

RANDOLPH-SHEPPARD ACT ARBITRATION

Case No. R-S/12-03

LYNN KNEIP, Complainant,

v.

IDAHO COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED, Respondent.

DECISION OF THE ARBITRATION PANEL

I. General Background

In 1936, Congress enacted the Randolph-Sheppard Act to provide employment opportunities for the blind by granting priority to blind persons who wish to operate vending facilities in government buildings. 20 U.S.C. § 107(b). The Act divides responsibility for the “blind vendor” program between state and federal agencies. At the federal level, the Secretary of Education interprets and enforces the provisions of the Act and designates state licensing agencies. 20 U.S.C. §§ 107a(a)(5) & 107b; 34 C.F.R. §§ 395.5 & 395.8. At the state level, state licensing agencies (SLAs) implement the program. State participation in the program is voluntary.

A person seeking a position as a blind vendor applies to the designated state agency and is licensed by that agency. The state agency then applies to the federal government for placement of the licensee on government property. 20 U.S.C. § 107b. Once the state and federal government have agreed on an appropriate location for the vending facility, the SLA is responsible for equipping the facility and furnishing the initial stock and inventory. 20 U.S.C. § 107b (2). The blind vendor thereafter operates as a sole proprietor who is entitled to the profits of the vending facility and who is responsible for the facility’s losses. Among the conditions of state participation in the Randolph-Sheppard program is the state’s agreement to provide any blind licensee dissatisfied with any action arising from the operation or administration of the vending facility program an opportunity for a hearing before the state agency. 20 U.S.C. § 107b (6). If the hearing does not resolve the matter, the licensee must be given an opportunity to submit any unresolved grievances to an arbitration panel convened by the Secretary of Education. *Id.*

II. Findings of Fact

1. The Idaho Commission for the Blind and Visually Impaired (hereafter “Commission” or “ICBVI”) is an administrative agency of the State of Idaho. Pursuant to Idaho Code § 67-5411, the Commission was designated as the SLA for the State of Idaho under the provisions of the Randolph-Sheppard Act. Pursuant to that statutory authority, the Commission established the Business Enterprise Program (hereafter “BEP” or “Program”).
2. The BEP contracts with various governmental agencies for vending, snack bar, and cafeteria services in government buildings and facilities. The BEP then subcontracts the operation of the vending, snack bar, and cafeteria services in those facilities to licensed blind vendors. The BEP provides training and assistance to the blind vendors, and the BEP purchases and services the vending machines and other equipment used by the blind vendors who work on contract with the BEP.
3. Pursuant to federal law, the Commission has priority over vending services in most federal buildings in Idaho. When the federal government selects the Commission to provide services to a building through the Randolph-Sheppard program, it issues the Commission a permit to provide services for a specific building or location, but the location can cancel the permit if the vending, snack bar, or cafeteria facilities are not serviced and operated in accordance with the terms of the permit.
4. Between 2006 and August 2012, Lisa Van Ry was the supervisor of the BEP.
5. Gina Washburn went to work with the BEP in May 2011 as a BEP Specialist. In August 2012, Ms. Washburn assumed the position of BEP supervisor.
6. Through the BEP, the Commission provides hands-on training for blind vendors, including training on establishing a business plan, accounting, machine care and maintenance, and adherence to the Commission’s rules and policies. Part of the training is done as an apprenticeship with a licensed blind vendor in the Program.

7. The blind vendors meet twice per year, and – at those meetings – blind vendors attend training programs designed as continuing education to assist them in operating their businesses.
8. The BEP conducts regular inspections of subcontracted vending, snack bar, and cafeteria sites.
9. Mr. Lynn Kneip entered the BEP as a trainee in November 2006. Mr. Kneip’s trainer was Scott Marcott, who at that time was the blind vendor licensed to operate the TSA- TSB snack bar (later known as the Soaring Eagle) at the Idaho National Laboratories and the vending machines at the EROB location. Mr. Kneip worked at the snack bar during his training with Mr. Marcott.
10. On November 28, 2006, Mr. Kneip signed a Limited Duration Contract for Operation of the TSA- TSB snack bar and vending machines at a Department of Energy property at 1250 Sawtelle, Idaho Falls, Idaho. Exhibit J6. Mr. Kneip also operated vending machines at federal buildings identified as EROB and DOE South. Exhibits J4 & J5.
11. Mr. Kneip’s temporary contract was converted to a long term location Agreement on September 1, 2007. Exhibit J7.
12. Mr. Kneip’s location Agreement required the parties to comply with the responsibilities and rights imposed and granted by applicable laws and regulations. Exhibit J7, p.2. Mr. Kneip further agreed to be bound by all rules, regulations, and statutes governing operation of the BEP, id., B-1, and to be financially responsible for payment of any obligations incurred by him in operation of his facilities, id., B-2 & B-4. The Agreement required Mr. Kneip to operate the business on a cash basis, to “conduct the facility in an orderly, business-like manner,” to take proper care of the equipment of the facility, and not to make alterations or changes to the facility without written approval of the SLA. Id., B-8 & B-9. The Agreement further provided that it “may be terminated by the SLA if the business of the facility is not conducted in accordance with this Agreement or within applicable federal, state or local laws and regulations, or any time with thirty (30) days advance written notice.” Id., ¶ C-7.
13. The BEP provided Mr. Kneip with some training to permit him to become a licensed blind vendor and to succeed in the Program as a blind vendor.

- A. Prior to licensure, Mr. Kneip participated in and successfully completed the standard BEP vendor training regimen, which consists of working with BEP staff to develop a comprehensive business plan, participating in on-the-job training with a licensed vendor who operates a cafeteria, snack bar, or vending location, working with a mentor, and successfully completing an interview with BEP staff to ensure that would-be vendors are qualified for licensure and the responsibilities of running a BEP location.
 - B. After licensure, Mr. Kneip attended semi-annual meetings of the Idaho Blind Vendors at which he and other members heard presentations on topics such as creating a menu board, marketing suggestions, vending repairs, BEP goals and common practices, electronic transmissions, customer service for food service and vending, pricing fundamentals, dealing with difficult customers, transport of perishable foods, computer training, taxation issues, self-development ideas, acceptable vending standards, and more.
 - C. BEP staff also occasionally met with Mr. Kneip and discussed his operations and concerns in general ways, but the record contains very limited evidence regarding the contents of these discussions. Thus, it is impossible to determine that they were sufficient to qualify as trainings.
 - D. In 2010, Mr. Kneip participated in a one week training with Executive Chef Dane Sorenson, but the record does not indicate that Chef Sorenson provided Mr. Kneip with the kind of training he needed, specifically training on cash flow management and accounting, which arguably would have allowed him to maintain adequate provisions for stocking his vending machines and snack bar with products to meet customer demand;
14. For the first two years or so, Mr. Kneip operated his facilities well, and the Commission received no complaints about Mr. Kneip or his operations from the facility managers or others.
15. Beginning in the spring of 2009, however, the Commission began having problems with Mr. Kneip's operation of the TSA-TSB snack bar and his vending machines.

16. On April 14, 2009, an inspection of Mr. Kneip's vending machines at the TSA/TSB and EROB buildings showed multiple empty rows and many out-of-date products in his vending machines. For example, one machine at the EROB location had 14 empty rows and many products out-of-date by more than six weeks. Similarly, a machine at the TSA/TSB location had 34 empty rows and many out-of-date products, one of which had expired two months before the inspection. Exhibit R4, p. 9 (notes of 4/14/09 inspection by Lisa Van Ry and BEP Specialist Klaudia Saric). See also Exhibit R13-8 (11/2/09 e-mail from Saric to Kneip).
17. On October 2, 2009, a BEP staff inspection again revealed that Mr. Kneip's vending machines had out-of-date products. Exhibit R4, p. 8 (10/19/09 entry). On October 19, 2009, BEP Specialist Saric sent an email to Mr. Kneip addressing the out-of-date products found during the October 2, 2009 inspection and reminding him that out-of-date products are unacceptable. Exhibit R13, p. 5. That e-mail concluded with the following warning: "Please receive this e-mail as reminder that there is zero tolerance on outdated products, and I hope we will not find any more on our next visit." Id. Mr. Kneip clearly received and read Ms. Saric's e-mail because he responded to it on Sunday, October 25, 2009. Id.
18. On January 27, 2010, Supervisor Van Ry and Specialist Saric again inspected Mr. Kneip's machines and found multiple out-of-date products with expiration dates ranging from December 19, 2009 to January 13, 2010, between two and six weeks out-of-date. Exhibit R4, p. 8 (01/27/10 entry).
19. On June 16, 2010, an inspection by Supervisor Van Ry and Specialist Saric disclosed a lack of cleanliness at Mr. Kneip's snack bar, lack of professional signage, dozens of empty rows in the vending machines, out-of-date product, and complaints by building employees. Exhibit R4, p. 7 (07/2/10 entry).
20. On June 18, 2010, Tory Landon, facilities manager of the TSA/TSB building, sent BEP staff a written complaint against Mr. Kneip noting broken/improperly working machines, over-priced merchandise on sale at the snack bar, inconsistent opening and closing times at the snack bar, and grease and food being improperly placed down the disposal. Exhibit R13, p. 13.

21. On June 21, 2010, Ina M. Nordstrom, another facilities manager, sent Specialist Saric a written complaint about improper signage and redundant product in Mr. Kneip's vending machines. Exhibit R13, p. 14.
22. During June and July, 2010, BEP staff received Customer Satisfaction Survey results regarding Mr. Kneip's snack bar. Mr. Kneip received satisfactory to high marks from some customers, but other customers made negative comments about food prices, excessive wait times, and poor service. Subjects of particular customer ire were the failure of the snack bar to open at 7:00 a.m. as scheduled and the fact that the snack bar sometimes closed during regular business hours while Mr. Kneip made trips to the store to buy food or while Mr. Kneip attended to personal business. Exhibit R2, pp. 2, 5, 8, 44, & 47.
23. On a July 14, 2010, BEP Supervisor Lisa Van Ry noted facility management's frustration over Mr. Kneip's performance at the facility. Two members of management had urged Tory Landon, the TSA/TSB building manager, to contact the Department of Energy to get rid of the snack bar altogether. The contractor was concerned because its employees were leaving the building and shopping at a nearby convenience store rather than using the snack bar. Building management complained about Mr. Kneip and his employees dumping grease, eggshells, and other items down the drain causing \$1,100 in damage. Building management also complained about vending machines being broken or not stocked properly. See Exhibit R4, p. 7 (7/14/10 entry); see also Tr. 399:12 to 400:22 (Frank Kocsis testimony).
24. After receiving the complaints from building management in July 2010, BEP staff took several actions designed to help Mr. Kneip improve his operations and performance. Specifically, BEP staff counseled Mr. Kneip once again about the need to properly stock his machines on a consistent basis. In addition, BEP staff obtained new equipment for the snack bar and arranged for a chef-consultant (Dane Sorensen) to come work with Mr. Kneip. Moreover, BEP staff arranged for plans to be drawn up for a remodel of the snack bar. Exhibit R4, p. 7 (7/14/10 entry).

25. On January 12, 2011, a BEP inspection showed that Mr. Kneip had not yet replaced the improper signage and had not properly stocked his machines, which had many empty rows (one machine had 12 empty rows) and considerable amounts of out-of-date products. Exhibit R4, p. 6 (01/18/11 entry).
26. On March 1, 2011, contractors finished remodeling Mr. Kneip's snack bar.
27. For the grand reopening, Frank Kocsis, the CH2M Hill director for information and facilities (Tory Landon's boss), asked Mr. Kneip if he could open by 6:45 a.m. instead of 7:00 a.m. (the usual opening time) because most employees would like to have breakfast before work. Mr. Kneip agreed to Mr. Kocsis's request to open early. Exhibit R4, p. 6 (3/7/11 entry). See also Tr. 403:8-13 (Frank Kocsis testimony).
28. The grand re-opening occurred on March 7, 2011. Despite his agreement to open the snack bar early, Mr. Kneip failed to deliver on that promise on a consistent basis.
29. On March 11, 2011, Mr. Kneip's employee left the dishwasher in the "run" mode overnight with the dishwasher's door open. As a result, water poured out of the dishwasher and flooded the snack bar. Water from the dishwasher also seeped under walls and into two adjacent offices.
30. Building management was very upset because of the flood and because Mr. Kneip had failed to open early consistently during the snack bar grand opening. Tory Landon asked ICBVI if there was someone who could take Mr. Kneip's place. Exhibit R4, pp. 5-6 (3/14/11 entry).
31. On April 21, 2011, Tory Landon sent an email to Mr. Kneip highlighting facility management's complaints concerning the inconsistent opening time of the snack bar as well as concerns about Mr. Kneip doing his own repair work on the facility's infrastructure. Exhibit R4, p. 5 (4/22/11 entry); Exhibit R13-22. In a follow-up phone conversation with BEP staff, Tory Landon indicated that Mr. Kneip had two strikes against him—one for not opening as agreed during the week of the grand opening and the other for flooding the snack bar. Landon said that the third strike would have been if Mr. Kneip did not pay the plumber. Mr. Kneip argued with building

management about the plumbing bill saying that his wife could have fixed it and that he should not have to pay. Eventually, Mr. Kneip paid the plumbing bill.

32. On April 25, 2011, BEP staff telephoned Tory Landon to follow up on his e-mail complaining about Mr. Kneip's performance. Exhibit R4, 4-5 (04/25/2011 entry). Mr. Landon stated that management was very upset that the snack bar had been flooded twice and that upper management was watching Mr. Kneip very closely. Management was also upset that Mr. Kneip had delayed paying the plumbing bill and warned Mr. Kneip that he could lose the snack bar. Management felt that Mr. Kneip minimized their concerns and did not seem to grasp the seriousness of the situation.
33. On May 4, 2011, BEP Supervisor Lisa Van Ry sent Mr. Kneip an official Warning Letter outlining facility management's complaints against Mr. Kneip and notifying him that "if they do not see consistent necessary improvements" Mr. Kneip could be removed from the locations, placed on suspension or even terminated. Exhibit J12. Tellingly, however, the BEP did not follow up that letter with specific training to address the root causes of the complaints leveled at Mr. Kneip by facility management.
34. On May 17, 2011, Specialist Saric visited Mr. Kneip's location and found that the sandwich prep table, the Panini grill, and the popcorn machine were all dirty. Exhibit R4, p. 4 (5/17/11 entry). In her notes of the inspection, Specialist Saric indicated that the Panini grill and the popcorn machine looked like they had never been cleaned. She also noted that the "place was disorganized," that the snack bar was selling old and stale product, that the snack machine in the TSA building did not have a working light in it, and that 10 of the 45 rows in the Sobe glass front vending machine were empty.
35. On September 12, 2011, Wendy Hall from the Department of Energy, the operating contractor at the Idaho National Laboratory, called the Commission's Administrator, Angela Jones, to inform her that "numerous people were complaining about empty machines at EROB." Ms. Jones requested that a more detailed written complaint be sent to her, but Ms. Hall never

followed up with the requested detailed written complaint. Exhibit R13, p. 31 (September 2011 e-mail string between Angela Jones and Lisa Van Ry).

36. During this time-period, BEP continued to warn Mr. Kneip and give him instructions on properly managing the snack bar and his vending machines.
37. On October 3, 2011, BEP Supervisor Van Ry sent Mr. Kneip an official letter of probation. Exhibit J13. BEP placed Mr. Kneip on probation because of the multiple complaints about and recurring problems with Kneip's operation of his vending machines and the snack bar. The letter informed Mr. Kneip of his responsibilities and obligations while on probation and warned that failure to resolve sufficiently these issues could ultimately lead to license termination. The letter concluded with a summary of the dates and substance of some of the complaints lodged against Mr. Kneip's performance. Once again, however, BEP staff failed to provide Mr. Kneip with meaningful training and assistance to address Mr. Kneip's on-going problem with cash flow management, which was the root cause of his other performance problems including his inability to keep his vending machines stocked with products.
38. On January 19, 2012, just three months after placing Mr. Kneip on probation, Supervisor Van Ry sent Mr. Kneip a letter indicating that although some problems continued with his vending machines, BEP was taking him off probation. Exhibit J17. The letter further stated that machines will be monitored regularly and that continued failure to come into compliance could result in license termination.
39. After BEP ended Mr. Kneip's probation, he continued to display the same old problems with cash flow management and improperly stocked machines. Mr. Kneip even bounced checks for his January set-aside payment to the BEP and to Admiral Beverage, a supplier of soft-drinks for his vending machines. He also neglected to pay a supplier for baked goods.
40. On Friday, March 22, 2012, Supervisor Van Ry travelled to Idaho Falls and hand-delivered to Mr. Kneip a Notice of Termination letter. Exhibit J19. The letter informed Mr. Kneip, that, among other things, his Agreement was being suspended immediately and that his license was going to be terminated 15 days from the Notice unless he sought review in which case the

license would be suspended pending completion of all review processes, including arbitration. The Notice summarized the factual basis for the BEP's decision and stated that the action was being taken for violations of Mr. Kneip's Agreement with the BEP and under the authority of BEP rules. Specifically, the BEP terminated Mr. Kneip's Agreement and license because: "a. The Vendor is not operating the facility on a cash basis; b. The facility is not being operated in accordance with ICBVI rules, the terms and conditions governing the permit, or the terms and conditions of the agreement or contract; c. The licensee engages in conduct or allows a condition to exist for which the licensee has previously been placed on probation; d. The licensee's conduct may jeopardize the state's investment in the facility or place the facility in danger of being closed." Exhibit J19, pp. 8-9.

41. On Friday, March 22, 2012, the snack bar was not scheduled to be open because of the building's work schedule.
42. On March 22, 2012, moreover, then-BEP Specialist Washburn inspected Mr. Kneip's facilities and took photographs to record the condition of Mr. Kneip's snack bar and vending machines. See Exhibit R-16, pp. 1-35. Those photos showed improperly stocked vending machines and a snack bar in distress.
43. On April 2, 2012, Mr. Kneip filed with Administrator Angela Jones a request for administrative review of the Commission's decision to terminate his license as a blind vendor. Exhibit R-5, p. 1. By letter dated April 6, 2012, Administrator Jones advised Mr. Kneip of a schedule for the administrative review. Id. In a letter dated May 1, 2012, Mr. Kneip responded to the Commission's termination notice. Exhibit J20. In a letter dated May 14, 2012, Administrator Jones affirmed the BEP Supervisor's decision to terminate Mr. Kneip's contract. Exhibit R-5.
44. After receiving the Administrator's final decision, Mr. Kneip requested a full evidentiary hearing. Thereafter, the case was assigned to an independent hearing officer, who held hearings on September 26 and 27, 2012, at which Mr. Kneip was represented by counsel and had a full opportunity to introduce evidence and to argue his cause. Exhibit J2. On November 15, 2012, the hearing officer issued a decision affirming the BEP's decision, and on December

10, 2012, Administrator Jones entered a Final Order adopting the hearing officer's decision as her own. Mr. Kneip then filed a timely complaint with the United States Department of Education requesting arbitration under the Randolph-Sheppard Act.

III. Conclusions of Law & Reason

A. Preliminary Matters

On March 11 and 12, 2015, the Arbitration Panel presided over an evidentiary hearing held in Idaho Falls, Idaho. Susan Gashel represented Complainant Lynn Kneip. Idaho Deputy Attorney General Adam Warr represented Respondent. The parties were afforded a full and fair opportunity to present witness testimony, to introduce exhibits, and to make arguments. The Arbitration Panel received the parties' briefs on May 11, 2015, at which point the record in this case was closed.

Neither the Randolph-Sheppard Act nor the implementing federal and state rules and regulations establish a clear standard of proof for the Arbitration Panel to apply in this case. In considering Complainant's claims, the Arbitration Panel will apply the well-established administrative law standard of "substantial evidence on the record as a whole" to determine the legal issues in this case. The meaning of that standard has been well-established for more than sixty years. "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. NLRB*, 305 U.S. 292, 300 (1951). "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." *Universal Camera Corp. v. NLRB*, 340

U.S. 474, 488 (1951). Other plausible standards of review, including "arbitrary and capricious" and "abuse of discretion," are more deferential to the deciding authority and are thus subsumed within the "substantial evidence on the record as a whole" standard that the Panel applies here.

Before applying this substantial evidence standard, it is also necessary to determine what the Arbitration Panel is reviewing. The two possibilities are the BEP's March 22, 2012 decision to terminate Mr. Kneip's license and Agreement or the final agency decision after the fair hearing. The

Arbitration Panel finds that it is reviewing the BEP's decision to terminate Mr. Kneip's license and Agreement and not the final agency decision after the fair hearing.

The Complainant has the burden of proving by substantial evidence the alleged violations of law set forth in Complainant's Statement of Issues.

B. The Commission Failed to Train and Support Mr. Kneip Properly before Terminating His License and Agreement.

There is no question that Mr. Kneip was struggling to operate his business properly and successfully. In fact, when the BEP placed him on probation in November 2011, he had been teetering on the edge of failure for some time. Specifically, since at least 2009, Mr. Kneip had exhibited an on-going and unremitting inability to keep his vending machines stocked with fresh and varied products for sale. He had similar problems running his snack bar. The root cause of these problems was Mr. Kneip's inability to manage his cash flow. He simply did not retain enough money in his operational accounts to pay for sufficient inventory and other materials required to operate a successful vending business within the Randolph-Sheppard Program.

The BEP placed Mr. Kneip on probation in November 2011 as a result of his on-going performance problems. The BEP's regulations define "probation" as "A conditional status wherein a vendor has a specified period of time to correct identified problems before an agreement or contract may be terminated." IDAPA 15.02.30.10.16. The regulation authorizing probations provides as follows:

The Supervisor has the authority to place a vendor who is not in compliance with the terms of an agreement or contract on probation. The Supervisor shall notify the vendor in writing of the probation and shall identify the specific deficiencies and the time allowed for the vendor to take corrective action. If no resolution has been made at the end of the specified time, the Supervisor shall issue a notice of termination.

IDAPA 15.02.30.040.06.

The implicit purpose of a probationary period is to give the licensee notice of deficiencies and an opportunity to improve. In order for the probationary period to be successful, the BEP must provide

the support, training, and other services required to correct the problems and return the vendor to full and successful participation in the Program.

The Commission utterly failed to provide Mr. Kneip with this aspect of a probationary period. Instead, the Commission gave him a written notice of probation, failed to follow up with remedial training or other support, and then – three months after the probation started – took Mr. Kneip off of probation even though he continued to exhibit the same deficits that caused BEP staff to warn him and to place him on probation in the first place. This scenario is fundamentally unfair, and – more importantly – it amounts to a breach of the Commission’s own regulations on probation and on-going training of licensed blind vendors.

The Commission’s regulations specifically provide that, as part of the initial training process, trainees in the BEP will receive training on the “Fundamentals of purchasing, inventory control, pricing, record keeping and other accounting systems.” IDAPA 15.02.30.150.01.a. The same regulation indicates that trainees will receive additional training “customized to meet the needs of each individual applicant.” Id. The regulations also require Commission to provide in- service training and other post-employment services for licensees:

- I. In-Service Training. The Program shall provide each vendor with regular and systematic assistance and in-service training to promote:
 - a. Maximum returns to the vendor;
 - b. Maximum service to the clientele;
 - c. Maintenance of a clean and attractive place of business;
 - d. The utilization of sound business practices; and
 - e. Adherence to the Commission’s rules, policies, and building management requirements.
- II. Post-Employment Services. Post-employment services may be provided to eligible vendors when necessary to assure that they maintain suitable employment within the agency’s

Business Enterprise Program. Eligibility for and provision of post-employment services shall be in accordance with IDAPA 15.02.02, “Vocational Rehabilitation Services.”

IDAPA 15.02.30.150.02 & .03.

Despite Mr. Kneip’s obvious deficits in the financial end of his business operations and the glaring need for customized training on accounting, cash flow management, and other aspects of financial operations, the Commission never provided him with the required training that – in the words of IDAPA 15.02.30.150.03 – was “necessary to assure that [he] maintain suitable employment within the agency’s Business Enterprise Program.” Instead, the Commission let Mr. Kneip struggle along, making the same errors over and over again until March 22, 2012, just two months after the BEP Supervisor had allowed Mr. Kneip’s probationary period to expire, when the BEP notified him that he was being terminated him from the Program.

For all of these reasons, a majority of the Arbitration Panel finds that the Commission failed to comply with its own regulations, which were designed to give Mr. Kneip a fair chance to improve his performance before the BEP could terminate his license and Agreement. Thus, the Commission’s decision to terminate Mr. Kneip’s license and his Agreement to operate various facilities through the BEP cannot stand. This is so because the Commission failed to comply with the training requirements of its own regulations and with the training requirements of the Randolph-Sheppard Act. See 34 C.F.R. § 395.11. In addition, although it is unnecessary to fully explore the due process raised by Complainant in this case, the BEP’s failure to provide Mr. Kneip with necessary and required training before terminating his license and Agreement may violate due process.

Because of our decision on this aspect of Complainant’s claims, it is unnecessary to consider Complainant’s other arguments.

IV. Conclusion & Remedy

Based upon the foregoing Findings of Fact and Conclusions of Law and Reason, the Arbitration Panel finds that the Idaho Commission for the Blind and Visually Impaired’s decision to terminate Mr. Kneip’s BEP license and his Agreement was not supported by substantial evidence because the

Commission failed to provide Mr. Kneip with the post-license training on financial operations and accounting, including but not limited to cash-flow management training, that he was legally entitled to receive under Idaho's administrative regulations and the Randolph-Sheppard Act.

As a remedy, the Arbitration Panel orders the Commission to reinstate Mr. Kneip's license. Within two weeks of the reinstatement of Mr. Kneip's license, the panel orders the Commission to enter into a discussion with Mr. Kneip to determine whether he wishes to reenter the BEP program or whether he is interested in pursuing other employment. Assuming Mr. Kneip wishes to return to the program, the Panel further orders the Commission to provide Mr. Kneip with adequate training on accounting and other financial operations so that he can manage his cash flow issues properly. At the same time, the Commission must provide Mr. Kneip with any other additional training required to bring him back up to speed as a licensed blind vendor since he has been out of the Program now for over three years.

Once Mr. Kneip receives the above-required remedial training, the Commission shall restore Mr. Kneip to his Agreement and, for a period of at least two months thereafter, shall provide Mr. Kneip with a full-time, on-site supervisor or trainer whose task will be to provide Mr. Kneip with the in-service training and coaching necessary to ensure that Mr. Kneip is able to operate his business profitably and successfully.

Finally, as required by the Commission's regulations, "the Program shall restore all rights and benefits to the vendor including compensation for the period of termination calculated at a weekly rate determined by averaging the net income for the facility for the prior federal fiscal year." IDAPA 15.02.30.40.04. The payment of compensation to Complainant required by the cited regulation shall be subject to any attorney's fees lien Complainant's counsel may file with the Commission's attorneys.

The Arbitration Panel denies Complainant's request for attorney's fees because there is no statutory authority for such an award and, under the American rule, each party is responsible for its own attorney's fees and costs.

Dated June 22, 2015.

Stephen Douglas Bonney, Neutral Chair

Joanne Wilson, Concurring

Fredric K. Schroeder, Ph.D., Concurring