

implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: The Arizona Department of Economic Security, Rehabilitation Services Division, the State licensing agency (SLA), alleged that between December 1995 and July 2001, Mr. Robert Kunau operated a vending facility at the Rio Salado Post Office and paid to USPS a 10 percent commission on his gross sales totaling \$116,684.02.

Similarly, the SLA alleged that since 1988 Mr. Scott Weber operated a vending facility at the Phoenix General Mail Facility (PGMF). In 1995, Mr. Weber assumed the operation of additional vending machines at PGMF. From October 1995 to May 2001, Mr. Weber also paid to USPS a 10 percent commission on his gross sales totaling \$88,444.57. Both vendors alleged that they paid the 10 percent commission to USPS as required by the agency until they were advised by their attorney to cease payment.

#### Arbitration Panel Decision

The issue heard by the panel was whether the actions taken by USPS violated the Act and implementing regulations concerning the placement and operation of vending facilities at the Rio Salado Post Office and the Phoenix General Mail Facility. If there was a violation, the panel was asked to determine the appropriate remedy.

After reviewing all of the records and hearing testimony of witnesses, the panel concluded that the Act requires Federal agencies to give priority to blind vendors in the operation of vending facilities on Federal properties. To accomplish this, Federal agencies and SLAs enter into permit agreements authorizing the operation of vending facilities by licensed blind vendors. However, the panel noted that the Act does not authorize Federal agencies to collect commissions from a blind vendor or the SLA without the authorization of the Secretary of Education. Moreover, Federal agencies are not permitted to go outside the Department of Education's regulations and substitute a negotiated vending agreement in place of the permit system.

Therefore, because USPS failed to obtain authorization from the Secretary of Education, the collection of commissions was a violation of the Act. Accordingly, the panel ruled that both Mr. Kunau and Mr. Weber were damaged by USPS's violation of the Act in the amounts of \$116,684.02 and \$88,444.57, respectively.

The panel further directed that, subject to any future finding by a court of competent jurisdiction that this order

exceeds the panel's authority under the Act, USPS must reimburse Mr. Kunau and Mr. Weber the amounts that they were damaged as a result of USPS's violation of the Act.

One panel member dissented.

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: October 14, 2005.

**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 gives notice that on October 18, 2004, an arbitration panel rendered a decision in the matter of *Bert Hansen, et al. v. Nevada Department of Rehabilitation, Bureau of Services to the Blind (Docket No. R-S/03-05 and 03-07 consolidated)*. 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 petitioners, Bert Hansen, *et al.*

**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 in the preceding paragraph.

**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 two separate complaints that were consolidated into one case in the interest of judicial economy. The complainants alleged violations of the Act (20 U.S.C. 107 *et seq.*), the implementing regulations in 34 CFR part 395, and State rules and regulations by the Nevada Department of Employment, Training and Rehabilitation, Bureau of Services to the Blind and Visually Impaired, the State licensing agency (SLA).

A summary of the facts in the first part of the complaint is as follows: On January 11, 2002, Mr. Bert Hansen, Chairman of the Nevada Committee of Blind Vendors, wishing to ensure that the 2002 election of Elected Committee of Blind Vendors (Committee) would be carried out in accordance with State rules and policy, wrote to the SLA on behalf of the Committee.

In his letter, Mr. Hansen noted that the 1999 bylaws of the Committee were not certified as required by the Nevada Administrative Code, section 426.080.2. Mr. Hansen suggested that, since clarification of the 1999 bylaws was needed, the 1983 certified bylaws be used for the 2002 election process. However, by memorandum dated January 30, 2002, the SLA rejected the Committee's proposal and indicated that the SLA would conduct its own Committee election. On February 24, 2002, under the leadership of Mr. Hansen, the Committee held the 2002 election.

Subsequently, the SLA informed the Committee it was holding a new election that took place on April 7, 2002. The complainants alleged that the SLA election was held without the participation of the Committee and that the individuals elected on April 7 were different from those elected on February 24. The complainants further alleged that the April 7 election was improperly

constituted under the bylaws being used by the SLA.

Following the April 7 election, the complainants petitioned the SLA to conduct another election. On March 21, 2002, the SLA denied the complainants' petition. Subsequently, complainants filed for a State evidentiary hearing on the matter that was held on May 30, 2002.

Regarding the second part of the complaint, complainants alleged problems with the SLA's administration of the Nevada vending facility program following an audit at the Hoover Dam by the State Legislative Counsel Bureau (LCB) on April 12, 2001. In particular, the complainants were upset with the audit report that indicated that high levels of set-aside payments were being assessed against the blind vendors. On July 28, 2001, the Committee comprised of the complainants voted to suspend set-aside payments to the SLA for July and August 2001.

On October 4, 2001, the SLA, following State rules and regulations, issued to the complainants notices of noncompliance in making timely set-aside payments. Dissatisfied with the noncompliance notices, the complainants requested a State evidentiary hearing that was held on March 29 and 30, 2002.

On February 28, 2003, a hearing officer affirmed the SLA's decision to deny complainants' request for a new election. In that same decision, the hearing officer affirmed the SLA's issuance of the noncompliance notices regarding complainants' nonpayment of set-aside payments, but reversed the late payment penalties assessed by the SLA.

Additionally, the hearing officer ruled that the Committee had actively participated in setting the set-aside payment schedule, but required the SLA to maintain adequate records to support the set-aside payments charged. The SLA adopted the hearing officer's February 28 decision as final agency action, and complainants sought review of that decision by a Federal arbitration panel.

#### Arbitration Panel Decision

The issues heard by the panel were: (1) Whether the SLA abused its authority, violated the Act, implementing regulations, and the Nevada Administrative Code and the functions of the Committee in conducting a Committee election; (2) whether the complainants' unilateral decision to withhold payment of set-aside fees for the months of July and August 2001 violated the Act and/or applicable Nevada statutory law; (3) whether the SLA had the authority to

compel the complainants to repay the set-aside payments and/or to impose penalties on the complainants; and (4) whether the SLA was properly administering the vending facility program in accordance with the Act, implementing regulations, and State rules and regulations.

After reviewing all of the records and hearing testimony of witnesses, the panel majority ruled concerning the election issue that the SLA acted in substantial compliance with the Act and regulations when it conducted the Committee election in April 2002.

Concerning the withholding of set-aside payments, the majority of the panel ruled that the complainants' withholding of set-aside payments in July and August of 2001 was not in compliance with the Act or applicable provisions of the Nevada Administrative Code. Accordingly, the panel directed the complainants to repay the set-aside payments to the SLA but without penalty. Regarding the question of the SLA's administration of the vending facility program, the majority of the panel ruled that the SLA's actions were consistent with the Act.

One panel member dissented.

One panel member concurred with the majority opinion concerning the election of the Committee and complainants' noncompliance with the Act and regulations in withholding set-aside payments from the SLA, but dissented in part regarding the appropriate remedy, believing that the complaints should repay the set-aside fees with penalty.

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: October 14, 2005.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC06-2-000]

**Brascan Power St. Lawrence River LLC, Erie Boulevard Hydropower L.P., Carr Street Generating Station, L.P., Brascan Power Piney & Deep Creek LLC, Great Lakes Holding America Co., BPC NY Holding Inc., Brascan Power New York Corp., Carr Street New York Holding Corp.; Notice of Filing**

October 12, 2005.

Take notice that on October 4, 2005, Brascan Power St. Lawrence River LLC, Erie Boulevard Hydropower, L.P., Carr Street Generating Station, L.P., Brascan Power Piney & Deep Creek LLC, Great Lakes Holding America Co., BPC NY Holding Inc., Brascan Power New York Corp., and Carr Street New York Holding Corp. (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization to complete a proposed intra-corporate reorganization.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for