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## VII. Agency Contact

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Dated: December 17, 2003.

**Grover J. Whitehurst,**

*Director, Institute of Education Sciences.*

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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 April 11, 2003, an arbitration panel rendered a decision in the matter of *Joseph Urbanek v. South Carolina Commission for the Blind* (Docket No. R-S/01-7). 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, Joseph Urbanek.

**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 the alleged failure of the South Carolina Commission for the Blind, the State licensing agency (SLA), to properly administer the vendor selection process regarding a military mess hall dining facility at Fort Jackson, South Carolina, 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: Complainant, Joseph Urbanek, is a licensed Randolph-Sheppard vendor with the South Carolina Commission for the Blind. In June 2000, the SLA posted a bid notice with a closing date of June 9 for the dining facility at Fort Jackson, South Carolina.

Complainant and four other vendors applied for the Fort Jackson opening. The SLA's selection committee interviewed all candidates, including Mr. Urbanek, on June 26, 2000. After the interviews, one of the other vendors was awarded the Fort Jackson dining facility.

Complainant alleged that the SLA misapplied its selection criteria by refusing to select him to receive the Fort Jackson dining facility and instead awarded the location to another experienced blind vendor in violation of State rules and regulations. Complainant also alleged that the SLA was biased against him in pre-selecting the vendor who was awarded the Fort Jackson facility resulting in a denial of his right to due process.

The complainant requested a State fair hearing, which was held on November 27, 2000. On February 5, 2001, the hearing officer affirmed the SLA's denial of complainant's bid for the Fort Jackson dining facility.

### Arbitration Panel Decision

The issue heard by the panel was whether the South Carolina Commission for the Blind violated the Act, 20 U.S.C. 107 *et seq.*, the implementing regulations in 34 CFR part 395, and the State regulations by allegedly improperly denying complainant's bid on the military mess hall dining facility at Fort Jackson, South Carolina.

After reviewing all of the records and hearing testimony of witnesses, the panel ruled that the SLA's selection

committee was not biased against the complainant's bid for the Fort Jackson dining facility.

Specifically, the complainant alleged that the SLA selection committee was biased against him by adding to the five-factor selection criteria to include information on each applicant's creditworthiness, financial status, prior experience outside the blind vending program, and personal references. Also, the complainant objected to Mr. Johnson, the successful applicant, serving on a study committee that considered and recommended changes in the selection criteria for the Fort Jackson dining facility.

The panel concluded that, based on the evidence and testimony presented, the additional information requested by the study committee did not have the effect of favoring either applicant. Furthermore, the panel determined that Mr. Johnson's decision to serve on the study committee at the same time he was submitting a bid for the Fort Jackson dining facility did not advance or hinder Mr. Urbanek's bid for the same facility. In addition, the panel found that the SLA had a legitimate basis to review and improve the selection criteria given that the Fort Jackson facility was an important breakthrough for the SLA.

Finally, the panel determined that the selection committee had justification for the final ratings for the bidders. According to the panel only three of the rating factors involved judgment. All five members rated the complainant lower overall than Mr. Johnson.

The panel found that there was nothing in the unanimous judgment of the selection committee in selecting the blind vendor that required a remedy. Both bidders were qualified, but the committee found Mr. Johnson to be more qualified. According to the panel, the committee's selection of Mr. Johnson was a matter committed to its sound discretion. On this basis, the panel denied plaintiff's claim.

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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