

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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Dated: January 29, 2003.

Loretta Petty Chittum,

Acting 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 gives notice that on January 23, 2002, an arbitration panel rendered a decision in the matter of *J. Allen Tharp v. Texas Commission for the Blind Docket No. R-S/99-9*. 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, J. Allen Tharp.

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 Texas Commission for the Blind, the State licensing agency (SLA), to properly administer the 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: Complainant, J. Allen Tharp, is a contract manager for a large cafeteria food service operated by the SLA and Food Service, Inc., under a teaming agreement at Lackland Air Force Base in San Antonio, Texas.

On October 13, 1998, complainant filed a complaint with the SLA asserting his dissatisfaction with actions taken by the SLA in the operation of the cafeteria. Complainant requested a State fair hearing, which was denied by the SLA. In denying complainant's request for a hearing, the SLA determined that the complainant did not identify the actions taken by the SLA to which he objected, nor had the complainant indicated the

timeframe in which they occurred. Therefore, in finding that the complaint did not comply with State regulations, the SLA refused to refer the complaint to the Texas State Office of Administrative Hearings (SOAH).

On November 4, 1998, the complainant filed a second demand for a hearing. Again, the SLA determined that the complaint did not comply with State regulations. On November 10, 1998, the SLA requested that SOAH rule on whether it could request complainant to identify the facts of his complaint and the timeframe in which they occurred before the SLA referred the complaint to SOAH.

On February 10, 1999, the Administrative Law Judge (ALJ) affirmed the SLA's decision. The SLA dismissed the case without prejudice and adopted the hearing officer's decision as final agency action. On March 2, 1999, the complainant filed a request for arbitration with the Secretary of Education. Following the previous events, telephone conference calls occurred among attorneys for the complainant, the SLA, and representatives and counsel for the U.S. Department of Education (ED). The complainant and the SLA agreed that the complainant would submit a detailed grievance to SOAH, which the complainant filed on January 28, 2000. In a ruling dated August 16, 2000, the ALJ held that the statute of limitations required that a blind vendor file a grievance within 15 days following the occurrence of the action that is being grieved.

Subsequently, complainant filed an amended complaint for Federal arbitration, which was received by ED on November 16, 2000. The amended complaint incorporated by reference the issues stated in the original complaint filed on March 2, 1999, and also included an appeal of the ALJ's August 16, 2000, ruling on his grievance.

A hearing on this matter was held on November 29, 2001, and was limited to the only issue that was decided at the State fair hearing level.

Arbitration Panel Decision

The issue heard by the panel was whether the 15-working-day limitation period established by the Texas Commission for the Blind for blind vendors to file a grievance when they are dissatisfied with an action arising from the operation or administration of the Randolph-Sheppard vending facility program as provided by the Act and implementing regulations constituted a denial of due process to complainant, J. Allen Tharp.

After reviewing all of the record, the arbitration panel concluded that—(1) the 15-working-day limitation period is part of an administrative process, not part of a judicial process; (2) it is important that grievances be processed and resolved in a timely manner; and (3) the submission of a request for a State fair hearing is a simple and straightforward action. The hearing itself is held at a later time, giving ample time to prepare witnesses and to sort out legal issues. Finally, the panel ruled that the 15-working-day limitation period was mandatory.

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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Dated: January 29, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

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