

NO. A11-1942

3

State of Minnesota
In Court of Appeals

In the Matter of: Jensen Field Relocation Claims

Jensen Field, Inc.,

Claimant,

Clay Adams, et al.,

Relators,

v.

The Board of Regents of the University of Minnesota,

Respondent.

RELATORS' BRIEF

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TABLE OF CONTENTS

	<u>PAGE</u>
Table of Authorities	2
Legal Issues	4
Overview of the Case	5
Statement of Facts	7
Standard of Review	13
Argument	13
1. Vice-President O'Brien's determination that Relators were not eligible for relocation benefits, was an error of law.	
2. Vice-President O'Brien's conclusion that it was appropriate to make a determination regarding Relators' individual claims for payment of their relocation benefits prior to them being determined eligible for relocation benefits was an error of law.	
3. Vice-President O'Brien's decision denying reimbursement for the costs Relators incurred to move their personal property, equipment and airplanes from Jensen Field was an error of law.	
4. The University's use of Vice-President Kathleen O'Brien, as the hearing officer, was a violation of Minnesota Statutes § 117.012, Subd. 1 and § 117.52, Subd. 4.	
Conclusion	37
Form and Length Certification	39
Addendum	40

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF AUTHORITIES

<u>STATUTES</u>	<u>PAGE</u>
<u>FEDERAL</u>	
49 C.F.R. Part 24	
Section 24.10(d)	35
Section 24.10(e).....	35
Section 24.10(g)	35
Section 24.10(h)	36
Section 24.2(a)(9)(i)(A).....	14
Section 24.2(a)(9)(i)(B).....	14
Section 24.2(a)(9)(ii)(K).....	24
Section 24.2(a)(15)(ii)	15
Section 24.2(a)(22)	15
Section 24.2(a)(29)	24
Section 24.202	14
Section 24.203(b)	15, 19
Section 24.205(c)(2)(i)	27
Section 24.207(a).....	27
Section 24.207(b)	27
Section 24.207(c).....	27
Section 24.207(d)(1)(i).....	27
Section 24.301(a).....	14, 30
Section 24.301(d)	30
Section 24.301(d)(1).....	30
Section 24.301(d)(2)(i).....	30
 <u>MINNESOTA STATUTES</u>	
Minn. Stat. § 117.012, Subd. 1	35
Minn. Stat. § 117.52, Subd. 4	34
Minn. Stat. § 645.08(1).....	15
 <u>MINNESOTA STATE CASES</u>	
<i>Caucus Distributors, Inc. v. Commissioner of Commerce</i>	36
642 N.W.2d 1 (Minn. 2002).	
<i>Dietz v. Dodge County</i> , 487 N.W.2d 237, 239 (Minn. 1992)	13
<i>In re Relocation Benefits of James Bros. Furniture, Inc.</i>	37
642 N.W.2d 91 (Minn.App. 2002).	
<i>Lee v. Fresenurs Med. Care, Inc.</i> , 741 N.W.2d 117 (Minn. 2007).....	13
<i>Martin ex rel. Hoff v. City of Rochester</i> , 642 N.W.2d 1 (Minn. 2002)	36
<i>Wheeler v. Merriman</i> , 16 N.W. 665 (Minn. 1983).....	25

OTHER STATE CASES

Bi-Rite Meat v. Redevelopment Agency..... 33
68 Cal.Rptr.3d 81 (Cal.App. 2007).
Hindsley v. Lower Marion, 360 A.2d 297 (Pa. Commw. Ct. 1976)..... 17
Moorer v. Department of Housing and Urban Development..... 18
561 F.2d 175 (C.A.8 (Mo.), 1977).
Pedro Amezcuita, et al. v. Rafael Hernandez-Colon 25
518 F.2d 8 (C.A. 1 (Puerto Rico), 1975).
Pn. Transp. Auth. v. Frankford 5206 Bar, Inc., 17
587 A.2d 855 (Pa. Commw. Ct. 1991).
Reg. Transp. Dist. v. Outdoor Sys., Inc., 34 P.3d 408 (Colo. 2001) 17, 20
Superior Strut & Hanger Co. v. Port of Oakland..... 20, 21, 22
72 Cal.App.3d 987 (Cal.App. 1st Distr. 1977).

SECONDARY SOURCES

Business Relocation, U.S. Department of Transportation..... 30, 31
Federal Highway Administration, Publication No. FHWA HI-95-025,
May 1995.
Federal Aid Policy Guide, U.S. Department of Transportation..... 18
Federal Highway Administration, February 23, 2007.
Federal Register, Vol. 54, No. 40, March 2, 1989..... 18, 19
Real Estate Acquisition Guide for Local Public Agencies 18-9
(visited June 22, 2011)
<<http://www.fhwa.dot.gov/realestate/lpaguide/ch2.htm>>.
Webster's Desk Dictionary (1993)..... 15, 25
Your Rights and Benefits as a Displaced Person under the 30, 31
Federal Relocation Assistance Program, (visited June 15, 2011)
<<http://www.fhwa.dot.gov/realestate/lpaguide/ch2.htm>>.

LEGAL ISSUES

I. Whether the hearing officer's determination that Relators were not eligible for relocation benefits was an error of law.

The hearing officer concluded that Relators were not displaced persons eligible for relocation benefits.

There is no caselaw interpreting the statute as applied in this case.

II. Whether the hearing officer's conclusion that it was appropriate to make a determination regarding Relators' individual claims for payment of their relocation benefits prior to them being determined eligible for relocation benefits was an error of law.

The hearing officer concluded that it was appropriate to make a determination regarding Relators' individual claims for payment of their relocation benefits prior to them being determined eligible for relocation benefits.

There is no caselaw interpreting the statute as applied in this case.

III. Whether the hearing officer's decision denying reimbursement for the costs Relators incurred to move their personal property, equipment and airplanes from Jensen Field was an error of law.

The hearing officer concluded that Relators did not provide sufficient documentation in support of their claims for payment of the relocation expenses they incurred.

Bi-Rite Meat v. Redevelopment Agency, 68 Cal.Rptr.3d 81 (Cal.App. 2007).

IV. Whether Respondent's use of an employee of the University of Minnesota, as the hearing officer, was a violation of Minnesota Statutes § 117.012, Subd. 1 and § 117.52, Subd. 4.

Despite the requirements of Minnesota Statutes § 117.012, Subd. 1 and § 117.52, Subd. 4, Respondent refused to initiate contested case proceedings under Minnesota Statutes §§ 14.57 - 14.66 for a determination of the relocation assistance for which Relators were entitled to receive.

There is no caselaw interpreting these two statutes.

OVERVIEW OF THE CASE

Relators, Jensen Field, Inc. and its individual hanger owners¹, are all displaced persons eligible for certain relocation advisory services, claim assistance, benefits and payments pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 49 C.F.R. § 24, (“URA”) and Minnesota Statutes §§ 117.50 – 117.56. Relators’ eligibility for these relocation benefits vested on November 17, 2009. That is the date when the University of Minnesota (the “University”) informed them they would have to move their personal property, equipment, airplanes and airplane hangers from Jensen Field as a direct result of its federally assisted wind turbine project.

In reaching her decision, the hearing officer disregarded the vesting date of Relators’ eligibility for relocation benefits. Because of that the hearing officer erroneously concluded that Relators were not eligible for relocation benefits because they moved as a result of the simple expiration of their leases rather than as a result of the University’s wind turbine project. Whether Relators moved on November 18, 2009 or on October 31, 2010, it is irrelevant because they all became eligible for relocation benefits on the date they were informed they would have to vacate the property to accommodate the University’s project.

¹ As of November 17, 2009, ten different persons owned the thirteen hangers located at Jensen Field. The names of those ten persons are located in Paragraph 27 of the Stipulated Facts. Both Jensen Field, Inc. and the individual hanger owners are separately eligible for relocation benefits. Throughout this brief they will be collectively referred to as Relators. However, when addressing their

Additionally, the hearing officer ignored the impact the wind turbine project had upon the University's decision to require Relators to move from Jensen Field. In rendering her decision, the hearing officer acted as if the University's decision to require Relators to move from Jensen Field occurred in a vacuum. As this Court will see, there was only one reason why the University required Relators to move and that was because of the wind turbine project.

Finally, the hearing officer determined that even if the individual hanger owners did move as a result of the project, they were not eligible for relocation benefits because they allegedly did not have valid subleases allowing them to occupy the property. There is no basis in law for the hearing officer's decision in this regard because there is no requirement within the URA that a displaced person must have a written lease to be eligible for relocation benefits. As long as a claimant is lawfully occupying the property from which they will be displaced, they are eligible for relocation benefits if they move as a direct result of the rehabilitation or demolition of that property for a project. Their eligibility for those benefits vests on the date they receive notice they will have to move as a result of such a project.

individual claims of eligibility for relocation benefits or benefit amounts they will be referred to as Jensen Field, Inc. or as the individual hanger owners.

STATEMENT OF FACTS

Jensen Field, Inc., is an umbrella corporation created on August 30, 1982, by a loose collection of aviation hobbyists that owned airplane hangers and operated a small airport at Jensen Field. (Findings of Fact, Conclusions of Law and Order--Appendix A-174) Jensen Field was located on land owned by the University called UMore Park. (Stip. Facts, ¶2)

The University required the individual hanger owners at Jensen Field to create the corporate entity known as Jensen Field, Inc. because it wanted one entity to deal with in regards to the operation and leasing of the Jensen Field, instead of having to deal separately with each of the individual hanger owners. (Findings of Fact, Conclusions of Law and Order--Appendix A-171) Starting in 1986, the University leased approximately 8 acres at UMore Park to Jensen Field, Inc. (Stip. Facts, ¶2) On December 31, 1986, the Regents of the University of Minnesota executed a lease agreement with Jensen Field, Inc. for the purposes of occupying Jensen Field. (Stip. Facts, ¶2)

Prior to entering into that lease agreement with Jensen Field, Inc., on November 20, 1986, Susan Carlson Weinberg, then the University's Real Estate Coordinator, sent a letter to then Jensen Field, Inc., President, Earl Adams, regarding the need for subleases with the individual hanger owners. (Findings of Fact, Conclusions of Law and Order--Appendix A-175) In that letter, Ms. Weinberg submitted fourteen copies of a sublease agreement the University

wanted Jensen Field, Inc. and the individual hanger owners to sign. Once those sublease agreements were executed they were to be returned to her.

On January 5, 1987, Ms. Weinberg sent another letter to Mr. Adams regarding the required subleases. (Findings of Fact, Conclusions of Law and Order--Appendix A-176) In the third paragraph of that letter, the University noted that the subleases between Jensen Field, Inc. and the individual hanger owners would only be approved upon the sublessee's compliance with the University's insurance requirements.

On March 25, 1988, Ms. Weinberg sent another letter regarding the subleases to then Jensen Field, Inc. President, Thomas L. Schluter.² (Findings of Fact, Conclusions of Law and Order--Appendix A-177) In that letter Ms. Weinberg informed Mr. Schluter that the University had approved of some of the subleases between Jensen Field, Inc. and certain individual hanger owners. However, in that same letter, Ms. Weinberg indicated that for various reasons some of the subleases had not been approved. In particular, Ms. Weinberg noted that the University did not approve of the subleases with Arnie Jensen and William E. Benson. However, following that letter, the University never took any steps to have Mr. Jensen or Mr. Benson,³ nor any of the other individual hangers

² This was approximately 17 months after the University entered into the lease agreement with Jensen Field, Inc.

³ Mr. Jensen and Mr. Benson remained as hanger owners at Jensen Field until October 31, 2010 and both are claimants in this matter. (Stip. Facts, ¶27)

with unapproved subleases, removed from Jensen Field.⁴ (Stip. Facts, ¶27 and ¶29)

On April 26, 1991, Gerry Duncan in the University's Property/Casualty Insurance Department issued an internal memorandum to Ms. Weinberg, regarding some of his concerns involving the subtenants at Jensen Field. (Findings of Fact, Conclusions of Law and Order--Appendix A-182) In particular, Mr. Duncan stated that he had concerns about the University allowing the subtenants to remain at Jensen Field without the proper insurance coverage. In that memorandum, Mr. Duncan went on further to recommend that the University immediately terminate the lease with Jensen Field, Inc. That did not happen and the University allowed Jensen Field, Inc. and the individual hanger owners to remain at that site until October 31, 2010. (Stip. Facts, ¶35)

Despite Mr. Duncan's concerns and knowing of the lack of approved subleases with the individual hanger owners, on September 25, 1991, the parties entered into a written lease extension through October 31, 1993. (Stip. Facts, ¶5) Following that first written lease extension, the University and Jensen Field, Inc. entered into an annual series of one-year leases beginning on October 6, 1994.⁵ (Stip. Facts, ¶¶6-21) The last of those leases expired on October 31, 2009. (Stip. Facts, ¶21) During that time, Jensen Field, Inc. and the individual hanger owners

⁴ Despite knowing that the individual hanger owners were occupying Jensen Field with allegedly unapproved subleases, the University never sought the removal of either Mr. Jensen or Mr. Benson from Jensen Field and accepted rent from Jensen Field, Inc. for twenty-four years. (Stip. Facts, ¶¶28-30)

occupied Jensen Field and used that property with the full knowledge and consent of the University.

On November 17, 2009, Ms. Weinberg, now the Director of Real Estate for the University, sent a letter to Relators informing them:

- That the University had received notice of an \$8 million grant it received from the United States Department of Energy (“DOE”) in federal stimulus funds for a research project involving the construction of a wind turbine. (Stip. Facts, ¶22)
- The University would not allow Relators to continue to remain at the Jensen Field site after October 31, 2010. (Stip. Facts, ¶22)
- By October 31, 2010, Relators would be required to move their personal property and any improvements constructed at Jensen Field and return the land to the condition in which it was in at the commencement of their use of Jensen Field. (Stip. Facts, ¶22)

Also on that date:

- The parties entered into a written lease extension through October 31, 2010. (Stip. Facts, ¶22)
- Relators were current on the payment of their rent to the University. (Stip. Facts, ¶28)
- At no time prior to or after November 17, 2009, did Relators receive an eviction notice from the University. (Stip. Facts, ¶29)
- At no time prior to or after November 17, 2009, were Relators evicted for serious or repeated violations of the material terms of their lease or occupancy agreement with the University. (Stip. Facts, ¶30)

On June 14, 2010, Ms. Weinberg and another University official, Larry Laukke, met with two of Relators’ representatives, Stein Bruch and Clay Adams, to discuss Relators’ move from Jensen Field. (Stip. Facts, ¶32) During that meeting:

⁵ All of these leases were signed by Ms. Weinberg on behalf of the University.

- Mr. Bruch stated that the buildings were owned by the individual hanger owners and each hanger had a separate property identification number for tax purposes with the county. Following that statement, Mr. Laukke acknowledged that he knew that the hangers were all separately owned by the individual hanger owners and not by Jensen Field, Inc.
- Ms. Weinberg acknowledged that Jensen Field, Inc. subleases to its members who individually own the hangers.
- Mr. Bruch and Ms. Weinberg had an exchange regarding the subleases with the individual hanger owners.

(Findings of Fact, Conclusions of Law and Order--Appendix B-104-127)

In preparation for their move and in order to document their relocation benefits claim, on August 19, 2010, Relators did a walkthrough of Jensen Field with Dion Schilling, owner of All Furniture, Inc. (“All Furniture”), a commercial moving company. (Stip. Facts, ¶35) The purpose of that walkthrough was to obtain an estimate for the costs to move Relators’ personal property, equipment and airplanes. (Stip. Facts, ¶35) Prior to producing that estimate, Relators provided All Furniture with written specifications for the scope of the move of their personal property, equipment and airplanes to ensure that All Furniture produced a move estimate that complied with the requirements of the URA.⁶ (Stip. Facts, ¶34, Findings of Fact, Conclusions of Law and Order--Appendix B-131) All Furniture determined it would cost Relators \$141,825.00 to move their personal property, equipment and airplanes from Jensen Field. (Stip. Facts, ¶34,

⁶ It cost Relators \$995.00 to have All Furniture perform the move walkthrough and to produce that estimate. (Stip. Facts, ¶34, Findings of Fact, Conclusions of Law and Order--Appendix A-067) Because of that Relators could not afford to obtain any additional estimates prior to their move from Jensen Field.

Findings of Fact, Conclusions of Law and Order--Appendix B-130) The amount of those estimated expenses has never been disputed by the University.

On or before October 31, 2010, Relators moved, sold or otherwise disposed of twelve of the thirteen airplane hangers located at Jensen Field, as well as their personal property, equipment and airplanes. (Stip. Facts, ¶35) Following Relators move from Jensen Field they provided a copy of the All Furniture estimate and move specifications to the University in January 2011 for the purposes of settling all of their relocation claims.⁷ (Stip. Facts, ¶34) After the submission of that claim, the University denied Relators' eligibility for relocation benefits and the amount of relocation benefits for which they claimed.

Following the denial of their eligibility, Relators requested an administrative appeal hearing pursuant to the requirements of Minnesota Statute § 117.52, Subd. 4. However, the University refused to initiate contested case proceedings under Minnesota Statutes §§ 14.57 - 14.66, which would have required the use of a State of Minnesota Administrative Law Judge ("ALJ") to be the decisionmaker for the appeal hearing. Instead, the University appointed one of its own employees, Kathleen O'Brien, Vice-President of University Services, to be the hearing officer for Relators' hearing. (ADD-1) It is the decision of Vice-President O'Brien which gives rise to this appeal.

⁷ The fact that this documentation was submitted to the University as part of Relators' attempt to settle their relocation claims is one of the reasons why the hearing officer should not have resolved both issues of Relators' eligibility for relocation benefits and will be fully addressed later in this brief.

STANDARD OF REVIEW

The standard for judicial review of “quasi-judicial decisions of administrative bodies” is limited to whether the decision “was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992) (citation omitted). Quasi-judicial administrative decisions involving statutory interpretation are reviewed *de novo* by this Court. *Lee v. Fresenurs Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007).

ARGUMENT

I. Vice-President O’Brien’s determination that Relators were not eligible for relocation benefits, was an error of law.

This is an issue of first impression in the State of Minnesota.

In Vice-President O’Brien’s Conclusions of Law, she concluded that Jensen Field, Inc. was not a displaced person eligible for relocation benefits because it lost its right to occupy Jensen Field “due to the termination of its Lease . . . and not because of the wind turbine project or any other project planned for UMore Park on or adjacent to the site of Jensen Field.” (ADD-10)

In regards to the individual hanger owners, Vice-President O’Brien concluded that:

1. They were “not displaced persons under the URA because they had no property rights under the Lease because they did not have approved subleases as required by the Lease” (ADD-10); and
2. Even if they “were in legal possession of their respective sites, they are not displaced persons under the URA because their property

rights, if any, were lost as a direct result of the expiration of the Lease . . . and not by a *project* as defined by the URA.” (ADD-10)

There is no basis in the URA to support Vice-President O’Brien’s conclusions regarding Relators’ collective eligibility for relocation benefits.

A. Relators are displaced persons eligible for relocation advisory services, claim assistance, benefits and payments under the URA.

In order to be eligible for relocation advisory services, claim assistance, benefits and payments, a potential claimant must meet one of the definitions of displaced person in the URA. 49 C.F.R. § 24.202; 49 C.F.R. § 24.301(a).

Under the first definition, a person is considered displaced and therefore, eligible for relocation benefits, if they move from real property or move their personal property from real property “as a direct result of a written notice of the intent to acquire, the initiation of negotiations for, or the acquisition of such real property in whole in part for a project” 49 C.F.R. § 24.2(a)(9)(i)(A).

The other instance in which a displaced person is eligible for relocation benefits is when they are forced to move from real property or move personal property from real property “as a direct result of rehabilitation or demolition for a project” 49 C.F.R. § 24.2(a)(9)(i)(B). This can occur:

1. When a governmental entity already owns the property and requires the occupant to vacate it as a result of rehabilitation or demolition for a project; or
2. When a private entity owns the property, it receives federal funding to rehabilitate or demolish that property for a project and it requires the occupants of the property to vacate the property because of that project.

The URA defines project as “any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking”⁸ 49 C.F.R. § 24.2(a)(22). Webster’s Desk Dictionary defines demolition as “to destroy or ruin; tear down” and it defines rehabilitation as “to restore to good condition, operation or management.”⁹ Webster’s Desk Dictionary, 118; 382 (1993).

If a potential claimant meets either of the above definitions of displaced person, their eligibility for relocation benefits vests “on the date [the] notice of intent to acquire [is issued], the initiation of negotiations, or the actual acquisition, whichever occurs first.” 49 C.F.R. § 24.203(b). “Whenever the displacement is caused by rehabilitation [or] demolition . . . (and there is no related acquisition by a Federal Agency or State Agency), the *initiation of negotiations* means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.” 49 C.F.R. § 24.2(a)(15)(ii) (emphasis in original).

As noted above, on or about November 17, 2009, the University sent a letter to Relators informing them that as a result of it receiving the \$8 million grant from the DOE; they would all have to vacate the subject property by October 31,

⁸ The University received federal funding from the DOE for the wind turbine project. (Stip. Facts, ¶31)

⁹ As these words are not defined within the URA, according to the canons of statutory construction “words and phrases are construed according to rules of grammar and according to their common and approved usage” Minn. Stat. § 645.08(1).

2010. (Stip. Facts, ¶22) In that same letter, the University informed Relators that they would all have to:

- Remove their personal property from Jensen Field;
- Tear down and remove their airplane hangers from Jensen Field; and
- Restore the land to the condition which existed at commencement of their use of the premises. (Stip. Facts, ¶22)

As also noted above, at the meeting on June 14, 2010, Ms. Weinberg, Mr. Laukke, Mr. Bruch and Mr. Adams discussed Relators' move from Jensen Field. (Stip. Facts, ¶32) Mr. Bruch made a tape recording of that meeting. (Stip. Facts, ¶32) The statements made by Ms. Weinberg and Mr. Laukke during the meeting could not be any more clear, the reason Relators were being forced to move from Jensen Field was as a direct result of the pending wind turbine project. Ms. Weinberg and Mr. Laukke also noted, consistent with the November 17, 2009 letter, Relators would have to remove their personal property from Jensen Field, tear down and remove their hangers from Jensen Field and return Jensen Field to the condition it was in prior to the parties entering into the lease agreement in 1986.

Based upon the November 17, 2009, letter and their meeting with Ms. Weinberg and Mr. Laukke, on or about October 31, 2010, Relators moved, sold or otherwise disposed of twelve of the thirteen airplane hangers located at Jensen Field, as well as their personal property, equipment and airplanes. (Stip. Facts, ¶35)

As the federally-financed wind turbine project directly resulted in the move of Relators' personal property from Jensen Field, the demolition and removal of their hangers from Jensen Field and the rehabilitation of that site, Relators' are eligible displaced persons under 49 C.F.R. § 24.2(a)(9)(i)(B). Their eligibility for relocation benefits vested on November 17, 2009, which was the date Relators were first informed by the University they would have to move because of the wind turbine project.

B. Vice-President O'Brien incorrectly disregarded the vesting date of Relators' eligibility and there is no basis in the URA or caselaw to support her erroneous legal conclusions regarding Relators' eligibility for relocation benefits.

In her decision Vice-President O'Brien cited three cases in support of her conclusion that Relators are not eligible displaced persons because they moved solely as a result of the expiration of their leases. (ADD-10; ADD-18) Those three cases are *Reg. Transp. Dist. v. Outdoor Sys., Inc.*, 34 P.3d 408 (Colo. 2001), *Pn. Transp. Auth. v. Frankford 5206 Bar, Inc.*, 587 A.2d 855 (Pa. Commw. Ct. 1991) and *Hindsley v. Lower Marion*, 360 A.2d 297 (Pa. Commw. Ct. 1976). However, Vice-President O'Brien's reliance on those three cases was misplaced as they do not apply to Relators' claim of eligibility under 49 C.F.R. § 24.2(a)(9)(i)(B).

Additionally, Vice-President O'Brien's reliance upon the *Frankford* and *Lower Marion* cases is misplaced because those two cases were based upon the pre-1987 version of the URA.

In the pre-1987 version of the URA it did not define a displaced person to include persons that are forced to move from real property or move their personal property from real property “as a direct result of rehabilitation or demolition for a project”¹⁰ *Moorer v. Department of Housing and Urban Development*, 561 F.2d 175, 178 (C.A.8 (Mo.), 1977) (citing 42 U.S.C. § 4601(6)). The purpose of the 1987 amendments to the URA was to expand:

the Act’s scope to apply to private entities who received Federal financial assistance and who use such assistance to under take projects that involve land acquisition or the displacement of persons. *The 1987 Amendments also expanded the Act to apply to rehabilitation and demolition activities that often do not involve the acquisition of real property.*¹¹

Federal Aid Policy Guide, U.S Department of Transportation, Federal Highway Administration, February 23, 2007. (emphasis added). (Findings of Fact, Conclusions of Law and Order--Appendix A-131)

In addition to amending the term displaced person, the 1987 amendments also added two new sections to the URA, which address the eligibility vesting date for persons displaced by rehabilitation or demolition. The first section was 49 C.F.R. § 24.203 regarding the Notice of Relocation Eligibility. *Federal Register*,

¹⁰ The *Lower Marion* case was decided prior to 1987 and the *Frankford* case involved an acquisition by the Southeastern Pennsylvania Transportation Authority that occurred in 1985. Additionally, the *Frankford* case dealt with an interpretation of a Pennsylvania state relocation statute adopted in 1964, which was prior to the adoption of the original version of the URA in 1970.

¹¹ “The Uniform Act applies to all projects receiving Federal funds or Federal financial assistance where real property is acquired *or* persons are displaced as a result of acquisition, demolition, or rehabilitation.” *Real Estate Acquisition Guide*

Vol. 54, No. 40, March 2, 1989, p.8916. (Findings of Fact, Conclusions of Law and Order--Appendix A-140) That section indicates that eligibility for relocation benefits begins “on the date of a notice of intent to acquire (described in § 24.203(d)), the initiation of negotiations (defined in § 24.2(a)(15)), or the actual acquisition, whichever occurs first.” 49 C.F.R. § 24.203(b). On the eligibility vesting date, that new section required the displacing agency to promptly issue in writing a Notice of Relocation Eligibility notifying the person to be displaced “of their eligibility for applicable relocation assistance.” *Id.* That obviously did not occur in this case.

The second section was 49 C.F.R. § 24.2(a)(15)(ii), which defines the Initiation of Negotiations in cases involving rehabilitation or demolition. *Federal Register*, Vol. 54, No. 40, March 2, 1989, p.8915-16. (Findings of Fact, Conclusions of Law and Order--Appendix A-139-40) As noted above, the initiation of negotiations in these types of cases is now defined as the date the person receives the notice that they will be displaced by the project. In this case that date was November 17, 2009, the date the University issued the vacate letter to Relators. (Findings of Fact, Conclusions of Law and Order--Appendix B-033)

As a result of these 1987 amendments to the URA, neither the *Frankford* case nor the *Lower Marion* case cited by Vice-President O’Brien consider these

For Local Public Agencies, (visited June 22, 2011)
<<http://www.fhwa.dot.gov/realestate/lpaguide/ch2.htm>> (emphasis added).

fundamental issues of eligibility and her conclusion that Relators are not eligible displaced persons based upon these two cases was an error of law.

Even though the *Reg. Transp. Dist. v. Outdoor Sys., Inc.*, 34 P.3d 408 (Colo. 2001) case cited by Vice-President O'Brien was decided after the amendments were made to the URA in 1987, for numerous reasons that case is not applicable to Relators' claim of eligibility for relocation benefits.

Specifically, that case is not applicable because the owner was not making a claim for relocation benefits for the costs to move their billboards, but instead was attempting to require the Regional Transportation District to acquire their billboards under the acquisition portion of the URA. Additionally, in that case the court concluded that the URA was not applicable because there was no federal financial assistance provided in the acquisition of the underlying real estate. Finally, the *Outdoor Systems* case is not applicable because the legality of the termination of the leases in that case was analyzed under standard landlord-tenant law, not in the context of the application of the URA and the impact it may have on eligibility for relocation benefits.

In reaching her decision, Vice-President O'Brien ignored one analogous case in which the court rejected the displacing agency's determination that their tenants were not eligible for relocation benefits because they moved by the simple termination of their lease and not because of the underlying project. That case is *Superior Strut & Hanger Co. v. Port of Oakland*, 72 Cal.App.3d 987 (Cal.App. 1st Dist. 1977).

In that case, the Port of Oakland (“Port”) leased property it owned to Superior Strut and the lease allowed Superior Strut to occupy the property “until such time as demolition of buildings would be required” *Id.* at 992. Four years after the parties entered into the lease, the Port served Superior Strut with a thirty-day notice of lease termination as was allowed by the terms of the lease. *Id.* at 993.

Due to complications with its move, Superior Strut remained on the property for an additional six months after it was supposed to vacate the property. *Id.* at 993. Following its move, Superior Strut sought the payment of relocation benefits. However, the Port concluded that by entering into the lease for the property, Superior Strut forfeited “all eligibility for relocation payments upon their compelled removal from the property for public use.” *Id.* at 995.

The California Court of Appeals noted that such a position was without merit because Superior Strut was not forced to move because of the simple termination of its lease, but because of the Port’s plans to rehabilitate the site for the construction of new public facilities. *Id.* at 995. As the California Court of Appeals noted, “[w]e cannot accept the Port’s contention that its leasing of the property to respondent for an interim period could” negate its eligibility for relocation benefits. *Id.* at 996. The California Court of Appeals went on to conclude, “[t]o accept the Port’s interpretation of the Act would mean that the vast proportion of tenants who are required to move . . . would be ineligible for

relocation benefits simply because they continued to rent from the public entity in the interim.” *Id.* at 996.

The same is true in this case. Vice-President O’Brien concluded that Relators moved simply because their leases expired, but she ignored the effect the wind turbine project had upon the University’s need to demolish Jensen Field and rehabilitate that site. Jensen Field, Inc. and its individual hanger owners occupied that site for 24 years and the University renewed their leases every year like clockwork. (Stip. Facts, ¶¶ 2-22) The University did not terminate their lease because it found a better tenant willing to pay more for that site like in a standard landlord-tenant situation. The only reason the University forced Relators to move was because it received the \$8 million grant from the DOE for the wind turbine project.

The law and the facts are overwhelming in regards to Relators’ eligibility for relocation benefits. Relators have cited the relevant sections of the URA, applicable caselaw and documentation from the Federal Highway Administration, which address their eligibility for relocation benefits. Vice-President O’Brien is unable to cite a single case or any information from secondary sources, which would support her conclusion that Relators are not eligible for relocation benefits.

There is a reason why Vice-President O’Brien cannot cite any cases in support of her conclusion; because no such cases exist. If it were as easy as Vice-President O’Brien believes it is for a governmental entity to avoid having to pay relocation benefits to a tenant, any time the government acquires property dor a

project that has tenants on it, it could simply wait until the tenants' leases expire before commencing with a project. Such a procedure would lead to absurd results, was rejected in the *Superior Strut* case and is the reason why the URA addresses the vesting date of eligibility for relocation benefits.

The conclusion in this regard is very simple. Relators' eligibility for relocation benefits vested on November 17, 2009, when they were informed that they would have to vacate Jensen Field due to the federally-financed wind turbine project. Whether Relators moved from Jensen Field the following day or on October 31, 2010, they became eligible for relocation benefits on November 17, 2009 and should have been paid their relocation benefits when they moved from Jensen Field. Vice-President O'Brien's conclusion that the expiration of the leases voided Relators' eligibility for relocation benefits is without any basis in the law.

C. The individual hanger owners were lawful occupants of Jensen Field.

As noted above, Vice-President O'Brien concluded that in addition to not having to move as a result of the wind turbine project, the individual hanger owners were also not eligible for relocation benefits "because they had no property rights under the Lease because they did not have approved subleases as required by the Lease." (ADD-10) Vice-President's decision that a displaced person must have a written lease in order to be eligible for relocation benefits displays a quantum leap in logic that has no basis in the URA. This is because a displaced person does not have to have a lease to be eligible for relocation benefits; they merely need to be lawfully occupying the property.

A lease is only a contract between a landlord and tenant, which they can use to define the nature of their relationship and to protect their interests. There is no legal requirement that a landlord and tenant must have a written lease to create a lawful tenancy.¹² A written lease is merely an option for the parties if they determine it is in their best interests to have one. A lease has no bearing upon eligibility for relocation benefits under the URA.

Vice-President O'Brien cannot cite to any section in the URA or to any relevant cases, which requires a displaced person to have a valid lease in place in order for that displaced person to be eligible for relocation benefits. The only clause in the URA, which even tangentially addresses the disqualification of eligibility for relocation benefits in this regard is 49 C.F.R. § 24.2(a)(9)(ii)(K). According to that section of the URA, a person does not qualify as a displaced person if they are "determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause under applicable law, as provided for is § 24.206."¹³ 49 C.F.R. § 24.2(a)(9)(ii)(K).

The URA does not define the term "unlawful occupancy". However, 49 C.F.R. § 24.2(a)(29) does define an unlawful occupant as "[a] person who

¹² It does not require a specific citation to support the argument that there are countless situations in which a landlord and tenant would not have a written lease to define the nature of their agreement. In all those cases, a tenant is not an unlawful occupant simply because they do not have a written lease.

¹³ Pursuant to Stipulated Fact ¶30, Relators were never evicted for cause from Jensen Field. This means the only possible way the individual hanger owners would not qualify as eligible displaced persons is if it was determined they were unlawful occupants.

occupies without property right, title or payment of rent or a person legally evicted, with no legal right to occupy a property under State law.”¹⁴ Relators were not squatters at Jensen Field; they had a lawful right to occupy that site. For twenty-four years they paid their rent and lawfully occupied that property without any objection by the University. It was not until well after Relators moved from Jensen Field and made their claims of eligibility for relocation benefits that the University disingenuously determined them to be unlawful occupants/squatters/trespassers.¹⁵

The documents issued and the statements made by the University officials prior to Relators’ move from Jensen Field clearly indicate they were aware that the airplane hangers were not owned by Jensen Field, Inc., but were owned and occupied by the individual hanger owners. While the University will likely assert that it never consented to the sublease arrangement, it knew for years that the

¹⁴ This definition is almost the exact same as the definition of the word “squatter”, which is “to occupy another’s property without right or title.” Webster’s Desk Dictionary, 439 (1983). The word “squatter” is synonymous with the word “trespasser”. *Wheeler v. Merriman*, 16 N.W. 665, 667 (Minn. 1883). See also *Pedro Amezcuita, et al. v. Rafael Hernandez-Colon*, 518 F.2d 8, 11 (C.A. 1 (Puerto Rico), 1975) (persons living on the land were determined to be squatters when they knew they had no colorable right to occupy the land and had been repeatedly told to vacate the property.) Based upon the facts in this case, no reasonable person could conclude that the individual hanger owners were squatters/trespassers upon Jensen Field.

¹⁵ The section regarding disqualification for eligibility for relocation benefits requires that any determination of unlawful occupancy must be made either prior to or after the initiation of negotiations. However, in this case, the determination made by the University that the individual hanger owners were unlawful occupants due to the lack of valid subleases was not made until months after

individual hanger owners occupied the property and accepted payment of rent for the property from Jensen Field, Inc. (Stip. Facts, ¶28) At a minimum, the University knew that two of the individual hanger owners (Arnie Jensen and Bill Benson) occupied Jensen Field without approved subleases for twenty-two years and never attempted to have them removed.

At no time did the University ever indicate that the individual hanger owners were unlawfully occupying the property or seek to have those individual hanger owners evicted from the property due to the allegedly unlawful subleases. Regardless, the existence or lack thereof of subleases is not dispositive of this issue. Even if the subleases were not valid, a lease is not required to be an eligible displaced person.

Additionally, the individual hanger owners were not squatters. They paid their rent and they had the right to occupy Jensen Field with the full knowledge and consent of the University whether they had a written lease in effect or not. Vice-President O'Brien's determination that the individual hanger owners had no right to occupy Jensen Field and because of that they are not eligible for relocation benefits, was an error of law.

Based upon the foregoing, Relators respectfully request this Court reverse the decision of Vice-President O'Brien and conclude, as a matter of law, that they are displaced persons under 49 C.F.R. § 24.2(a)(9)(i)(B) eligible for relocation

Relators moved from Jensen Field and they persisted in their claims of eligibility for relocation benefits.

advisory services, claim assistance, benefits and payments and their eligibility for those benefits vested on November 17, 2009.

II. Vice-President O'Brien's conclusion that it was appropriate to make a determination regarding Relators' individual claims for payment of their relocation benefits prior to them being determined eligible for relocation benefits was an error of law.

Pursuant to the Administrative Order issued by Vice-President O'Brien on June 7, 2011, one of the issues she determined that needed to be resolved in the administrative hearing process was the amount of relocation benefits for which Relators were entitled to receive. (ADD-21) As Relators noted in their objection in their Memorandum of Law, it was premature for Vice-President O'Brien to make that conclusion prior to her making an initial determination of eligibility. (Findings of Fact, Conclusions of Law and Order--Appendix A-021)

There are two main reasons why Vice-President O'Brien should not have made a determination regarding both Relators' eligibility for relocation benefits and the amount of benefits for which they are entitled to receive. The first reason is that there are numerous types of relocation advisory services and claim assistance that a displacing agency must provide to an eligible displaced person to assist them with properly and thoroughly documenting their claims. 49 C.F.R. § 24.205(c)(2)(i) and 49 C.F.R. §§ 24.207(a) – (c).

To date, the University has not provided Relators with any of these mandatory relocation advisory services and claim assistance, which means any claims submitted by Relators to the University are incomplete at best.

Additionally, the University has not even provided Relators with a determination as to whether their claims have been sufficiently documented. The University has merely informed Relators they are not eligible for relocation benefits, with no comment regarding the sufficiency of the documentation submitted in support of their moving costs claim. Finally, if the University did determine Relators' documentation was not sufficient to support their claims, the University never informed Relators of any additional documentation that is required to fully document their claims. Without any of this assistance or information, Relators still do not know if their claims are deficient for a specific reason and, if so, what they need to do to provide the necessary information to the University for it to approve of their claims.

The second reason why Vice-President O'Brien should not have made a determination regarding both Relators' eligibility for relocation benefits and the amount of benefits for which they are entitled to receive is because the time for Relators to file their final claim for relocation benefit payments has not yet expired. Because Relators were tenants at Jensen Field, pursuant to 49 C.F.R. § 24.207(d)(1)(i), they have 18 months from the date of their move to submit their final claims for payment to the University. As Relators moved on or before October 31, 2010, this means they have until April 30, 2012 to submit their final claims for payment for any eligible relocation expenses they incur as result of their moves. For Vice-President O'Brien to make any determinations regarding claims

submitted to date was premature as Relators still had over six months remaining to submit their final claims for payment.

Based upon the foregoing, Relators respectfully request that this Court determine that it was an error of law for Vice-President O'Brien to make a determination regarding Relators' individual claims for payment of their relocation benefits prior to them being determined eligible for relocation benefits.

III. Vice-President O'Brien's decision denying reimbursement for the costs Relators incurred to move their personal property, equipment and airplanes from Jensen Field was an error of law.

In her decision, Vice-President O'Brien concluded that the individual hanger owners "did not provide any documentation recognized by the URA or approved by FHWA guidance for entitlement to relocation benefits they claimed as being *displaced persons* [sic] under the URA, and their individual claims for benefits are each DENIED." (ADD-11) Vice-President O'Brien's decision in this regard is categorically wrong and is an error of law.¹⁶

Under the URA, one of the relocation benefit payments that a displaced business is entitled to receive is the "payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary."¹⁷ 49

¹⁶ Vice-President O'Brien's decision on this issue is reviewed under an error of law standard because she did not determine that certain expenses incurred by Relators were not reasonable or necessary, but that the documentation submitted by Relators did not satisfy the legal requirements of the URA.

¹⁷ In addition to the costs to move its personal property, a business is entitled to be reimbursed for numerous other expenses it incurs as a result of being forced to relocate to a new location. These other eligible relocation expenses are

C.F.R. § 24.301(a). When a business must move, there are two methods by which it can be reimbursed for the expenses incurred as a result of its move¹⁸:

- Commercial Move—In this process the displacing agency obtains two estimates prepared by a commercial mover, the displaced business is then allowed to hire the commercial moving company with the lower of the two estimates and the displacing agency pays that commercial moving company directly for their services. 49 C.F.R. § 24.301(d)(1).
- Self-Move— In this process the displacing agency obtains two estimates prepared by two commercial movers, the displaced business takes on the responsibility of performing their move and when the move is completed, the displacing agency pays them the lower of the two estimates obtained from the commercial movers. 49 C.F.R. § 24.301(d)(2)(i). However, if the move is uncomplicated or of low cost, *the URA allows for a business' self-move costs to be based on a single bid or estimate.*¹⁹ *Id.*

If a displaced business elects to be reimbursed for their move based upon the self-move option, these self-move expenses “are lump-sum payments” determined by the displacing agency “through cost estimates prepared by professional movers employed by the agency.” *Business Relocation*, U.S. Department of Transportation, Federal Highway Administration, Publication No. FHWA HI-95-025, May 1995, p.8.6. (Findings of Fact, Conclusions of Law and Order--Appendix A-061) The only discretion the displacing agency has in these

specifically enumerated at 49 C.F.R. § 24.301(g)(1) – (7), 49 C.F.R. § 24.301(g)(11) – (18), 49 C.F.R. § 24.303 and 49 C.F.R. § 24.304.

¹⁸ The decision on how to perform and document the move is left to the discretion of the displaced business. 49 C.F.R. § 24.301(d).

¹⁹ See also *Business Relocation*, U.S. Department of Transportation, Federal Highway Administration, Publication No. FHWA HI-95-025, May 1995 (Findings of Fact, Conclusions of Law and Order--Appendix A-059); *Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program*,

types of claims is in the selection of the commercial movers to produce the estimates and the ability to review those estimates to determine whether they are reasonable.²⁰

Once the displacing agency determines which of the two move estimates is most reasonable, the displaced person is paid that amount no matter how much it actually costs them to remove their personal property from that site. “The displaced business may use its own employees, hire others, and use its equipment or rent equipment. Generally a lump-sum payment has been agreed on between the displacing agency and the business prior to the move and is paid when the move is complete.” *Id.* at p.8.6. (Findings of Fact, Conclusions of Law and Order--Appendix A-061) No matter how that personal property is disposed of, as long as it is removed from the subject property “[n]o other documentation is required for the self-move component.”²¹ *Id.* at p.8.6. (Findings of Fact, Conclusions of Law and Order--Appendix A-061)

(visited June 15, 2011) <<http://www.fhwa.dot.gov/realestate/rights/sec3.html>>. (Findings of Fact, Conclusions of Law and Order--Appendix A-62)

²⁰ The University forfeited its right to select the movers and to provide those movers with move specifications when it refused to assist Relators with documenting these expenses, even for the purposes of preserving the record, prior to their moves.

²¹ The reason why displaced persons and displacing agencies often elect these types of moves is because of the simplicity of self-moves. “The advantage of this moving option is that it relieves [the displaced person] from documenting all moving expenses because the payment is limited to the amount of the lowest acceptable bid or estimate.” *Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program*, (visited July 21, 2011) <<http://www.fhwa.dot.gov/realestate/rights/sec3.html#sec3a>>. (Findings of Fact, Conclusions of Law and Order--Appendix A-062) This caps the displacing

As required by the University, Relators vacated Jensen Field on or before October 31, 2010. Instead of seeking reimbursement for the expenses they incurred based upon an actual cost move or the costs they would have incurred had they hired a professional mover, Relators opted to seek reimbursement for a self-move based upon an estimate from a commercial mover. (Stip. Facts, ¶34) This option is an approved method of reimbursement under 49 C.F.R. § 24.301(d)(2)(i).

As noted above, Relators retained All Furniture to provide them with an estimate for the costs to move their personal property, equipment and airplanes. (Stip. Facts, ¶34) Prior to producing that estimate, Relators provided All Furniture with written specifications for the scope of the move of their personal property, equipment and airplanes to ensure that All Furniture produced a move estimate that complied with the requirements of the URA. (Stip. Facts, ¶34, Findings of Fact, Conclusions of Law and Order--Appendix B-131)

As also noted above, All Furniture determined it would cost Relators \$141,825.00 to move their personal property, equipment and airplanes from Jensen Field. (Stip. Facts, ¶34, Findings of Fact, Conclusions of Law and Order--Appendix B-130) Given the lack of relocation advisory services and claim assistance in this matter, Relators documented their moving expenses in a reasonable manner that:

agency's exposure to a displaced person's moving expenses. Whether those items are moved, sold, given away or thrown into a dumpster, the displacing agency does not care because it knows that these expenses are capped at the amount

1. Complied with the requirements of the URA;
2. Was recognized as being sufficient by the Federal Highway Administration; and
3. Should have been approved for payment by Vice-President O'Brien as the University did not provide any evidence to the contrary indicating that the estimate provided by All Furniture was not reasonable or identified unnecessary costs.

In this case Relators did the best they could in documenting their move expenses. It cost Relators almost \$1,000.00 to obtain the one estimate for the self-move costs they would incur. Even though they are not required to do so by the URA, Relators even took the further step of creating move specifications that it provided to All Furniture to ensure the reasonableness of the move estimate.

Despite Vice-President O'Brien's decision to the contrary, "[i]n general, [relocation] claim requirements should not be applied rigidly or to 'snare the unwary.'" *Bi-Rite Meat v. Redevelopment Agency*, 68 Cal.Rptr.3d 81, 87 (Cal. App. 2007). "Rather, to gauge the sufficiency of a particular claim, the court looks at: (1) whether there is *some compliance* with all of the statutory requirements; and (2) if so, whether such compliance *is sufficient* to constitute substantial compliance." *Id.* at 97 (citation omitted) (emphasis added).

The University refused to do anything when given the chance and, given the circumstances, Relators took the reasonable steps necessary to comply with the self-move requirements of the URA and to sufficiently document their expenses.

determined by their commercial movers and neither side has to worry about the amount of reimbursement being unfairly skewed one way or the other.

Therefore, it was an error of law for Vice-President O'Brien to conclude that Relators did not sufficiently document their relocation claims.

If this Court determines that Relators are displaced persons eligible for relocation benefits and that it was appropriate for Vice-President O'Brien to resolve the amount of relocation benefit payments for which they are entitled to receive, Relators respectfully request that this Court also conclude:

1. That they are entitled to be reimbursed \$141,825.00 for the costs they incurred in moving their personal property, equipment and airplanes from Jensen Field; and
2. That the expiration of Relators' 18-month claim period be tolled for twelve months following the conclusion of this appeal.

IV. The University's use of Vice-President O'Brien, as the hearing officer, was a violation of Minnesota Statutes § 117.012, Subd. 1 and § 117.52, Subd. 4.

This is an issue of first impression in the State of Minnesota.

As noted above, instead of initiating the contested case proceedings under Minnesota Statutes §§ 14.57 - 14.66, the University appointed Vice-President O'Brien to be the hearing officer for Relators' hearing. (ADD-1) In their Memorandum of Law, Relators noted an objection to the use of Vice-President O'Brien as the hearing officer because it was a violation of Minnesota Statute § 117.52, Subd. 4. (Findings of Fact, Conclusions of Law and Order--Appendix A-021)

Pursuant to Minnesota Statute § 117.52, Subd. 4,

if a person entitled to relocation assistance under this section does not accept the acquiring authority's offer, the acquiring authority must initiate contested case proceedings under sections 14.57 to

14.66 for a determination of the relocation assistance that must be provided by the acquiring authority.

Despite Relators' objections and the requirements of Minnesota Statute § 117.52, Subd. 4, the University refused to initiate the mandatory contested case proceedings.

The University's refusal to initiate the mandatory contest case proceedings fails in light of the preemption language contained within Minnesota Statute § 117.012, Subd. 1. According to the requirements of that statute, "[a]dditional procedures, remedies, or limitations that do not deny or diminish the substantive and procedural rights and protections of owners under this chapter may be provided by other law, ordinance, or charter." Minn. Stat. § 117.012, Subd. 1. This means that anyone in Minnesota is entitled to all of the protections provided for in Chapter 117 and any other laws that diminish their substantive or procedural rights (e.g. 49 C.F.R. § 24.10) are preempted by State law. This is important because the procedural protections offered by Minnesota Statutes §§ 14.57 to 14.66, and the rules adopted pursuant thereto, are far greater than the protections provided by 49 C.F.R. § 24.10.

The due process and procedural protections offered by 49 C.F.R. § 24.10 are limited to only:

1. The right to be represented by legal counsel. 49 C.F.R. § 24.10(d).
2. The right to inspect the records and files of the agency. 49 C.F.R. § 24.10(e).
3. The right to a written decision of the hearing officer. 49 C.F.R. § 24.10(g).

4. The right to a hearing officer, however, there is no right to an ALJ and the appointed hearing officer may be an employee of the acquiring authority. 49 C.F.R. § 24.10(h).

In contrast, the contested case proceedings under Minnesota Statutes §§ 14.57 to 14.66 and the Minnesota Administrative Procedures Act (“MAPA”) provide due process and procedural protections similar to the Minnesota Rules of Civil Procedure. These protections are found in the Minnesota Rules 1400.5010 – 1400.8400.

As a result of the conflict between the administrative appeal hearing procedures provided for by the URA and Minnesota Statute § 117.52, Subd. 4, “we must answer the question whether the federal provisions supersede the state statutes.” *Martin ex rel. Hoff v. City of Rochester*, 642 N.W.2d 1, 10 (Minn. 2002). In answering this question “[t]he test is whether, in the relationship between state and federal law as applied, the state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Caucus Distributors, Inc. v. Commissioner of Commerce*, 422 N.W.2d 264, 272 (Minn. App. 1988) (citing *Hines v. Davidowitz*, 312 U.S. 52 (1941)).

Instead of acting as an obstacle to the accomplishment and execution of the purposes of the URA, Minnesota Statute § 117.52, Subd. 4, further enhances the purposes of the URA. By incorporating the minimal amount of due process protections contained within the URA and expanding those rights further by making the full due process and procedural protections mandated by the MAPA applicable to these proceedings, it further serves the purposes of the URA by

ensuring no one will be deprived of the payment of their relocation benefits without due process of law.²²

Based upon the foregoing, Relators respectfully request:

1. That if this Court remands this matter for any further proceedings it require the University to initiate contested case proceedings under Minnesota Statutes § 117.52, Subd. 4 and Minnesota Statutes §§ 14.57 to 14.66.²³
2. That this Court conclude that even if this matter is not remanded for further proceedings on the issues raised in this appeal, that the University is required to initiate contested case proceedings under Minnesota Statutes § 117.52, Subd. 4 and Minnesota Statutes §§ 14.57 to 14.66 for any future administrative appeal hearings requested by Appellant.

CONCLUSION

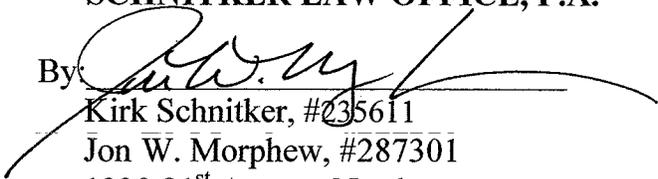
Based upon the foregoing, Relators respectfully request that this Court reverse the decision of Vice-President O'Brien, determine that they are displaced persons eligible for relocation benefits and that they are entitled to be reimbursed \$141,825.00 for the costs they incurred in moving their personal property, equipment and airplanes from Jensen Field.

²² This is important in appeals involving relocation benefit claims because displaced persons have a constitutionally protected property interest in the payment of relocation benefits. *In re Relocation Benefits of James Bros. Furniture, Inc.*, 642 N.W.2d 91, 103 (Minn.App. 2002).

²³ A similar process was followed in the *James Brothers Furniture* case. In that case, this Court was concerned when the attorneys representing the acquiring authority were arguing their case to one of their own clients as the University's attorneys did in this case. When this Court remanded the *James Brothers Furniture* case for further proceedings, it required the acquiring authority "to appoint a different hearing officer or agency official to conduct the additional proceedings on remand." *In re James Bros. Furniture*, 642 N.W.2d at 104.

Respectfully submitted, this 28th day of DECEMBER, 2011.

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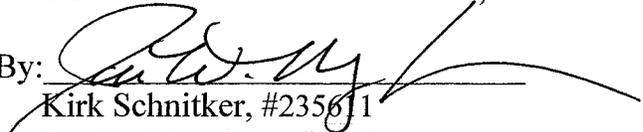
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FORM AND LENGTH CERTIFICATION

I certify that this brief conforms to the rules contained in the Minnesota rules of Appellate Procedure for a brief produced using the following font: Times New Roman, 13 point. The word count for the brief is 8,871.

Dated: 12/28/11

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