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Program Authority: 20 U.S.C. 1057-1059d, 1101-1103g.

Dated: November 24, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

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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 18, 2003, an arbitration panel rendered a decision in the matter of *Rodney Jackson v. Tennessee Department of Human Services, the Division for the Blind and Visually Impaired (Docket No. R-S/02-2)*. 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, Rodney Jackson.

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

Information Relay Service (FIRS) at 1-800-877-8339.

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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 improper termination of Mr. Rodney Jackson's vending operator's license by the Tennessee Department of Human Services, the Division for the Blind and Visually Impaired, 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: On October 16, 1998, Mr. Rodney Jackson (complainant) was the successful bidder and was assigned by the Tennessee Department of Human Services, the Division for the Blind and Visually Impaired, the State licensing agency (SLA), to operate Facility #218 located in the Shelby County Administrative Complex in Memphis, Tennessee. In 1998, Facility #218 was a vending-only operation and later was converted to a manual food service and vending machine operation.

Complainant alleged that before being assigned to Facility #218, he had completed the SLA's Business Enterprise management training program, graduating as the top student in the class, and had completed a course on health and sanitation from the National Restaurant Association. Complainant also alleged that, from July 1999 through April 2000, he successfully managed Facility #218 in such a manner that he was awarded the title "Rookie of the Year." Moreover, complainant alleged that when he began managing Facility #218, he repeatedly requested cooking utensils, surveillance equipment, mop and food preparation sinks, and a viable connection to the hot food table, which he maintained were not provided at the time Facility #218 was converted from a vending-only facility to a manual food service and vending machine facility. Complainant further alleged that a former disgruntled employee was the motivating factor behind a petition by the Shelby County employees to remove him from Facility #218 and that he had never failed a

Shelby County Government health inspection.

Conversely, the SLA maintained that it complied fully with the Act, implementing regulations, and State laws and regulations governing the removal of complainant from Facility #218 and the revocation of his vending facility operator's license.

The SLA alleged that beginning in or about January 2000 the situation at Facility #218 began to deteriorate. The SLA stated that the facility was closed a number of times when it should have been open, and customers began to complain about sanitation, fluctuating item prices, lack of items in the vending machines, and cleanliness. During the summer of 2000, more than one-third of the employees in the building where Facility #218 was located signed a complaint petition. The SLA further alleged that inspection reports by the SLA showed that complainant failed seven of eight inspections.

In September 2000, the SLA stated that it gave complainant a letter citing poor inspection reports and customer complaints and then placed him on probation. In October 2000, the SLA gave complainant a second notice advising him of a 30-day notice of intent to terminate his operating license.

Subsequently, in November 2000 the property managing official at the Shelby County Administrative Complex sent written notice to the SLA terminating its food and vending machine services. On December 6, 2000, the SLA notified complainant of the termination of his operating license to manage Facility #218.

Complainant requested a State fair hearing, which was held on February 16, 2001. On March 26, 2003, the hearing officer affirmed the SLA's termination of complainant's license and removal from Facility #218.

Arbitration Panel Decision

The issue heard by the panel was whether the SLA 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 terminating complainant's vendor operating license and removing him from Facility #218, and, if so, what was the appropriate remedy.

After reviewing all of the records and hearing testimony of witnesses, the panel unanimously ruled that the SLA acted properly and in full and fair compliance with the Act, implementing regulations, and State rules and regulations in removing complainant from Facility #218. The panel stated that the SLA has the responsibility to both vendors and customers, as well as to the

agencies where vending facilities are located, to provide quality service and to preserve job opportunities for blind vendors.

Therefore, the panel denied complainant's grievance, but instructed the SLA to allow Mr. Jackson the opportunity to qualify for issuance of a license to operate another vending facility following appropriate training at the SLA's expense. Upon Mr. Jackson's re-qualifying for a license, the SLA was instructed to reinstate his seniority as if his license had not been terminated. However, his placement would follow normal agency assignment protocol.

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

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Dated: November 24, 2004.

Troy R. Justesen,

Acting Deputy 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 February 3, 2003, an arbitration panel rendered a decision in the matter of *North Carolina Department of Human Resources, Division of Services for the Blind v. United States Postal Service (Docket No. R-S/98-8)*. This panel was convened by the U.S. Department of

Education, under 20 U.S.C. 107d-1(b), after the Department received a complaint filed by the petitioner, North Carolina Department of Human Resources, Division of Services for the Blind.

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 telecommunication device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1-800-877-8339.

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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 violation by the United States Postal Service (USPS) of the priority provisions of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395 in awarding a contract to a private vending company at the Greensboro Processing and Distribution Center (P&DC) in Greensboro, North Carolina.

A summary of the facts is as follows: Beginning in 1995, the North Carolina Department of Human Resources, Division of Services for the Blind, the State licensing agency (SLA), operated a cafeteria on the second floor of the P&DC and also various vending machines in a break area and swing room on the first floor of the building under a contract agreement with USPS. The cafeteria included a hot food line and was staffed by attendants. Later, the cafeteria operation became not as profitable as the SLA desired, and discussions took place between the SLA and USPS wherein the SLA proposed closing the attendant hot food cafeteria and replacing it with a facility comprised of vending machines.

In January 1998, USPS issued a request for proposal (RFP) for a vending machine facility at P&DC, the same type of facility that the SLA had previously discussed with USPS. The SLA received

the RFP and proposed to USPS that a single blind licensee be allowed to operate all vending operations at the P&DC under a permit agreement rather than a contract.

After the SLA's proposal, USPS declined to enter into a permit agreement with the SLA, and the SLA elected not to submit a response to the RFP. USPS then awarded a contract for the operation of the new vending machine facility to a private vending company.

Thereafter, the SLA filed a complaint with the Secretary of Education requesting the convening of a Federal arbitration panel. In its complaint, the SLA alleged that USPS violated the priority provisions of the Act and implementing regulations in awarding the contract to a private vending company. The SLA further alleged that the Act specifically recognizes that the operation of vending machines are to be under a permit agreement, while the operation of a cafeteria is required to be under a contract.

As a result of this dispute, an arbitration panel was convened, and a hearing on this matter was held on June 6, 2000.

Arbitration Panel Decision

The issue heard by the panel was whether USPS had violated the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395 in awarding a contract to a private vending company to operate the vending machine facility at P&DC.

After considering all of the evidence, the majority of the panel ruled that the P&DC vending facility was not a cafeteria as defined by the Act and implementing regulations. The panel stated that the regulations in § 395.1(d) define a cafeteria as a facility "capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections." On this basis, the panel ruled that USPS was required to approve the SLA's permit application for P&DC or indicate in writing to the Secretary of Education the reasons for refusing approval.

The panel also determined that the vending facility at P&DC operated by the private vending company and comprised of vending machines was being operated in direct competition with vending machines operated by the SLA. Moreover, because the private vending company's vending machines were readily accessible to most or all of the employees at P&DC, the panel ruled that the SLA was entitled to receive 100 percent of all vending machine income