

State rules and regulations surrounding the selection process utilized by the SLA to fill a vacancy at Facility #531 located at the Wright-Patterson Air Force Base in Dayton, Ohio.

Summary

On March 21, 2003, the SLA announced a vacancy at Facility #531, a collection of four bagel shops located in buildings 28, 556, 558, and 560 at the Wright-Patterson Air Force Base in Dayton, Ohio. The bid announcement indicated that all applicants were to submit a business plan with their application. On April 1, 2003, complainant applied for a position at Facility #531 and complied with all aspects of the bid announcement. Following the bid closing, complainant and another vendor were both being considered for Facility #531.

Complainant alleged that the SLA applied its transfer and promotion policies incorrectly. Complainant contended that there are six specific criteria that the SLA normally uses to rate candidates on a scale of 1 to 10. Additionally, an interview is also required. Complainant alleged that the SLA's selection committee used a different scoring system, rating each of the criteria on a scale of 1 to 100 instead of 1 to 10.

Complainant further alleged that a member of the selection committee had a conflict of interest. Specifically, complainant alleged that the selection committee member was interested in becoming the manager of the location that would be vacated by the other candidate, thus, making the selection committee biased toward the other candidate to be named the manager of Facility #531. Complainant asserted that his scores in training and the fact that he has 120 semester hours of college education made him the more qualified candidate for Facility #531.

Complainant filed a grievance against the SLA on this matter. A hearing on the grievance was scheduled for March 15, 2004, but was later cancelled. The parties were instructed by the hearing officer to submit to him written briefs on complainant's grievance. On July 23, 2004, after reviewing the briefs, the hearing officer denied complainant's grievance in its entirety. On September 27, 2004, the SLA adopted the hearing officer's order as final agency action. Complainant sought review by a Federal arbitration panel of that decision.

Arbitration Panel Decision

The issue heard by the panel was whether the actions taken by the Ohio Rehabilitation Services Commission, Bureau of Services for the Blind

concerning the selection process for Facility #531 at Wright-Patterson Air Force Base were in accordance with the Act, implementing regulations and State rules and regulations regarding the operation or administration of the Randolph-Sheppard vending facility program.

After reviewing all of the records and hearing testimony of witnesses, the panel ruled that the SLA violated the Act, implementing regulations, and State rules and regulations in conducting the selection process for Facility #531. The panel issued a four-part ruling as follows: (1) The SLA must conduct another selection for Facility #531; (2) Individuals who served on the previous panel are ineligible to participate in the new process, and only the complainant and the other vendor are eligible to be considered as candidates; (3) In evaluating the two candidates, the SLA is prohibited from considering the experience of the other vendor who is currently operating Facility #531; and (4) The SLA must reimburse the complainant for all attorney fees and other costs that he incurred with his complaint. The amount must include all cost and fees from the time that the selection committee awarded Facility #531 to the other vendor.

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

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Dated: June 14, 2007.

John H. Hager,

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 October 2, 2006, an arbitration panel rendered a decision in the matter of *Michael Benson v. Georgia Department of Labor, Division of Rehabilitation Services (Case No. R-S/04-2)*. This panel was convened by the Department under 20 U.S.C. 107d-1(a), after the Department received a complaint filed by the petitioner, Michael Benson.

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 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 concerned alleged violations of the Act, the implementing regulations in 34 CFR part 395, and State rules and regulations by the Georgia Department of Labor, Division of Rehabilitation Services, the State licensing agency (SLA), regarding Michael Benson's (complainant) placement as the licensed manager of a cafeteria operated under contract at the Federal Law Enforcement Training Center (FLETC) in Brunswick, Georgia.

Summary

In 1999, the SLA was awarded a contract to operate the FLETC cafeteria. In March 1999, the SLA, through its nominee agency Georgia Cooperative Services for the Blind, contracted with Southern Food Service Management

(SFM), a private company to act as a teaming partner with the licensed blind vendor selected to operate the FLETC cafeteria.

In mid 1999, complainant responded to the SLA's bid announcement to manage the FLETC cafeteria. In July 1999, complainant was selected as the licensed manager for the FLETC cafeteria and began work in February 2000. In the beginning, complainant felt that there were several problems, i.e., his office was not completed, he was unable to access certain computer documents, and he was not provided training.

Additionally, complainant alleged that he had no involvement in the selection of SFM and that the terms of the teaming agreement required that he receive a fixed salary with no right to share in the profits. Further the complainant alleged that the teaming agreement negotiated between the SLA and SFM left him with no staff support to carry out his duties as the cafeteria contract manager. On October 11, 2002, complainant filed a grievance against the SLA on this matter. A fair hearing on the grievance was held on January 16, 2003, and complainant's grievance was denied. On May 15, 2003, complainant filed an appeal. On September 18, 2003, the Administrative Law Judge (ALJ) issued an order denying the appeal and any relief to the complainant. The SLA adopted the ALJ's decision as final agency action. Complainant sought review by a Federal arbitration panel of that decision.

Arbitration Panel Decision

The issue heard by the panel was whether the actions taken by the Georgia Department of Labor, Division of Rehabilitation Services violated the Act, 20 U.S.C. 107 *et seq.*, the implementing regulations in 34 CFR part 395, and its own rules and regulations concerning the administration of a cafeteria contract at FLETC and the selection of complainant to manage this facility.

After reviewing all of the records and hearing testimony of witnesses, the majority of the panel ruled that the SLA followed the provisions of the Act, and implementing regulations in the administration of the FLETC cafeteria contract. Therefore, the panel denied complainant's grievance. 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: June 14, 2007.

John H. Hager,

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 August 21, 2006, an arbitration panel rendered a decision in the matter of *David Stewart v. Alabama Department of Rehabilitation Services (Case No. R-S/04-1)*. This panel was convened by the Department, under 20 U.S.C. 107d-1(a), after the Department received a complaint filed by the petitioner, David Stewart.

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 at 1-800-877-8339.

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Background

This dispute concerned alleged violations of the Act, the implementing regulations in 34 CFR part 395, and State rules and regulations by the Alabama Department of Rehabilitation Services, the State licensing agency (SLA), regarding David Stewart's (complainant) termination as manager of the military dining facility at the Redstone Arsenal in Huntsville, Alabama.

Summary

On November 13, 2002, the SLA issued a bid announcement for the military dining hall facility at Redstone Arsenal. Among other details in the announcement, the SLA specifically indicated that the contract was a joint venture and that the licensed blind vendor selected would be required to team with an outside military dining hall contractor known as KCA, Inc.

On January 7, 2003, the SLA informed complainant that he had been selected as the licensed manager for the military dining hall at Redstone Arsenal and complainant accepted on January 8, 2003.

On February 4, 2003, the complainant met with SLA staff members, KCA, Inc. staff and other interested parties. At the meeting, complainant explained that his wife would not be able to assume the administrative roles, i.e., payroll assistant, driving, and other duties as the previous blind vendor's wife. Therefore, complainant proposed that one-half of the general and administrative costs normally passed on to KCA, Inc. be allocated to him since complainant would have to hire additional staff to perform those duties.

Subsequently, complainant alleged that a member of KCA, Inc. informed him that a proposed joint venture agreement would be sent to complainant to consider. On February 13, 2003, the SLA wrote the complainant stating that he must execute a joint venture and operating agreement by February 21, 2003 or the military dining hall facility at Redstone Arsenal would be awarded to the next highest-scoring blind vendor.

Previously, complainant had hired an attorney to assist him in reviewing the joint venture agreement. Upon receipt of the February 13, 2003 letter from the SLA, complainant's attorney and the