1998, the date of his initial request for a "fair minimum return."

Next, the complainant asked that the SLA add vending machines at the Sheridan Federal Prison to his vending route. This request was also denied. On August 9, 1999, the complainant requested that the SLA provide him with a State fair hearing on the denial of adding vending machines at the Sheridan Federal Prison. On June 13, 2000, the SLA responded to the complainant by denying his request for a fair hearing on the basis that the issue of facility assignment was the sole discretion of the SLA.

In November 2000, the SLA added the snack machines to complainant's vending route, and, in December 2000, the SLA submitted the complainant's August 1999 complaint to the State's hearing office. The hearing officer ruled that, according to Oregon Law, a nonattorney could not represent complainant at the State fair hearing.

Subsequently, complainant filed for a Federal arbitration hearing alleging that the SLA failed to provide due process to him regarding his grievance as provided by the Act and implementing regulations. A hearing on this matter was held on December 3, 4, and 5, 2001.

Arbitration Panel Decision

The issues heard by the panel were— (1) whether the SLA prevented the complainant from exercising his right to administrative remedy by refusing to proceed with a State fair hearing; and (2) whether the SLA failed to administer properly the Randolph-Sheppard vending facility program by denying the complainant's request to add vending machines from the Sheridan Federal Prison and other locations to his vending route. For his remedy, the complainant requested \$59,800 in damages for loss of income and an additional \$2000 per month for every month a resolution of his grievance was not attained.

Following the December 2001 Federal arbitration hearings, the parties entered into discussions on possible settlement options. Subsequently, both the complainant and the SLA signed a settlement agreement in January 2002.

The terms of the settlement agreement were— (1) the SLA would pay the complainant a money settlement in the amount of \$22,500 for damages and costs; (2) the SLA agreed to secure additional vending routes for complainant; and (3) the SLA agreed to make all reasonable and diligent efforts to formalize existing permit agreements or secure new permit agreements for additional vending machines to be operated by complainant.

After reviewing all of the evidence and hearing testimony, the panel found

that the SLA had acknowledged financial responsibility to complainant for not securing additional vending routes for him. Also, the panel found that the SLA failed to exercise its best efforts to obtain additional permits for the operation of vending machines by complainant.

Concerning the settlement agreement, the panel determined that two of the original issues brought by the complainant were moot as the result of both parties signing the settlement agreement. The issues were—(1) the adding of vending machines at the Sheridan Federal Prison to complainant's vending route; and (2) the complainant's allegation that the SLA had prevented him from exercising his right to administrative remedy by refusing him a State fair hearing because he was represented by a nonattorney.

Finally, the panel ruled that the settlement agreement was reasonable and fair and that both parties had entered into the settlement agreement in good faith. Therefore, the panel adopted the settlement agreement as the panel's final opinion and award.

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. Telephone: (202) 205-8536. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205-8298.

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