

In the Matter of the Arbitration

CASE NO. R-S/11-05

Between:

BIRD, et al, Complainant,

and

OREGON COMMISSION FOR THE BLIND, Respondent.

ORDER

This matter came on for hearing before the Arbitration Panel (the "Panel") on September 24 and 25, 2013, at Portland, Oregon. Complainants were represented by Ronald Heard and Roger Harris with Harris Berne Christensen LLP. Respondent was represented by Lynn Rosik and Serena Hewitt of the Oregon Attorney General's Office. Testimony and documentary evidence were received. Post hearing briefs were received by the Panel on December 12, 2013 and December 20, 2013.

Based on the applicable law and regulations, the evidence, the arguments of the parties, the Panel hereby
AWARDS AND ORDERS:

Jurisdiction

The Panel has jurisdiction of this matter under 20 USC §107d-2, 34 CFR § 395.37 and the September 21, 2012 appointment letter from Dr. Edward Anthony, Deputy Commissioner of the United States Department of Education, pursuant to a request filed by Jerry Bird, Randy Houth, Miranda Lewanda and Art Stevenson. Mr. Stevenson subsequently requested that he be removed as a party to the arbitration.

Procedural History

This dispute concerns actions of the Oregon Commission for the Blind ("Commission") with respect to vending services at Chemeketa Community College ("Chemeketa") a political subdivision

of the State of Oregon, Complainants are blind vendors licensed by the Commission to operate the vending facilities on federal, state and other property in the State of Oregon. Complainants requested that the arbitration panel require the Commission to take legal and other action against Chemeketa sufficient to protect the blind vending facility program and the blind vendor previously assigned to Chemeketa, including a demand that any compensation, commissions, or benefits accruing to competing vending facilities at Chemeketa be paid to Jerry Bird, the previously assigned blind vendor at Chemeketa, and a demand that Chemeketa take such other actions as are necessary to bring it into conformity with Oregon Law.

The Issues

The four issues agreed to by the parties were as follows:

1. Whether Chemeketa is subject to the preference guaranteed by Oregon law, and to ORS 346.220, and whether the Commission's actions failed to protect the preference in violation of state law or the Randolph-Sheppard Act.
2. Whether the burden is on Chemeketa as a public agency to show that it is not subject to the blind vending facility preference imposed by Oregon law, and whether the Commission refused to insist that Chemeketa adhere to the law in violation of Oregon and federal law.
3. Whether the Elected Committee of Blind Vendors in Oregon ("ECB") was allowed by the Commission to actively participate in a major program decision involving strategy on the Chemeketa controversy, in violation of the Randolph-Sheppard Act.
4. Whether the Commission was obligated to object to, and prevent, Chemeketa's contracts with both NWI, Inc. and Courtesy Vending, and was the Commission's failure to stop these contracts a violation of state law and the Randolph-Sheppard Act

The Facts

The Commission entered into an intergovernmental agreement (IGA) with Chemeketa

Community College in 2007. The IGA had a five year term, and allowed for the operation of certain vending machines on the main Salem campus and various satellite campuses. The Chemeketa vending was assigned to licensed blind vendor Jerry Bird in accordance with a previous arbitration decision. In November 2008, Chemeketa entered into a contract with Northwest Innovations, Inc. ("NWI") to provide food services on Chemeketa campuses. At the same time, NW1 entered into a Sponsorship Agreement with Pepsi Bottling for "pouring rights" for carbonated beverages on the college properties.

When the Commission became aware of the NWI contract, it concluded that Chemeketa had not given the Commission notice and an opportunity to bid on these vending and food service opportunities as required under Oregon law. The director of the Business Enterprise program, Walt Reyes, worked with the Commission's legal counsel, Senior Assistant Attorney General Joe McKeever, to negotiate an IGA that addressed the additional vending and provided financial benefit to the assigned vendor, Mr. Bird. Tentative agreements were reached, but negotiations broke down because Mr. Bird and the BECC did not agree to the payment of any commissions to Chemeketa, and Mr. Bird demanded that he be awarded all of the vending machines.

The Commission decided to follow a BECC recommendation to pursue litigation against Chemeketa based on its failure to notify the Commission of the vending opportunities and provide the Commission with the opportunity to bid. Chemeketa settled the lawsuit by agreeing to amend its NWI contract to remove all of the vending machines from the contract and announced that the vending machines would be put out to bid. Chemeketa also informed the Commission that it was terminating the IGA so that all of the vending machines could be put out to bid at once.

Chemeketa put the vending machines out to bid with an RFP. The Commission and two private vending companies responded to the RFP. On August 15, 2011, Chemeketa announced it would award the vending contract to Courtesy Vending. Chemeketa provided written notice of the reasons for the award and described why Courtesy Vending's bid was better than the Commission's bid. The reasons given by Chemeketa included, but were not limited to, payment of commissions. The BECC recommended that the bid award be protested, but the Commission

received legal advice from the Oregon office of Attorney General that there was no valid basis for a protest, so no protest was filed.

Discussion

1. Whether Chemeketa is subject to the preference guaranteed by Oregon law, and to ORS 346.220, and whether the Commission's actions failed to protect the preference in violation of state law or the Randolph-Sheppard Act.

The parties do not disagree as to whether Chemeketa is subject to the preference for blind vendors under Oregon law. The parties disagree about the nature and extent of that preference. Complainants maintain the Commission had the right of first refusal on all Chemeketa vending contracts if the Commission submitted a reasonable bid for those contracts. The Commission maintains Chemeketa has the discretion to pick the bid which is satisfactory to it. ORS 346.520 provides:

For the purposes of providing persons who are blind with remunerative employment, enlarging the economic opportunities of those persons and stimulating them to greater efforts to make themselves self-supporting with independent livelihoods, persons who are blind are who are licensed under the provisions of ORS 346.510 to 346.570 by the Commission for the Blind as set forth in ORS 346.510 to 346.570, shall operate vending facilities in or on any public buildings or properties where, in the discretion of the head of the department or agency in charge of the maintenance of such buildings or properties, such vending facilities may properly and satisfactory operate.

This language is somewhat ambiguous because on the one hand it states that licensed blind managers "shall" operate vending facilities in public buildings, but on the other hand it modifies that "shall," with the phrase "where, in the discretion of the head of the department or agency in charge of the maintenance of such buildings or properties, such vending facility may properly and satisfactory operate." Complainants argue a reasonable interpretation of this language is that the only discretion a department head has is to determine whether there will be vending facilities on the property or not. Once that decision is made, the Commission automatically gets those vending facilities if it submits a

reasonable bid. The Commission argues a reasonable interpretation of the statute is that the head of the department or agency has the discretion to not only determine whether any vending facilities shall operate, but also the discretion to define what the proper and satisfactory operation of those vending facilities should be. In other words, the head of the department or agency can ask for bids, and use the best bid as that which is necessary to properly and satisfactorily operate the facility.

If ORS 346.520 stood alone, Complainant's argument would be more persuasive. However, ORS 346.530(2) states:

If the Commission for the Blind makes an offer to operate a vending facility under the provisions of this section and the offer is not accepted for reasons other than a decision to have no vending facility on the premises, such head of the department or agency shall notify the Commission in writing of the reasons for refusing its offer, including but not limited to the terms and conditions of the offer which was accepted, if any.

This provision expresses the intent of the legislature that the head of the department or agency may decline the offer of the Commission to operate a vending facility for reasons other than a decision to have no vending facility on the premises. If the head of the department or agency does *this*, then that head shall notify the Commission of the reasons for refusing the Commission's offer. The head of an agency can decide that vending is appropriate, but that in his discretion, the Commission's bid is not satisfactory because another bid is much better. Adhering to the maxim that we should strive to not render any provision of the Oregon law null and void, then we cannot accept Complainants' position that the head of an agency cannot decline an offer for reasons other than a decision to have no vending facility on the premises. Further, the Attorney General's Opinion in 37 OP Atty. Gen. 392 (1975) construed the statutes to allow an agency the discretion to refuse the Commission's offer if an agency chooses to accept a better offer. It is notable that the 1975 opinion was available when the Oregon legislature deliberated on amendments added to ORS 346.530. The legislature chose not to revise the language to prevent an agency from the acceptance of a better offer.

We find that Chemeketa had the discretion under Oregon law to determine which bid was

satisfactory to Chemeketa, and no violation of the law occurred when the Commission did not challenge Chemeketa's discretion to select Courtesy Vending.

2. Whether the burden is on Chemeketa as a public agency to show that it is not subject to the blind vending facility preference imposed by Oregon law, and whether the Commission refused to insist that Chemeketa adhere to the law, in violation of Oregon and federal law.

At the hearing this issue evolved into whether the Randolph-Sheppard Act requires every entity which allows a licensed vendor to operate on its property to also execute a permit with the Commission for an indefinite period of time. Both parties agree that Chemeketa is not federal property. Both parties agree that Chemeketa is "other property" under the Randolph-Sheppard Act. The question is must the managers of Other Property enter into permits with the Commission for an indefinite period of time.

34 CFR § 395.34 provides:

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing on the appropriate form, and submitted for the review and approval of the head of the Federal property managing department, agency, or instrumentality.

This provision implies that permits are required when dealing with the head of the federal property agency. Nothing requires permits when dealing with Other Properties as defined by the Randolph-Sheppard Act. Therefore, the provisions of Section 395.35 addressing terms of permits would only apply when dealing with federal property. This interpretation is bolstered by the terms of Section 395.35 itself. For instance, Section 395.35(c)(2) talks about certain costs not being the responsibility of the "department, agency or instrumentality responsible for the maintenance of the federal property.,, 395.35(c)(3) talk about the articles which can be sold "in consultation with the onsite officials responsible for the federal property."

No case stands for the proposition that permits issued on Other Property must be for an indefinite period of time. The *Delaware Department of Health and Social Services v. United States Department of Education*, 772 F.2d 11.23, 1126-27 (3rd Cir. 1985) case cited in the Brief of Complainants merely

holds that vendors on Other Property have certain rights under the Act as stated in 20 U.S.C. § 107(b).

None of those rights have anything to do with securing pennits for an indefinite period of time on Other Property.

The Panel finds the law does not require that these contracts for vending services on Other Property be for an indefinite period of time.

3. Whether the Elected Committee of Blind Vendors in Oregon (the "BECC"), was allowed by the Commission to actively participate in a major program decision involving strategy on the Chemeketa controversy, in violation of the Randolph-Sheppard Act.

We must first examine whether the issues surrounding Mr. Bird's permit with Chemeketa were a major program decision, and if they were, did the Commission allow active participation of the BECC with regard to those issues.

The Commission's rules and regulations define active participation as "major administrative decisions and policy and program decisions affecting the overall administration of the program." See OAR 585-010-0015. This regulation gives examples of these major administrative decisions affecting the overall administration of the program. None of those examples include negotiating a particular contract for a particular vendor or even litigating an issue for a particular vendor. The examples are of issues which affect the overall administration of the program such as policies which govern duties, supervision, transfer, promotion and final participation of all of the managers, not just one.

The evidence at the hearing was clear that although another definition of active participation was discussed, no other definition of active participation was ever formally adopted by the Commission and approved by the Rehabilitation Services Administration as is required for it to become effective.

We find that active participation by the BECC was not required. This is not to say that the issues involved in Mr. Bird's concern would not have been of interest to many managers. However, that is not the definition of a major administrative decision affecting the overall administration of the program. If the Commission is dealing with one manager's contract with a state agency, that is

not a major administrative decision affecting the overall administration of the program.

4. Whether Respondent was obligated to object to, and prevent, Chemeketa's contracts with both NWI, Inc. and Courtesy Vending, and was its failure to stop those contracts a violation of state law and the Randolph-Sheppard Act.

We have previously held that the Commission did not have the right of first refusal on Chemeketa vending contracts *if* it submitted a reasonable proposal for that vending. Because Chemeketa had the discretion to award vending contracts to vendors presenting superior bids for those contracts, the Commission was not obligated by state or federal law to try to stop or to prevent those vending contracts.

Conclusion

Because the Panel majority has found in favor of the Commission on all four issues, there are no grounds for an award of damages or attorneys' fees.

Thomas F. Levak Dated 3/24/14

Assent - Peter A. Nolan Dated 3/19/14

Dissent - Susan Rockwood Gashel Dated 3/24/14

DISSENT

The majority decision of the arbitration panel has the effect of nullifying Oregon blind vending law, a law with the explicit purpose of improving the employment prospects of blind individuals. That law provides that individuals licensed by the Oregon Commission for the Blind (Commission or OCB) "shall operate vending facilities" on public property where "in the discretion" the state agency charged with maintenance of the public property such vending facilities may "properly and satisfactorily operate." ORS § 346.510(a). Neither the Commission nor a blind licensee can be required to pay for rent or utilities incurred in the operation of the vending facility. ORS § 346.410(b).

Contracts entered into by agencies in contravention of ORS §§ 346.220, 346.510 to 346.570 "shall be null and void." ORS § 346.530(3).

The majority's decision in this case involving Chemeketa Community College (CCC or Chemeketa) is that a state agency can accept a "better offer" from a non-blind operated concern. There is no language in the statute that authorizes a "better offer" to overcome the blind's statutory preference. This means that CCC or other host agencies can circumvent the blind vendor law. The "better offer" interpretation ensures that a commercial concern will be awarded all but the least profitable facilities, thwarting both the letter and the spirit of ORS § 346.510. Under Oregon law, the statutory interpretation advocated by the Commission and acceded to by the majority is not tolerable. As stated in *Int'l Broth. of Elec. Workers Local No. 48 v. Oregon Steel Mills, Inc.*, 168 Or. App. 101, 106, 5 P.3d 1122, 1125 (2000), a statute cannot be interpreted to render it a nullity; "[s]ettled principles of statutory construction counsel against that interpretation."

In effect, a state agency can put a vending facility out to bid, and award it to a non-blind operated concern. This interpretation puts the blind vending preference on the same footing as any other bidder for a concession to operate a blind vending facility on state property. The "better offer" interpretation nullifies, indeed eviscerates, the blind vending preference. For all practical purposes, there is no preference. The "better offer" interpretation effectively ensures that Oregon will not carry out the purposes of the law. It will not "provide persons who are blind with remunerative employment." It will not "enlarge the economic opportunities of the blind." It will not stimulate the blind to "greater efforts to become self-supporting individuals with independent livelihoods."

Indeed, the desirable and profitable employment and economic opportunities will go to non-blind operated concerns.

DISCUSSION

Issue One: The Majority Erred When it Concluded that CCC had Discretion to Choose the "Better Offer" and When it Concluded that the Commission was Not Required to Declare the CCC Contracts with Non-Blind Operators Null and Void

A. Principles of Statutory Construction

As explained by the United States Supreme Court, in United States v. Am. Trucking Ass'ns, 310 U.S. 534, 542, (1940):

In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. There is no invariable rule for the discovery of that intention. To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute[.]

Yet this is precisely what the Majority has done, in its acceptance of the "best offer" interpretation of Oregon's blind vending law. See, also, State ex rel. Cox v. Wilson, 277 O.R. 747, 562 P.2d 172, 173 (1977): "[t]he best standard for statutory construction applicable to the problems of this case is the often quoted statement in U.S. v. Amer. Trucking Ass'ns."

The Majority has inserted language into the statute that the legislature omitted. Under Oregon law, this statutory construction is impermissible:

When we construe the language of a statute, "we are to effectuate the intentions of the legislature, 'if possible.' ORS 174.020. To ascertain the intentions of the legislature, we examine the text, its context and, if necessary, the legislative history. In all events, however, we are constrained by the reasonable construction of the language that the legislature actually enacted. We are forbidden, both by statutory command and by constitutional principles, to insert language that the legislature, whether by design or

by default, has omitted."

Tee v. Albertson's, Inc., 148 Or. App. 384, 389, 939 P.2d 668, 670 (1997) (citations omitted).

B. The Better Offer" Interpretation Does Not Accord with Well-Settled Principles of Statutory Construction

The majority sees the requirement at ORS § 346.430(2) that state agencies notify the Commission of the reasons for refusing the Commission's offer, as an exception to the law, stating that the Commission's bid can be rejected because "another bid is much better." This reasoning ignores Oregon's comprehensive scheme to ensure that blind licensees are given the opportunity for remunerative employment. Briefly summarized, that law provides:

346.520(a) Blind persons shall operate vending facilities on public property where agency heads, in their discretion, determine that the facilities may properly and satisfactorily operate.

346.520(b) The state agency cannot charge the Commission or the blind licensee for rent or utility costs.

346.530(1) Agency heads shall notify the Commission (a) of sites where vending facilities might properly and satisfactorily operate; (b) of intention to issue a permit 30 days prior to issuance; (c) of any locations where vending facilities are planned or might properly and satisfactorily operate at least 30 days prior to permit issuance .

346.530(2) If the Commission's offer is not accepted, the agency head shall notify the Commission of the reasons for not accepting the offer, and the terms and conditions of the offer that was accepted.

346.530(3) Any contract in violation of ORS §§ 346.220 and 346.510 to 346.570 shall be null and void.

Moreover, the Majority has misstated Complainant's position. Complainant's position is that the head of an agency can decline an offer when no licensee can provide the services meeting requisite standards (other than of course, the payment of rent, utilities, commissions, and the like—i.e., the "better offer").

Contrary to the Majority's view, ORS §§ 346.520 and 346.530, when read together, provide support for

Complainant's position that an agency can decline to issue a permit to the Commission when (a) no vending facility is desired by the state agency, or (b) no blind licensee can provide the requisite services sought by the agency at the vending facility. Indeed, the requirement that the agency notify the Commission of the terms accepted gives the Commission an opportunity to see if it can meet those terms.

Furthermore, the Majority has misinterpreted the legislative history, stating:

It is notable that the 1975 opinion was available when the Oregon legislature deliberated on amendments added to ORS 346.530. The legislature chose not to revise the language to prevent an agency from the acceptance of a better offer.

This is the actual sequence of events: on February 28, 1975, the Oregon Attorney General issued an opinion on the issue of whether blind licensees are granted a preference to operate vending stands on public property. The opinion stated, in part:

the agency head must consider the commission's offer. While it may be rejected, we believe there must be sufficient cause for such rejection which perhaps might be a better offer.

On April 23, 1975, the Oregon House Committee on Human Resources held a public hearing on HB 2437, which added the provision declaring "null and void" contracts which do not comply with the blind licensee preference. The testimony was that the

"null and void" language was inserted to ensure that the preference is recognized. Rep. Bunn stated that the purpose of the "null and void" language was to ensure that "blind persons would, in fact, have first opportunities at those contracts."

Thus, the Majority's statement that the legislature did not revise the language is incorrect. In fact, the legislature did amend the act to declare such "better offer" contracts "null and void."

Thus, the Majority erred when it concluded that CCC had the "discretion" to accept the "better offer." The Majority also erred when it concluded "no violation of the law occurred when the Commission did not challenge Chemeketa's discretion to select Courtesy Vending." The

Commission is charged with the duty of establishing vending facilities in those locations which the Commission deems suitable, and with entering into leases or licensing agreements therefor, with the consent of the state agencies. ORS § 346.540(b). The Commission failed to do ensure that a blind licensee could operate the vending facility at CCC, contrary to its statutory duty. It failed to take steps to ensure that the contract between CCC and Courtesy Vending be "null and void."

Issue Two: The Panel Erred When it Concluded that Permits for Vending Facilities on State Property are Not Required to be Indefinite

As stated above, Oregon law requires that state agencies enter into leases or licensing agreements with the Commission for vending facilities to be operated by blind licensees (akin to permits). Blind vendors receive licenses for an indefinite period. 34 C.F.R. § 395.3(a)(11)(1). The Randolph-Sheppard Act (R-S Act) "establishes a cooperative federal-state program that provides employment opportunities for the blind."

Premo v. Martin, 119 F.3d 764, 766 (9th Cir. 1997). Each state has a state licensing agency (SLA) that issues "licenses to blind individuals to operate vending facilities on Federal and other property. 34 C.F.R. § 395.1(v) (emphasis added). The blind vending program "means all the activities of the licensing agency under this part related to vending facilities on Federal and other property. 34 C.F.R. § 395.1(p) (emphasis added). The Majority states that permits issued for "other property" need not be for an indefinite period of time. This reasoning ignores the fact that licensees are granted a license for an indefinite period of time. If the license is indefinite and the agreement (whether it is termed permit, lease, or licensing agreement) is not for an indefinite period of time, then the vendor does not have the right to operate that particular facility for an indefinite period of time (note that cafeteria contracts may be time limited under the R-S Act). The majority ignores the fact that termination of a permit is limited by the R-S Act regulations: 34 C.F.R. § 395.7(b) only authorizes revocation of a license if a vending facility is not being operated in accordance with the SLA's rules and regulations, the permit's terms and conditions, and the terms and conditions of the SLA's agreement with the vendor. A finite permit effectively limits a licensee's indefinite permit; the end result is that the R-S Act's purposes and those of the Oregon blind vending law are thwarted. The blind licensee's ability to engage in remunerative employment

is limited by a finite permit.

Issue Three: The Panel Erred When it Ruled that the Oregon Elected Committee of Blind Vendors Was Not Required to Be Involved in Strategy in the CCC Controversy.

The Majority's characterization of the issue as "negotiating a particular contract for a particular vendor or even litigating an issue for a particular vendor" trivializes the importance of the issues in this case to Oregon's blind licensees. The CCC contract was the first time vendors in Oregon were faced with the SLA agreeing to two contract terms: the payment of commissions and a "termination without cause" provision. There can be no doubt that these provisions weaken the blind vendor preference, and that the Oregon SLA was starting down a slippery slope that would weaken the economic prospects of Oregon's blind licensees.

The Commission is required to establish a blind vendors committee (Business Enterprise Consumer Committee or BECC.) 20 U.S.C. 107b-1. The BECC's role is,

inter alia, to actively participate in major administration decisions and policy and program development. Id. The Commission, as the SLA, is required to establish "[t]he methods to be used to ensure the continuing and active participation of the State Committee of Blind Vendors in matters affecting policy and program development and **administration**. 34 C.F.R. § 395.3(a)(4) (emphasis added).

It is noteworthy that in a previous arbitration brought by Mr. Bird, R-S/07-2, the panel found that "OCB's rules and regulations require it to consult with the BECC about decisions regarding opportunities the magnitude of the CCC vending." Thus, the issue was res judicata, as there was no appeal of the arbitration award. The evidence in the record makes it clear that the Commission's refusal to actively participate on this issue along with its acceptance of the legally flawed "better offer" interpretation have had the dismal result of lessening the number of blind people who are able to secure employment through the Commission. In fact, Oregon has only 17 blind licensees, down from 25 in 2008.

Issue Four: The Panel Erred When it Held that the Commission Was Not Required to Object to and Prevent CCC's contracts with both NWI, Inc. and Courtesy Vending.

Oregon's blind vendors cannot be required to pay utilities or rent. ORS § 346.520(2). This sets up a scenario where state agencies will seek to improve the state agency's fiscal condition by acceptance of a non-blind offer. After all, the non-blind vending facility operator can be required to pay utilities, rents, commissions, and the like. The "better offer" interpretation ensures that a commercial concern will prevail over the statute at ORS § 346.520(1), that blind licensees "shall" operate vending facilities.

ORS § 346.530 provides that contracts that do not comply with ORS §§220 and 346.510 to 346.570 "shall be null and void." While the law is not clear what action must be taken by the Commission to nullify and void the contracts, the facts are clear that the SLA did nothing to void the contracts. In fact, the SLA did nothing to enlarge the economic opportunities of the blind in this case, and failed in its essential mission.

CONCLUSION

The Panel erred when it failed to order the following prospective relief:

A ruling that OCB has failed in its obligations as a state licensing agency when it

(a) agreed to the payment of commissions to Chemeketa; and (b) failed to take actions to obtain a declaration that the contract between Chemeketa and non-blind operated concerns were null and void;

An order that OCB be required to ensure that BECC participate in major administrative decisions such as the Chemeketa decision.

An order requiring OCB to take actions to ensure that the Chemeketa contract be declared "null and void" and that Mr. Bird be awarded the CCC contract.

The Panel erred when it failed to award damages. In this circuit, *Premo v. Martin*, 119 F.3d 764 (9th Cir. 1997) is the controlling authority. *Premo* involved an arbitration panel that ruled in favor

of the blind licensee, awarding her damages and attorney fees. There, the Ninth Circuit concluded that arbitration panels convened under the Act have the authority to award compensatory relief. Premo at 769.

Mr. Bird's damages can best be calculated by means of reference to a March 23, 2010 email from the Oregon Department of Justice to OCB, which sets out the amount of income received from May 2007 through August 2009. This amount is deemed to be reliable as it is a public record. The total amount for the 27 month period comes to \$23,890, which comes to \$884 per month.

Accordingly, Mr. Bird should be awarded \$884 per month from September 2011 through the present, less set aside payable to the State of Oregon, plus post and pre-judgment interest payable at the federal statutory rate. In addition, Mr. Bird should be awarded \$884 (less set-aside charges) per month until OCB locates a suitable vending opportunity to place his net earnings at \$884.00 per month. Mr. Bird should also be awarded his reasonable attorneys' fees and costs incurred in this action.

Dated: March 17, 2014

Susan Rockwood Gashel

SUPPLEMENTAL DECISION

UNITED STATES DEPARTMENT OF EDUCATION REHABILITATION SERVICES ADMINISTRATION

In the Matter of the Arbitration Remand JERRY
BIRD, Complainant,

Case No. R-S/11-05 FINAL ORDER

vs.

OREGON COMMISSION FOR THE BLIND,
Respondent.

FINAL ORDER

This Final Order disposes of any and all claims, counterclaims, arguments, and contentions relating to the scope of the appeal and remand, the merits and the amount of damages. This matter is closed.

1. Attorney for Complainant has brought to the Panel's attention that a typographical error was contained at page 11, Section IV, paragraph 1 of the Panel's Findings of fact, Conclusions of Law, and Award. The figure of \$81,400 is accordingly replaced with the figure \$83,040. The total damages awarded remain at \$71,040. Complainant's request to reconsider the deduction for attorneys' fees that he will be reimbursed for is denied.

2. Complainant's request for prejudgment interest is denied.

3. Complainant's supplemental petition for attorneys' fees is granted in part, and denied in part. Complainant is awarded \$30,415 in attorneys' fees representing all fees sought in Complainant's Supplemental Petition and Declaration in Support of Attorney Fees, Costs, and Expenses, with the exception of those incurred May 1, 2018,

motion was not authorized by the Panel. Complainant is awarded is costs in the amount of \$ 4,668.59.

Dated July 19, 2018

Thomas Levak, Chair

Peter Nolan, Respondent's Appointed Panel Member

Susan Rockwood Gashel, Complainant's Appointed Panel Member