

can protect its interest in a facility it established, as well as protecting a blind vendor's interest because a blind vendor has no right to enforce an arbitration decision and award favorable to the SLA against a federal agency. As a result of this failure to protect the vendor's interest, the SLA became liable for damages that were afforded to complainant pursuant to the 2000 arbitration decision and award, which had directed GSA to pay complainant for his lost earnings. The panel determined the amount of wages lost by the vendor, but then stated that the vendor had a duty to mitigate damages. Based on the following circumstances, the panel ruled that complainant failed to mitigate his damages.

On or about August 1, 2002, the SLA had offered the complainant an opportunity to apply for another permanent facility without waiving his rights to return to the Roybal building. However, complainant argued that he lacked the financial ability to make a new vending facility operable. The panel majority rejected this argument based on complainant's previous experience in the business enterprise program and the SLA's past assistance to him. The majority concluded that it was complainant's obligation to request financial assistance from the SLA to start a new vending facility and he failed to do so. Thus, because complainant failed to mitigate his damages, the panel majority concluded that the appropriate period for computing damages should end as of August 2002, the time the SLA offered complainant the opportunity to manage a new permanent facility.

Accordingly, the panel majority ruled that the appropriate period for calculating damages was from December 1, 1997 to August 1, 2002 or a period of 56 months. Thus, the panel majority ruled that compensatory damages must be paid to the complainant by the SLA within 30 days from the date of the panel's decision calculated at the rate of \$2500 per month for 56 months or \$140,000. Also, the panel majority ruled that if the SLA failed to pay complainant within 30 days of the final decision, interest would be attached equivalent to what the National Labor Relations Boards computes on its awards of back pay.

Additionally, the panel majority ruled that the SLA must give the complainant a permit to operate a vending facility at the Roybal building, if the Roybal building was currently part of the business enterprise program and available, or in the alternative provide complainant a comparable vending facility. This was to be accomplished

with 90 days from the date of the panel's decision. Further, the panel retain jurisdiction for a period not to exceed 90 days from the date of the award to resolve any issues relating to or compliance with the final decision and award by the SLA.

One panel member dissented.

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

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Dated: September 8, 2008.

**Tracy R. Justesen,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

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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 of Education (Department) gives notice that on May 15, 2008, an arbitration panel rendered a decision in the matter of *Arizona Department of Economic Security, Rehabilitation Services Administration v. United States Postal Service (Case No. R-S/06-3)*. This panel was convened by the Department under 20 U.S.C. 107d-1(b), after the Department received a complaint filed by the petitioner, the Arizona Department of Economic Security, Rehabilitation Services Administration.

**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 5022, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-7374. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**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

The Arizona Department of Economic Security, Rehabilitation Services Administration, the State Licensing Agency (SLA) alleged violations by the United States Postal Service (USPS) of the Randolph-Sheppard Act (Act), and the implementing regulations in 34 CFR part 395. Specifically, the SLA alleged that USPS improperly denied the SLA's request to establish vending facilities comprised of vending machines at postal locations in Mesa and Tucson, Arizona in violation of the priority provisions of the Act at 20 U.S.C. 107(b).

On October 22, 2002, USPS notified the SLA that the Mesa Postal Service was seeking a new vendor for nine postal locations in Mesa, Arizona. On October 29, 2002, the SLA informed USPS that it was exercising its priority under the Act and would be providing vending services to the nine Mesa postal locations. However, on December 16, 2002, USPS sent the SLA a letter to notify them of a change in the projected start up date for the SLA to begin operating the Mesa vending locations.

On April 22, 2003, USPS again notified the SLA that it was in need of vending food service for 15 postal locations in Tucson, Arizona. Following this notification, the SLA and USPS staff met on June 18, 2003. At that time, USPS informed the SLA that it had issued a directive stating that each of the 15 Tucson vending locations would have a permit and each location would require a separate blind vendor to manage the facility.

On July 31, 2003, the SLA sent a letter to USPS indicating that it did not intend

to waive the priority under the act regarding the 15 Tucson postal vending locations. Additionally, the SLA requested that USPS clarify in writing and provide a copy of the directive regarding USPS's position that a different blind vendor must operate each of the 15 vending locations.

The Postal Service contracting officer responded to the SLA in a letter dated September 18, 2003. The contracting officer citing Postal Service Handbook EL-602 (August 1994), section 331.1 stated, "It is the Postal Service's policy that a blind vendor may not be assigned vending machines remote from the location for which the permit is issued." Therefore, USPS informed the SLA each of the 15 vending sites in Tucson for which a permit was issued must be operated by separate blind vendors working full-time and vending sites could not be combined into a single operation for a blind vendor.

On August 17, 2005, the staff of the SLA's Business Enterprise Program contacted USPS's customer relations coordinator for an update on the Mesa vending locations. The customer service coordinator responded that no action had been taken pending the outcome of the SLA's request to operate the Tucson vending locations. Subsequently, the SLA filed a request for federal arbitration with the Secretary of Education regarding this matter. A federal arbitration panel heard this case on August 23, 2007.

The central issue heard by the arbitration panel was: Whether the Act and implementing regulations provided the SLA a priority to operate and manage vending machine routes on USPS property.

#### Arbitration Panel Decision

After reviewing all of the records and hearing testimony of witnesses, the panel majority ruled that vending locations combined into a single vending route are permissible under the Act and that current USPS policies are not in compliance with either the spirit or letter of the Act. The panel determined that there was nothing in the satisfactory site provisions in 34 CFR 395.31(d) that would exempt a federal entity desiring vending services from the priority under the act. Further, the majority found that there is nothing in the Act or the Postal Service Handbook EL-602 that addresses blind vendors being at a vending site full-time. The panel also found that USPS had not sought and received approval from the Secretary of Education to impose the requirement that blind vendors be on-site at USPS vending facilities full-time and that no similar

restriction was imposed on private vending companies.

Based upon the foregoing, the majority concluded USPS's policy of requiring that each vending location have an individual permit and a separate blind vendor constituted a limitation upon the placement of a vending facility on federal property in violation of the act and implementing regulations at 34 CFR 349.31(b).

Thus, the panel majority directed USPS to immediately terminate agreements with private concessionaires providing vending services at the Mesa and Tucson postal locations and to grant a permit(s) to the SLA to operate one or more facilities pursuant to the act. The panel also indicated that USPS should have the understanding that the SLA may choose to assign multiple postal locations to a single blind vendor.

Finally, the panel majority found that USPS's conduct warranted damages in this case. However, the majority did not award damages since they were not sought by the SLA and no individual blind vendor was harmed.

One panel member dissented.

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

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Dated: September 8, 2008.

**Tracy R. Justesen,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

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## DEPARTMENT OF EDUCATION

### Advisory Committee on Student Financial Assistance: Meeting

**AGENCY:** Advisory Committee on Student Financial Assistance, Education.

**ACTION:** Notice of open teleconference meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the teleconference meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Tuesday, September 23, 2008 by contacting Ms. Tracy Jones at (202) 219-2099 or via e-mail at [tracy.deanna.jones@ed.gov](mailto:tracy.deanna.jones@ed.gov). We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The teleconference site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

**DATE AND TIME:** Monday, September 29, beginning at 1:30 p.m. and ending at approximately 2 p.m.

**ADDRESSES:** Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Room 412, Washington, DC 20202-7582.

**FOR FURTHER INFORMATION CONTACT:** Dr. William J. Goggin, Executive Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202-7582, (202) 219-2099.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100-50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In