

AWARD

ARBITRATION PANEL DIVISION UNDER THE RANDOLPH-SHEPPARD ACT

ARBITRATION AWARD

R-S/10-10

Richard L. Bird (Bird) Complainant,

v.

Ohio Rehabilitation Services Commission, Bureau of Services for the Visually Impaired RSC/BSVI Respondent,

Appearances:

For the Complainant: John B. Gibbons

For the Respondent: Mike Dewine, Ohio Attorney General; Leah V.B. O' Carroll, Assistant Attorney General; Christina M. Wendell, Chief Legal Counsel, Rehabilitation Services Commission

Arbitration Panel: Robert R. Humphreys, Paul Stelzura and Joseph W. Gardner, Chair

Background

The conduct of this arbitration is governed by the Randolph-Sheppard Act, 20 U. S. C. §§107- 107e. The provisions of the Act and its implementing regulations, 34 C. F. R. Part 395, apply to the issues herein and their consideration by this Panel. The arbitration was duly convened by the U. S. Secretary of Education following the submission of a complaint by Richard Bird, the Complainant herein, a licensed blind vendor under the Act, against the Ohio Rehabilitation Services Commission, the State licensing agency, or "SLA," designated by U1e Secretary of Education to administer the Randolph-Sheppard program in the State of Ohio.

The parties selected their representatives to serve on the convened arbitration panel: Robert R. Humphreys, Esq. by the Complainant, and Paul Stehura, Esq., by the Respondent. Upon their joint recommendation, Joseph W. Gardner, Esq. agreed to serve, and was appointed Chair of the Panel by the Acting Commissioner of the Rehabilitation Services Administration, Department of Education.

Following a pre-hearing conference conducted by the Panel with counsel for the parties, a hearing was held in Cleveland, Ohio on January 25, 2013, at which evidence was

adduced through testimony and the admission of documents. Two witnesses appeared on behalf of the Complainant, and one witness appeared for the Respondent. Pre-hearing briefs were submitted by the parties in advance of the hearing; the proceedings were transcribed; and the parties submitted post-hearing briefs. Upon consideration of the law, the record, and the parties' submissions, the Panel adopts the following Opinion and Award.

Statement of Facts

After growing up in Cleveland, Ohio, Richard L. Bird (hereinafter referred to as Bird) age 17, enlisted in the Army. Bird served in Vietnam. Part of his job was "carrying explosives" to be used in combat against the North Vietnamese. While performing his duties, an explosion in Bird's face hospitalized Bird for months and permanently took away much of his sight.

Due to his loss of sight, Bird was having difficulty obtaining work in the private sector. A counselor advised Bird to enroll in the "Business Enterprise Program" (BEP), and Bird began working in this program ever since. Bird has been a licensed blind vender under RSC/BSVI's Business Enterprise Program since 1986.

In early 2002, the Complainant, Richard Bird, won a Randolph-Sheppard arbitration resulting from his grievance against the Respondent, successfully arguing that the Respondent had not represented his interests with the U. S. Postal Service and had not protected the priority conferred on Richard Bird by the Act, 20 U. S. C. §107. He was awarded \$30,000. The three- member arbitration panel unanimously directed the Bureau of Services for the Visually Impaired to "actively and aggressively" demand that the Postal Service honor the priority to blind vendors to operate vending facilities on Federal property under the Randolph-Sheppard Act. (Arbitration Ex. A). The Respondent never sought payment by the Complainant of a service charge on the arbitration award. *See, Richard L. Bird v RSC/BSVJ (Notices/Department of Education) Federal Register 68:31 (February 14, 2003) p.7515-7517 LEXIS 1/28113*

Adhering to the requirements of the arbitration award, the Respondent brought a Randolph-Sheppard arbitration complaint against the Postal Service. A panel was convened, but did not conclude because the parties entered into settlement negotiations.

The Complainant/Bird, was not a party to the negotiations, although the first iteration of a "General Settlement Agreement and Release of All Claims" in 2005 included the Complainant, Mr. Bird, as a signatory, along with the Postal Service and the Bureau of Services for the Visually Impaired. (Arbitration Ex. B). Mr. Bird testified that he refused to sign the settlement agreement because it included a requirement that he pay a

service charge on the amount of compensation agreed to by the parties to the settlement and concurred in by Mr. Bird. (Arbitration Ex. C). According to testimony from Mr. Bird, the State licensing agency, Respondent herein, calculated that the Postal Service owed Mr. Bird approximately \$580,000 (Tr. 98). That testimony was not challenged by Respondent. The Complainant, Mr. Bird, hired a representative to monitor and participate in the settlement negotiations in order to protect Mr. Bird's interests.

Following protracted settlement discussions, Mr. Bird indicated he would accept payment of \$100,000 in order that the process could finally be terminated promptly (Tr. 99). Accordingly, the executed settlement agreement did not include any reference to a service charge, and Mr. Bird was not included as a signatory. (Arbitration Ex. D). The Respondent was paid \$130,000 by the Postal Service, of which amount the Respondent forwarded \$100,000 to the Complainant, Mr. Bird. It should be noted that by keeping \$30,000.00, the Respondent was returned its \$30,000.00. The Respondent, RSC / BSVI, was made whole.

Respondent, RSC/ BSVI, demanded payment by the Complainant, Mr. Bird, of a service charge on the \$100,000 settlement amount it had provided to Mr. Bird. The demanded service charge was \$30,000, or 50 percent higher than the highest level of service charge of 20 percent imposed on blind vendors in Ohio. (No explanation or this arbitrary amount was given by the Respondent at the time, nor was an explanation offered by the Respondent during the arbitration hearing on January 25, 2013.)

Mr. Bird filed a grievance against the Respondent, Bureau of Services for the Visually Impaired, asserting that no service charge was payable on his settlement award. A hearing was held by a hearing examiner. That hearing examiner is a member of this arbitration panel.¹ On October 6, 2006 the hearing examiner recommended that Bird's grievance be denied, but that the amount of the service charge imposed be reduced by all business and other expenses, including expenses paid by Mr. Bird for representation by Ralph Sanders. (Arbitration Ex. E). Six months later, on April 18, 2007, the Respondent Bureau issued an adjudication order ratifying the hearing officer's recommendation. (Arbitration Ex. F).

Mr. Bird promptly notified the Respondent that he would file an arbitration complaint in appeal of the adjudication order. The Complainant hired an attorney, or so he believed, to prosecute his arbitration. As it turned out, because of an apparent miscommunication, the attorney did nothing to prosecute Bird's arbitration for approximately six months (Tr. 105-106).

¹ The rules governing this present arbitration does not prohibit a party from choosing a panel member arbitrator who was the hearing examiner in earlier proceedings of this case.

Mr. Bird dismissed the attorney in late 2007, and a few months later, in February, 2008, he became seriously ill from a stroke, a heart attack, and physical complications, requiring surgery, from these traumas (Tr. 105). He was unable to work regularly for some period of time, and concentrated on his recovery and rehabilitation. Mr. Bird testified that, even though he followed the requirements of the Ohio Administrative Code regarding a dispute with the State as to amounts owed, the State sued him to recover the service charge it said he owed, and turned the matter over to a collection agency (Tr. 106-108). He submitted an arbitration complaint to the U.S. Secretary of Education in July, 2011.

James Cyrus, a fellow blind vendor, testified that no effort was made by Respondent to collect any service charge on an award he, Cyrus, had received after an evidentiary hearing (Tr. 173), and that employees of the Respondent had asserted to him that the State was "out to get" Mr. Bird, and were attempting to "jump start" Mr. Bird's hearing over that of Mr. Cyrus in order to obtain a precedent to collect a service charge from Mr. Cyrus. (Tr. 180, 186). Cyrus stated that he waited five years for his evidentiary hearing. (Tr.178). No question of laches was raised in connection with Mr. Cyrus' case.

According to other testimony, no other blind vendor receiving compensatory damages was required to pay service charges. Indeed, Mr. Cyrus testified that he had researched the matter, not only in Ohio but throughout the country, and he found "no evidence whatsoever that any operator ... has paid a set-aside or a settlement agreement" (Tr. 173-175). Stephen Moore, the Respondent's sole witness, asserted in response to a question as to whether the State of Ohio had ever imposed a service charge on one of its vendors, that Steven Vincke "received a settlement and paid a service charge on it" (Tr. 253). The primary difference between the Vincke case and Richard Bird's would appear from Mr. Moore's testimony to be that Vincke agreed to pay a service charge as part of his settlement agreement and Bird did not. According to Mr. Cyrus, however, that was not the case. He testified that Vincke "agreed to lower his amount of a settlement as if there was a service charge....[he] told me and others in front of witnesses that he never paid any service charge and they never required him to pay a service charge on those moneys" (Tr. 175).

Applicable Law

The Federal Randolph-Sheppard Act controls the operation of Ohio's blind vending facility program. Subject to that Act, and to the extent that they do not conflict with the Act, the State of Ohio is entitled to promulgate its own rules for the operation of its vending program. The relevant provision governing the imposition of a set-aside levy, or as termed in Ohio regulations, a "service charge," is 20 U.S.C. §107b(3). The Federal regulation addressing this concept is 34 C.F.R. §395.9. The definition of "net proceeds," is at 34 C. F. R. §395.1(k). State rules dealing with this subject are at OAC §3304:1-2 1-08.

Regulation 20 U.S.C. §107b imposes requirements upon States applying to the U. S. Secretary of Education for designation as State licensing agencies under the Act. Paragraph (3) of that section directs that any funds set aside "from the net proceeds of the operation of the [blind] vending facilities" in the State shall be used for five specific purposes. The paragraph also includes a relevant proviso stating that "in no event shall the amount of such funds to be set aside from the net proceeds of any vending facility exceed a reasonable amount which shall be determined by the Secretary". The comparable regulatory provision is at 34 C.F.R. §395.9(b)(5).

Under 34 C. F. R. §395.1(s), the term "set-aside funds" is defined as "funds which accrue to a State licensing agency from an assessment against the net proceeds of each vending facility in the State's vending facility program and any income from vending machines on Federal property which accrues to the State licensing agency." The term "net proceeds" is defined in the same regulations as "the amount remaining from the sale of articles or services of vending facilities, and any vending machine income or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges required to be paid by such blind vendors)." Both the Act and the regulations confine the imposition of set- aside levies to the net proceeds from the operation of blind vending facilities.

Regulations promulgated by the State of Ohio governing the Randolph-Sheppard blind vending facility program adhere, as they must, to the Federal Act and regulations. Under Ohio rules, each blind vendor "shall submit a service charge" to the Bureau of Services for the Visually Impaired. OAC §3304:1-21-08. The term "service charge" is defined as "the total of the fee assessed by BSVI upon the operator's net monthly proceeds." *Ibid*. The amount of the service charge imposed on a blind vendor's net monthly proceeds is based upon "gross monthly receipts "less" deductible expenses, stock, and wages." *Ibid*. The term "gross monthly receipts" is defined as "a ll payments, sales tax collected, discounts (when credited to other than the facility), gifts, donations, rebates, federal vending machine income, income as described in paragraph (C)(1) of rule 3304:1-21-16 of the Administrative Code, commissions, promotional considerations, and bonuses, either monetary or in kind, which the operator has the power to obtain and control the disposition thereof, accrued from the operation of a facility." Rule 3304:1-21- 16 addresses the use and distribution of income from vending machines on Federal property.

Discussion of Service Charge Issue

A monetary award to a blind vendor based upon a grievance against the State, or derivatively from an arbitration by a State against a Federal agency, does not fall within the definition of " net proceeds," either in the Federal Act, its implementing regulations, or in Ohio rules. The Federal law defines net proceeds as net income from the operation of a blind vending facility, and the Federal regulation defines net proceeds as the amount remaining after the sale of, articles or services of vending facilities. The Ohio rules similarly

define net proceeds, for purposes of determining service charges, as gross monthly receipts from the operation of a vending facility, reduced by deductible expenses, stock, and wages. None of the definitions recited above includes a monetary award made by a court or arbitration panel, nor do such definitions include funds provided to a blind vendor as a result of a settlement between the Respondent and the Postal Service. The Respondent argues that Mr. Bird's settlement award represented the recovery of "lost income," and that it therefore must be treated as income from the operation of Mr. Bird's vending facility. A settlement award is not monthly income or receipts from the operation of a blind vending facility. That is graphically demonstrated in Mr. Bird's case. The respondent itself agreed that the amount of Mr. Bird's lost income should be calculated as \$580,000. The amount he finally received--\$100,000--was an arbitrary amount put forward by Mr. Bird himself in order to resolve the long-standing dispute between the State agency and the Postal Service. For these reasons, there can be no service charge, or set-aside requirement, imposed upon the amount received by Mr. Bird in settlement of his claim against the Postal Service.

Ohio is unusual among State vending facility programs in the specificity and detail of its regulation identifying the sources of gross monthly receipts, or gross sales, or gross income. Notwithstanding such detail, however, there is no reference, in the definition of gross monthly receipts, to monetary awards resulting from grievances, nor anything that can be construed to apply to such awards. The service charge, or set-aside levy as it is termed in other States, is specifically limited to a percentage of monthly net income (or proceeds) from the operation of a vending facility.

As we have noted, the Respondent estimated the amount of lost income due to the Postal Service's violation of the Randolph-Sheppard Act at \$580,000, an amount covering a number of years. Because he wanted to put the dispute behind him, the Complainant was willing to accept in settlement approximately one-sixth of the amount he was due. The amount he accepted had nothing to do with his monthly income, gross or net. The amount could not in any respect be tracked by the State licensing agency as "net proceeds from the operation of a vending facility." The law does not enable the State of Ohio to collect set-aside, or service charges, on any and all moneys received by a blind vendor in the vending facility program from whatever source the State determines.

Discussion of Laches Issue

Respondent puts forth as a principal defense the argument that the Complaint that is the subject of this arbitration should be dismissed on the basis of the equitable principle of laches.

Respondent asserts that the Complainant has forfeited his right to a favorable judgment because too much time had elapsed between the issuance of the adjudication order denying his grievance in the evidentiary hearing on his claim that the settlement he

received from the Postal Service was not subject to the State's service charge on net proceeds from his vending facility, and the date he filed his arbitration Complaint.

There is no time limitation on the filing of a complaint for arbitration under the Randolph-Sheppard Act, 20 U.S.C. §§107d-1 and 107d-2. The Act confers upon a blind vendor the right to submit an arbitration complaint to the Secretary of Education if he or she is "dissatisfied with any action taken or decision rendered as a result of such hearing." 20 U.S.C. § 107 d-1(a). The Secretary must convene a panel to arbitrate the dispute and the panel is required to "give notice, conduct a hearing, and render its decision" in the case. 20 U.S.C. §107d-2. Notwithstanding the absence of any limitation on filing time, Respondent says that an arbitration decision in Illinois dismissing the State licensing agency's complaint against the Department of Defense, and a Federal court's acceptance of that decision, has precedential value enabling this Panel to dismiss Complainant's arbitration, citing *Illinois Department of Human Svcs. v. United States Department of Education*, 263 F. Supp. 2d 1119-1121 (E. D. 111. 2003).

The Federal court in the *Illinois case* did not ratify the arbitration decision, but determined only that the panel had the authority under 5 U.S.C. §706(2)(A) to decide as it did. The Respondent's reliance on the *Illinois case* is misplaced. First, the forum is different here- this is a complaint by a blind vendor against a State licensing agency, whereas the cited case was an arbitration brought by a State licensing agency against a Federal agency. In the *Illinois case*, the State delayed a decision to assert the Randolph-Sheppard priority to establish a vending operation at Great Lakes Naval Training Center. During the pendency of the State's decision, Great Lakes had contracted with a nonprofit agency employing disabled individuals to provide the services it required. The panel in that case determined that in the balance of equities, Great Lakes would suffer greater injury if the State were allowed to assert the Randolph-Sheppard priority because the Navy would have had to terminate the contract in place and be subject to damages.

In this case, it was clear from the testimony that several factors combined to limit Mr. Bird's ability to pursue an arbitration, as described heretofore. The Respondent alleges that it would be prejudiced in the absence of a dismissal of the Complaint because a number of individuals who might have testified are no longer state employees. There is no basis for assuming (and there is no testimony on this point) that the potential witnesses could not have recalled matters salient to the Complaint. The individuals were not called by the State, and its only witness demonstrated a memory sufficient to show his involvement in the matters addressed in the Complaint. Furthermore, and most important, this case turns primarily on the law and its interpretation: What are "net proceeds" under the Randolph-Sheppard Act, and does the definition of that term include funds received by the Complainant under a settlement agreement? Those questions have been answered to our satisfaction, in favor of the Complainant's position.

Conclusion

The persistent attempt by the Respondent to collect set-aside (service charges) on monetary damages provided to the Complainant is arbitrary and capricious. Other blind vendors in the State- notably witness James Cyrus- have been the recipients of such awards, and there has been no effort by the State to collect service charges from those vendors. Not only has the State sent its purported claim against the Complainant to a collection agency, it has mercilessly "piled on" by charging the Complainant interest in the amount of \$30,000 (more than 50 percent greater than the amount supposedly owed by the Complainant in service charges), and it has named the Complainant a vendor "not in good standing," which has precluded him from bidding on other vending facilities, and has penalized him by withholding annual retirement benefits for several years. Apart from the fact that such actions provide the basis for our award of additional compensation to Mr. Bird, they obliterate any claim the Respondent might have to a laches defense.

The arbitration panel in this matter finds and concludes that neither the Randolph-Sheppard Act, nor its regulations, nor the applicable Ohio Administrative Code provisions, support the imposition of a service charge on any amounts received by the Complainant as a result of Respondent's settlement agreement with the U. S. Postal Service. We find that the \$100,000 award to Mr. Bird bore no relationship to his net proceeds from the operation of his vending facility, nor to the theoretical amount he should have recovered, over time, from the Postal Service. The award could therefore not have been subject to a service charge. We further find that the Respondent punished the Complainant in several respects before he had the opportunity to resolve his grievance against the State, and before there had been a final determination with respect to the dispute. The Respondent instead attempted to collect its imposed service charge by going to local court, and by referring its disputed claim to a collection agency. The State declared the Complainant to be a vendor "not in good standing," which resulted in (1) preventing him from seeking a more lucrative vending operation , and (2) a loss of thousands of dollars because of the State's withholding of pension funds from Mr. Bird, which funds were received by every other Ohio vendor.

We agree with the Complainant acted arbitrarily and capriciously with respect to him as a duly qualified and licensed blind vendor of the State of Ohio.

Order and Award

Accordingly, the Panel in this matter hereby directs:

- (1) That the Respondent shall terminate any and all efforts to recover from the Complainant any service charge imposed on the settlement funds paid to the Complainant under the settlement agreement with the U.S. Postal Service;

- (2) That the Respondent shall forthwith notify the appropriate State court that it withdraws any and all claims against the Complainant, in accordance with this Opinion and Award;
- (3) That the Respondent restore to the Complainant the status of blind vendor in good standing, retroactive to the date Respondent removed Complainant from such status;
- (4) That the Respondent provide to the Complainant forthwith an amount equal to any and all retirement fund payments not received by him during his status as a vendor not in good standing but which were received by Ohio vendors in good standing during such period;
- (5) That the Complainant submit to the Respondent an accounting of his attorneys fees and expenses incurred by him from the date he submitted his arbitration complaint in this matter, to and including all such fees and expenses he is obligated to pay as a result of this arbitration, which amount shall be paid to the Complainant within 30 days following the date of execution of this Opinion and Award; and
- (6) This Panel shall retain jurisdiction over this matter for a period of 30 days following the date of execution of this Opinion and Award to ensure that Respondent has complied with such Order and Award.

Joseph W. Gardner, Panel Chair May 16, 2013

Robert R. Humphreys, Panel Member May 21, 2013

Paul Stehura, Panel Member dissents – See attached written dissent

Dissent of Panel Member Paul Stehura

As set forth below, I respectfully dissent with portions of the majority arbitration panel members' decision and the ultimate Order and Award in this matter.

Although I in large part agree with the majority's recitation contained in the Statement of Facts, I believe that certain items contained therein are not relevant to the outcome of the instant arbitration. This is particularly true with the discussion regarding RSC/BSVI's ("Respondent's") negotiation and ultimate settlement agreement with the United States Postal Service ("USPS") in February 2005 (Arbitration Ex. D) (hereinafter "Settlement Agreement") of Respondent's 2004 Randolph-Sheppard arbitration claim.

Although that particular arbitration pertained to Bird's Business Enterprise Program ("BEP") facility, Bird was not a party to that arbitration, and thus, as ultimately resulted, he was not a signatory to the Settlement agreement. Accordingly, consideration of evidence that Bird

refused to sign an initial draft of the Settlement Agreement which erroneously listed him as a signatory is simply not relevant.

Further, testimony from Bird witness James Cyrus contained multiple hearsay references (and in some cases double hearsay and beyond) which surely bring into question its reliability for this panel. For example, Cyrus' testimony that members of Respondent's BEP were "out to get" Bird were allegedly relayed to Cyrus from a member of the BEP who was allegedly relaying words or sentiments expressed by the then-director of the BEP. (Tr. 179 - 187). Although admittedly the rules of evidence do not strictly apply under the Ohio Administrative Procedures Act (Ohio Revised Code Chapter 119) or federal Randolph-Sheppard arbitration hearings, a more reasonable standard of reliability should be applied to this important assertion. Similarly, such is also applicable to Cyrus' testimony of why another blind vendor, Steven Vincke, agreed to pay a service charge to Respondent as part of a similar arbitration settlement payment that Vincke received. (Tr. 175).

My main area of disagreement with the majority's decision is its application and interpretation of service charges under Ohio and federal regulations.

In his post-hearing brief arguing against the Lost Income Payment amount being subject to the service charge, Bird focuses on the fact that the Settlement Agreement did not expressly state that the amount would be subject to the service charge. This contract argument is misplaced in this analysis primarily because Bird was not even a party to the arbitration which resulted in the Settlement Agreement.

As noted, the Settlement Agreement was the result of Respondent's arbitration complaint against the USPS. As such, although the substance of the settlement dealt with Bird's BEP facility, Bird was properly not a party to the agreement. This scenario is contemplated by §20 U.S.C. 107d-1(b), which permit State Licensing Agencies (SLAs) to initiate arbitrations under the federal Randolph Sheppard Act against parties. Section 107d-1(b) specifically states that the arbitration decisions are binding on the parties to the arbitration. Similarly, settlement agreements resulting from arbitration complaints are binding on the parties thereto and not on others, such as Bird, who are not parties to the arbitration.

The proper analysis of whether the Lost Income Payment amount was subject to Respondent's service charge is based on the express language of and intent derived from the federal and Ohio Randolph-Sheppard Acts themselves as well as the administrative regulations promulgated therefrom.

The basis for Respondent's authority as an SLA to assess a service charge (also called a "set aside" charge) is plainly set forth at 34 C.F.R. §359(a), which states that the SLA shall establish written rules describing the extent to which blind vendors may be assessed set aside charges from the net proceeds of the operation of their vending facilities. "Set-aside funds" is defined as funds which accrue to an SLA "from an

assessment against the 'net proceeds' of each vending facility" in the SLA's facility program." 34 C.F.R. §395(k). "Net proceeds" as defined at 34 C.F.R. §395(k), is not only income from the sale of articles or services at the facility or from vending machines, but also includes "or other income accruing to blind vendors." Clearly, as argued by Respondent, these federal definitions contemplate income from sources other than gross receipts or from actual products or services sold.

Moreover, when analyzing Ohio's relevant administrative definition, one concludes that the definition is consistent with the above federal definitions and also contemplates income from other than merely the sale of products and services being subject to the service charge.

In Ohio, "gross monthly receipts" is defined at OAC § 3304:1-21-08(A)(1) as: all payments, sales tax collected, discounts (when credited to other than the facility), gifts, donations, rebates, federal vending machine income as described in paragraph (c)(1) of rule 3304: 1-21-16 of the Administrative Code, commissions, promotional considerations, and bonuses, either monetary or in kind, which the operator has the power to obtain and control the disposition thereof, accrued from operation of a facility

(Emphasis added).

Clearly, Bird had immediate control and dominion over the Lost Income Payment amount from the moment it was remitted by Respondent and has had control and dominion over that amount since.

As both the federal and Ohio regulations collectively classify Bird's receipt of the Lost Income Payment as income subject to the service charge, I believe that this arbitration panel should have found that the Lost Income Payment amount was properly subject to Respondent's service charge under the BEP.

With respect to the specific Order and Award on page 13 of the majority decision, I state the following:

- (1) I do not concur with items 1 and 2 and would recommend Respondent, through the Ohio Attorney General, continue efforts to recover from Complainant all aspects of the service charge, including any costs, expenses or fees to which it is entitled at law;
- (2) I do not concur with items 3 and 4 as the record reflects only assertions that Complainant is not in good standing in Respondent's BEP and as a result has not received retirement fund payments from Respondent.

- (3) Although not concurring with the Order and Award of the majority, I do concur that Complainant be required to submit to Respondent an accounting of any attorney fees or other expenses to which Complainant believes he is entitled as a result of the panel's Opinion and Award. Any disputes regarding the amount of or entitlement to certain fees and expenses should be referred to the panel for a final ruling.
- (4) I concur with item 6.

For the above-stated reasons, I respectfully dissent with the majority arbitration panel members' decision and Order and Award in this matter.

Paul Stehura, 6-3-13