

regulations for filing grievances. It is this decision that complainant sought to have reviewed by a Federal arbitration panel. An arbitration hearing on this matter was held on February 2 and 3, 2000.

Arbitration Panel Decision

The central issue before the arbitration panel was whether the actions taken by the New Mexico Commission for the Blind in denying Mr. Haney a full evidentiary hearing were in violation of the due process requirements under the Act (20 U.S.C. 107d-1(a)), the implementing regulations (34 CFR part 395), and applicable State rules and regulations. The panel ruled that complainant was essentially terminated for poor performance in the operation of the cafeteria, but waited for over 8 months before requesting an administrative review or a full evidentiary hearing to contest the termination before the New Mexico Commission for the Blind.

The SLA denied complainant's request for hearing because he failed to ask for a hearing within the 15-day time limit provided under the SLA's rules and regulations.

Based upon the evidence presented, the panel determined that, at all times, the complainant was knowledgeable about the time limits. Further, according to the panel, while he experienced some medical problems after his termination, there was no evidence that he was incapable of understanding or complying with the time limits. Therefore, the panel affirmed the New Mexico Commission for the Blind's denial of the complainant's request for hearing.

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

Dated: April 3, 2001.

Andrew J. Pepin,

Executive Administrator 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: Notice is hereby given that on January 6, 2000, an arbitration panel rendered a decision in the matter of

Alaska Division of Vocational Rehabilitation v. United States Department of Defense, Department of the Army (Docket No. R-S/97-2). This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d-1(b) upon receipt of a complaint filed by petitioner, the Alaska Division of Vocational Rehabilitation.

FOR FURTHER INFORMATION: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202-2738. Telephone: (202) 205-9317. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205-8298.

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SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)) (the Act), 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 Department of Defense, Department of the Army (Army), of the priority provisions of the Act by denying the Alaska Division of Vocational Rehabilitation, the State licensing agency (SLA), the opportunity to operate a dining facility at the Fort Richardson, Alaska, Army Installation.

A summary of the facts is as follows: On July 16, 1996, the SLA wrote to the

Director of Contracting at Fort Richardson expressing its desire to enter into negotiations for the operation of a dining facility at the Army Installation.

In late November 1996, the SLA learned that a food service contract had been awarded to another contract vendor in Anchorage, Alaska. Subsequently, the SLA appealed this decision and immediately contacted the Army contracting office. The Army contracting office advised the SLA that the Army indeed had awarded the contract to another vendor. Further, the Army declined to consider the SLA's appeal, advising the SLA that the time for appealing awards had passed.

The SLA alleged that the dining facility contract at the Fort Richardson Installation meets the definition of *satisfactory site* under the Act and implementing regulations in 34 CFR 395.1(q). Further, the SLA alleged that the Army contracting office failed to negotiate in good faith.

By this action, the SLA asserted that the Army denied it due process under the Act, and as a result the SLA was not awarded the dining facility contract under the terms of the Act. The SLA filed a request to convene an arbitration panel to hear this complaint. A Federal arbitration hearing on this matter was held on February 11 and 12, 1998.

Following the hearing, post-hearing briefs were submitted by the two panel members representing the SLA and the Army to the Panel Chair. However, after considerable time had elapsed the final award was not submitted by the Panel Chair to the Department of Education (Department). Accordingly, a new Panel Chair was selected in August 1999. The parties determined that it was not necessary to hold another hearing on the matter. It was further agreed that the newly appointed Panel Chair would render an opinion based upon the proceedings and submissions that had already taken place, and input from the two panel members and a final opinion and award would be submitted to the Department.

Arbitration Panel Decision

The central issue before the arbitration panel was whether the Army's alleged failure to negotiate with the SLA in good faith for a dining facility contract at the Fort Richardson Installation constituted a violation of the *satisfactory site* provisions provided by the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations (34 CFR part 395).

The Army contended that military troop dining facility procurement with appropriated funds is not subject to the priority provisions of the Act. The

majority of the panel found that this contention was not consistent with the findings of the Department of Education, the memorandum issued by the General Counsel of the Department of Defense in November 1998, and the Comptroller General's opinion of June 1993, which stated that generally military dining facilities are cafeterias and are indeed included within the scope of and subject to the Act.

Therefore, the majority of the panel ruled that the SLA was correct in asserting that procurements with appropriated funds are equally subject to the priority provisions of the Act as are procurements with non-appropriated funds. Similarly, the panel ruled that military dining facilities have been considered to come within the definition of *cafeterias* as defined in the Act and by administrative interpretation.

However, the panel concluded that the Act's priority is not applicable if the contract is for discrete services rather than the overall "operation" of the dining facilities. The facts of the case supported the Army's decision to give the contract to the other vendor and not to the SLA. Specifically, the majority of the panel determined that, although the Army contracted out certain functions, it retained overall operation of the dining facility and operated it on an in-house basis. Thus, the panel concluded that the factual setting of the Fort Richardson dining contract did not constitute the operation of a cafeteria, which would trigger the priority provisions of the Act. Moreover, the panel majority ruled that no vending occurred and no concessions were involved in the Fort Richardson dining contract. Consequently, the contract was not an entrepreneurial activity of the type contemplated by the Randolph-Sheppard 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.

Dated: April 3, 2001.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

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DEPARTMENT OF ENERGY

Bonneville Power Administration

Wallula Power Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice announces BPA's intention to prepare a joint National Environmental Policy Act (NEPA)/State Environmental Policy Act (SEPA) EIS in cooperation with the State of Washington Energy Facility Site Evaluation Council (EFSEC) for an electrical interconnection including a new 29-mile 500-kilovolt (kV) transmission line associated with a proposed power plant. BPA is the lead Federal agency under NEPA and EFSEC is the lead Washington State agency under SEPA. The Wallula Power Project is a 1,300-megawatt (MW) generating station proposed by Newport Northwest, LLC (Newport Northwest) that would be located near Wallula in Walla Walla County, Washington. Newport Northwest has requested an interconnection and upgrade to BPA's transmission system that would allow firm power delivery to customers in the Pacific Northwest. BPA proposes to execute an agreement with Newport Northwest to provide the interconnection and firm power transmission.

ADDRESSES: To be placed on the project mailing list, including notification of proposed meetings, call toll-free 1-800-622-4520, name this project, and leave your complete name and address. To comment, call toll-free 1-800-622-4519; send an e-mail to the BPA Internet address comment@bpa.gov; or send a letter to Communications, Bonneville Power Administration—KC-7, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT:

Thomas C. McKinney, Bonneville Power Administration—KEC-4, P.O. Box 3621, Portland, Oregon 97208-3621; toll-free telephone 1-800-282-3713; direct telephone 503-230-4749; or e-mail tcckinney@bpa.gov. Additional information can be found at BPA's web site: www.bpa.gov.

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of the proposed project, including:

- The interconnection agreement that BPA proposes with Newport Northwest;
- The construction and operation of the power plant;

- The construction and operation of a 5.9-mile, 20-inch-diameter gas line to tie into Pacific Gas & Electric (PG&E) Gas Transmission Northwest's (GTN) pipeline;

- The construction and operation of an interconnection consisting of 4.3 miles of 500-kV line plus a substation; and

- The construction and operation of a new 500-kV transmission line from the interconnection to the McNary switching station, roughly paralleling the existing 500-kV line from Lower Monumental Dam to McNary Dam.

Later this spring, an open house and public information meeting will be conducted by BPA, EFSEC, and Newport Northwest to discuss the project, associated BPA transmission interconnection and upgrades, and topics to be addressed in the EIS. At least two weeks' notice will be provided to interested parties concerning the time and location of this meeting.

After July 2001, one or more EIS scoping meetings will be held, and a 45-day comment period will be announced, during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. A 30-day notice of the meeting(s), including time and location, will be provided to interested persons. At the meeting(s), BPA and EFSEC will answer questions and accept oral and written comments.

Receiving comments from interested parties will assure that BPA and EFSEC address in the EIS the full range of issues and potentially significant impacts related to the proposed project. When completed, the Draft EIS will be circulated for review and comment, and BPA and EFSEC will hold at least one public comment meeting on the Draft EIS. BPA and EFSEC will consider and respond in the Final EIS to comments received on the Draft EIS.

Proposed Action. The Wallula Power Project would be a gas-fired combined-cycle plant with a nominal generating capacity of 1,300 MW. The plant site would be located on 175 acres of land that is zoned for industry and which is located on the east side of U.S. Highway 12, between the J.D. Simplot Feedlot and the Boise Cascade Wallula Mill.

Natural gas would be burned in a gas turbine engine, in which the expanding gases from combustion would turn the turbine's rotor, driving a generator to produce electrical energy. Hot exhaust from the gas turbine would be used to boil water, using a heat recovery steam generator (HRSG). Steam produced by the HRSG turns a steam turbine, that