

The final hearing was held via videoconference on May 18, 2021 and May 19, 2021. The hearing on May 18, 2021 commenced at 10:00 a.m. CT and concluded at 7:09 p.m. The hearing resumed on May 19, 2021 at 9:00 a.m. CT and concluded 4:32 p.m. CT. During the hearing, Josef Rau appeared by and through his counsel, Timothy L. Epstein and Vernon Thomas of Duggan Bertsch, LLC, USAW appeared by and through its counsel, Stephen A. Hess and Chelsea Reinhard of Sherman & Howard, LLC and Laura Peters of USAW, and John Stefanowicz appeared by and through his counsel, Howard L. Jacobs and Katy Freeman of the Law Offices of Howard L. Jacobs. In addition to Parties and counsel, the following individuals attended the telephonic hearing: Sara Pfilpsen (USOPC), Kacie Wallace (USOPC), Bryce Boarman (USOPC), Les Gutches (USAW), Veronica Carlson (Chair of AAC for USAW), and Bryan Medlin (Coach of Josef Rau). At the conclusion of the hearing, the Parties confirmed they were provided a full and fair opportunity to submit and argue necessary facts, allegations, legal arguments, evidence, and present all witnesses they deemed appropriate. During and at the conclusion of the hearing, no party or counsel filed an objection or indicated additional time was necessary to fully and fairly present this matter for consideration.

On May 21, 2021 at 5:45 p.m. CT, the Arbitrator issued a preliminary decision set forth verbatim as follows:

Thank you to all of the parties, counsel, witnesses, and the affected athlete for your participation in the arbitration of this matter on May 18-19, 2021. Counsel for the parties were well prepared and thoroughly addressed the facts and circumstances with little time to prepare for the expedited hearing. I have considered all the facts, allegations, arguments, testimony, and evidence submitted by the parties in the present proceeding and have reviewed the case *de novo*. After conducting such review and providing Mr. Rau a full and fair opportunity to be heard, I find that Mr. Rau failed to meet his burden to establish that the referee was partial in favor of the affected athlete and committed misconduct during match one of the wrestle-off between Mr. Rau and the affected athlete. The decisions made by the referee on the mat during match one of the wrestle-off fall within the field of play doctrine. My role, as arbitrator in this dispute, is not to supplant my judgment and analysis of the on-mat competition. Decisions about the application of the rules of wrestling are best left to field officials who are specifically trained to officiate wrestling contests. The claims filed and relief requested by Mr. Rau are denied. I wish the parties well in future competitions and endeavors.

II. Evidence Submitted by the Parties

The Parties submitted the exhibits and called witnesses as set forth below. The exhibits were admitted pre-hearing without objection.¹

A. Rau

¹ The exhibits referenced below have the labels provided by the Parties without Modification by the Arbitrator. By referencing the labels for each exhibit, it should not be interpreted as the Arbitrator agrees with the labels presented.

Claimant submitted exhibits labeled Exhibits C1-C9 and such exhibits included the following:

Exhibit C-1: Video of Match One of the Rau v. Stefanowicz Bout

Exhibit C-2: Video of Rau Scoring with a Front Headlock in Another Match without Referee Intervention

Exhibit C-3: Video of Competitors in a World Championship Match in which a Wrestler Scores with Front Headlock without Referee Intervention

Exhibit C-4: Video of Speelman Awarding Points and Not Intervening during Front Headlock in a Different Match

Exhibit C-5: Video of Speelman in Another Match Awarding Points for a Move that Continued after he had Blown his Whistle

Exhibit C-6: Video Showing Fans' Confusion as to why Joe was being Placed in the Down Position after the Stoppage

Exhibit C-7: Video of Speelman Shoving Rau

Exhibit C-8: Video of Speelman Officiating a Different Match in which his Demeanor is much More Calm and Measured

Exhibit C-9: United States Olympic and Paralympic Committee Bylaws

Claimant called the following witnesses at the final hearing who were sworn in and provided testimony under oath:

1. Josef Rau
2. Bryan Medlin
3. Nate Engel
4. Dan Chandler
5. Dennis Hall
6. Andy Bisek
7. Ed Kane

B. USAW

USAW submitted exhibits labeled R-A-R-G and such exhibits included the following:

Exhibit R-A: Screen Shot of Texts from Mr. Lindland's Phone

Exhibit R-B: Screen Shot of Texts from Mr. Mayabb's Phone

Exhibit R-C: UWW International Wrestling Rules

Exhibit R-D: USA Wrestling Olympic Athlete Selection Procedures

- i. Greco-Roman Selection Procedures
- ii. General Olympic Qualification Procedures

Exhibit R-E: Video Clips

- i. UWW Training Video “Injuries Prevention by Referees”
- ii. UWW Training Video: Negative Wrestling: Offensive and Defensive Foul
- iii. 2021 Speelman-Rau Match (Entire Match) without Narration
- iv. 2017 USA World Team Tryouts – Stefanowicz v. Haight
- v. 2019 US Open – Stefanowicz v. Sanders
- vi. Interview with Josef Rau – The Bader Show

Exhibit R-F: Audio Clips

- i. “Olympic Trials Recap with Medlin and Pete Kowalczyk”
- ii. Medlin Interview

Exhibit R-G: Referee Assignments

USAW called the following witnesses at the final hearing who were sworn in and provided testimony under oath:

1. Les Gutches
2. Casey Goessl
3. Jim Speelman
4. Lee Mackay
5. Pete Isais
6. Matt Lindland
7. Gary Mayabb

C. *Stefanowicz*

Stefanowicz submitted exhibits labeled AA-1-AA-11 and such exhibits included the following:

Exhibit AA-1: *Yang v. KOC & FIG*

Exhibit AA-2: Illinois Wrestling podcast

Exhibit AA-3: Photo and Video Breakdown of First Scoring Sequence:

- i. Photos 1-6;
- ii. “Replay Second Angle” video

Exhibit AA-4: Reverse Angle Footage of Rau “Shove”

Exhibit AA-5: USA Wrestling Addendum to Athlete Selection Procedures

Exhibit AA-6: 2020 General Olympic Team Trials Procedures

Exhibit AA-7: USOPC Bylaws

Exhibit AA-8: *Craig v. Taekwondo*

Exhibit AA-9: *Lea v. USA Cycling*

Exhibit AA-10: *Beaman v. USA Shooting*

Exhibit AA-11: 2021 USA Wrestling Rule Book

Stefanowicz called the following witness at the final hearing who was sworn in and provided testimony under oath:

1. John Stefanowicz

III. Notice to Affected Athletes

Prior to the hearing, the Parties agreed that Stefanowicz is the only affected athlete and, thus, additional notice was not necessary or required. Stefanowicz presented for and took part in the proceedings.

IV. Jurisdiction

An arbitrator has jurisdiction over disputes if the dispute is protected under the Act, 36 U.S.C. § 220501, *et seq.*, and the controversy involves the opportunity to participate in national and international competition representing the United States. Section § 220522(a)(4) of the Act states:

An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . .the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete . . ., conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation’s constitution and bylaws . . .

Additionally, Section § 220522(a)(8) of the Act states that a national governing body (“**NGB**”) must:

[P]rovide[] an equal opportunity to amateur athletes, coaches, trainers, managers, administrators, and officials to participate in amateur athletic competition, without discrimination on the basis of race, color, religion, sex, age, or national origin, and with

fair notice and opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate . . .

Section 9.1 of the USOPC Bylaws provides as follows:

No member of the corporation may deny or threaten to deny any amateur athlete the opportunity to participate in the Olympic Games, the Pan American Games, the Paralympic Games, a World Championship competition, or other such protected competition as defined in Section 1.3 of these Bylaws nor may any member, subsequent to such competition, censure, or otherwise penalize, (i) any such athlete who participates in such competition, or (ii) any organization that the athlete represents. The corporation shall, by all reasonable means, protect the opportunity of an amateur athlete to participate if selected (or to attempt to qualify for selection to participate) as an athlete representing the United States in any of the aforesaid competitions. In determining reasonable means to protect an athlete's opportunity to participate, the corporation shall consider its responsibilities to the individual athlete(s) involved or affected, to its mission, and to its membership.

Under USOPC Bylaws Section 1.3(x), "Protected Competition" means:

- i. any Delegation Event as defined by these Bylaws
- ii. any international competition between athlete(s) officially designated by the appropriate NGB as representing the United States, either individually or as part of a team, and any athlete(s) representing any foreign country where
 1. the terms of such competition require that the entrants be individuals or teams representing their respective nations; and
 2. the athlete(s) representing the United States are organized and sponsored by the appropriate NGB in accordance with a defined selection or tryout procedure that is open to all and publicly announced in advance except for domestic amateur athletic competition, which, by its terms, requires that entrants be expressly restricted to members of a specific class of athletes such as those referred to in Section 220526(a) of the Act (i.e., high school students, college students, members of the Armed Forces, or similar groups or categories);
- iii. any domestic competition or event (i.e., a camp, tryout, or trials event) organized and conducted by an NGB or PSO in its selection procedure and publicly announced in advance as a competition or event directly qualifying each successful competitor as an athlete representing the United States in a Delegation Event or protected international competition as defined in ii. above.

USOPC Bylaws Section 9.7 provides that, "[i]f the complaint [under Section 9.1] is not settled to the athlete's satisfaction the athlete may file a claim with the arbitral organization designated by the corporation Board against the respondent for final and binding arbitration." Under both Sections 9.7 and 9.9 of the USOPC Bylaws, the arbitration proceeding may be expedited.

V. Background

A. Selection Procedures and Criteria

Pursuant to the Act, the USOPC has “exclusive jurisdiction, directly or through constituent members [e.g., NBGs] . . . over all matter pertaining to United States participation in Olympic Games, the Paralympic Games, and the Pan-American Games, including representation of the United States in the games.” 36 U.S.C. § 220503(3)(A). The USOPC has both the authority and responsibility “to obtain for the United States, directly or by delegation to the appropriate national governing body, the most competent amateur representation possible in each event of the Olympic Games, the Paralympic Games, and the Pan-American Games.” 36 U.S.C. § 220503(4). In accordance with Section 19.3(i) of the USOPC Bylaws, the USOPC is authorized “to approve or disapprove selection procedures recommended by NGBs”

USAW is the NGB for wrestling in the United States and is recognized as such by the USOPC and United World Wrestling (“UWW”). USAW is authorized as the NGB for the sport of wrestling to “establish procedures for the determination of eligibility standards for participation in competition” and to “recommend to the [USOPC] individuals and teams to represent the United States” 36 U.S.C. § 220523(a)(5-6). In accordance with Section 8.4.1(d)(ii) of the USOPC Bylaws, USAW must “establish clear . . . procedures . . . approved . . . by the [USOPC] . . . and timely disseminate such procedure to the athletes and team officials.”

USAW adopted certain policies and procedures for qualification for the Olympic Games (“Olympics”). USAW drafted and adopted the *2020 General Olympic Team Trials Procedures* (“Procedures”). *Ex. R-D*. As a result of the coronavirus pandemic, on February 10, 2021, USAW issued the *USA Wrestling Addendum to Athlete Selection Procedures Olympic Games Tokyo 2020 Women’s Freestyle, Men’s Freestyle and Greco Roman* to account for various modifications to the Procedures including the date and location of the Olympic Trials. *Ex. AA-5*. The Procedures were approved by the USOPC and timely posted by USAW. In pertinent part, the Procedures provide as follows:

I. Eligibility

1. The Olympic Team Trials are open to all U.S. citizens eligible to represent the USA at the Olympic Games as governed by United World Wrestling (UWW) and USA Wrestling (USAW) rules. Athlete must be a U.S. citizen prior to the qualifying event entered.
2. Each competitor must meet style specific qualifications to take part in the Olympic Team Trials process. Style specific requirements may be found at: <http://www.teamusa.org/USAWrestling/Team-USA/Team-Selection-Criteria>
3. For purposes of defining the classification of an “Olympic Team Member”, this individual can be either the Final Olympic Team Trials Champion or the Olympic Games Participant.
4. The Competition will be contested by UWW rules except as modified by this document.

III. Olympic Team Trials Challenge Tournament

1. Seeding

- a. Wrestlers will be seeded by a seeding committee.
- b. All athletes entered into the event will be seeded.
- c. Majority vote is classified as the majority of the total number of voting representatives present in the meeting.
 - i. If a majority vote can't be reached on a motion, then there will be a second round of voting that only includes the top two athletes based on number of votes. All voting representatives will be required to vote as no abstentions will be allowed.
- d. The seeding committee shall consist of one coach or representative of each of the USAW registered clubs entered in the World Team Trials Challenge Tournament.
 - i. Individuals not a member of a club will be represented by a member of the seeding committee designated by the President of USA Wrestling.
- e. The National Head Coach will vote only in the case to break a tie.
- f. Seeding criteria to be used in rank order:
 - i. Head-to-head matches from the April 2019 U.S. Open up to the event being seeded. (If there is an even split in matches, then the last win determines the higher seed)
 - ii. Common opponents from the April 2019 U.S. Open up to the event being seeded.
 - iii. Medalists at a UWW calendar event from the April 2019 U.S. Open up to the event being seeded. (Majority vote will decide the higher seed if there are multiple medalists)

2. Bracketing

- a. Format to be line bracket double elimination to third place.

b. Byes will be placed with seeded wrestlers first, in order of seed. If any byes are remaining, they will be placed in the brackets in accordance with the accepted system in use by USA Wrestling.

c. In certain situations, athletes earn an automatic berth to the Final Wrestle-Off. Each style has its own set of criteria. Please see the style specific criteria for details.

d. The finals will be a best-of-three format.

3. True Third

a. In weights where the second-place finisher from the Olympic Team Trials Challenge Tournament has not wrestled the third-place finisher from Olympic Team Trials Challenge Tournament, they will wrestle one match during day two to determine a true third place for ranking on the National Team. This is only the case in weights that have an automatic berth to the final wrestle-off (day two).

4. Schedule and Weigh-Ins

a. Weigh-ins for the Olympic Team Trials Challenge Tournament will be held the day of the competition and will be at scratch weight on day one and scratch weight on day two.

i. Any wrestlers, who have earned an automatic berth to day two of the Olympic Trials, will be required to weigh in on day one and day two.

b. Any of the qualifiers may elect to change weight classes to compete at another weight at the Olympic Team Trials Challenge Tournament only. The contestant should notify USA Wrestling in advance of this intention, but a change in weight may be made at weigh-in.

c. A minimum of 30 minutes rest will occur between championship matches and a minimum of 20 minutes rest will elapse between consolation matches.

5. Uniform Markings

a. With the exception of standard manufacturers' equipment identification permitted by Rule 50 of the Olympic Charter (or the manufacturers' equipment identification permitted by the NGB's International Federation's rules, if applicable), the equipment, uniforms and the bibs/numbers of the competitors and officials at the Trials and Exhibitions may not bear any commercial identification or promotional material of any kind (whether commercial or noncommercial), and the NGB, along with USO[P]C support, shall be responsible for enforcement of this USO[P]C policy at the Trials and Exhibitions. The USO[P]C acknowledges and agrees that each competitor's uniform may bear two logos of his or her

wrestling club (provided that the wrestling club name does not reference any corporation or corporate brand and has been approved by the USO[P]C), not to exceed the size specified in the NGB's rules and regulations.

IV. Final Wrestle-Off

1. The Final Wrestle-Off of all weight classes will be contested in a best-of-three format.

a. In weight classes where an athlete has earned an automatic berth to the Final Wrestle-Off, the Challenge Tournament champion will face the automatic finalist and the winner will be the Olympic Team Member, except in the situation where an athlete earning automatic berth into the Final Wrestle-Off has been granted a delay under Article V.

b. If an athlete who earns an automatic berth into the Final Wrestle-Off is granted a delay in accordance with Article V or fails to make weight.

i. If the athlete earning the automatic berth is granted a delay in accordance with Article V, the winner of the Trials Tournament will face the athlete granted the delay at a date and in a format in accordance with Article V.

ii. If the athlete earning the automatic berth fails to make weight, the winner of the Olympic Team Trials Tournament is the 2020 Olympic Team Member.

c. Automatic berths to the Final Wrestle-Offs are only applicable to athletes who (a) are a previous year Senior World Medalist as specified in the style specific procedures. Please consult the style specific criteria for details on automatic berth to the Final Wrestle-Off.

Ex. R-D.

B. Dispute Presented by Rau

Rau competed in the U.S. Olympic Wrestling Team Trials hosted by USAW ("**Trials**") in Greco-Roman wrestling in the 87-kilogram weight class. Rau received a bye by winning the Pan-American Olympic Qualifier in Ottawa, Canada, and advanced to the final wrestle-off to face Stefanowicz in a best-of-three format. Stefanowicz won three (3) matches at the Trials to face Rau. Both Rau and Stefanowicz are decorated wrestlers who have represented the United States in international wrestling competitions. In addition to representing the United States, Rau competes for the Illinois RTC and Titan Mercury and Stefanowicz competes for the All-Marine Wrestling Team. Stefanowicz is an active member of the United States Marine Corp. The Trials were held on April 2-3, 2021 in Fort Worth, Texas.

On April 3, 2021, Rau and Stefanowicz competed against one another in the best-of-three wrestle-off. For the first match, Jim Speelman ("**Referee**") was assigned to serve as the referee

and Dwayne Henry and Tim Pierson were assigned to serve as the judge and chair, respectively.² *Ex. R-F*. Stefanowicz defeated Rau 6-5 in the first match and 2-1 in the second match, which awarded Stefanowicz a position on the United States Wrestling Team to compete at the Olympics. Rau disputes the result of the first match.

Rau alleged that Referee, for the first match, engaged in “clear and obvious partiality” and “misconduct” toward Rau “depriving Rau of the opportunity to represent the United States at the 2021 Summer Olympics” in violation of Section 9 of the USOPC Bylaws. Rau’s primary complaint is that Referee was a member of the All-Marine Wrestling Team and, thus, argued Referee favored Stefanowicz before Referee walked onto the mat. As noted above, Stefanowicz is currently a member of the All-Marine Wrestling Team. Rau complained about several decisions and calls made by the Referee that he argued that should have been awarded in his favor including: 1) “a premature whistle which prevented Rau from engaging Stefanowicz in a front headlock/head pinch;” 2) “penaliz[ing] Rau for continuation of a [front headlock/head pinch after the whistle and]...forc[ing] Rau...to begin again in the ‘down’ position....;” 3) Referee “did not penalize Stefanowicz for clear fouls that he committed during the match, including a leg foul, head down on multiple occasions, fleeing the mat, passivity, and interlocking of finger....” Rau argued that Referee made these decisions because Referee was biased in favor of Stefanowicz. Rau also claimed that Referee was making decisions on the mat in hopes that Stefanowicz would win so a Marine would advance to the Olympics and also save the All-Marine Wrestling Team that was set to be dismantled.³ Additionally, Rau argued that Referee committed misconduct during the first match of the wrestle-off. Rau claimed that Referee was “overly emotional and aggressive toward Rau” including pushing Rau and saying directly to Rau “[y]ou are so f***ing lucky I don’t disqualify you.”

Rau stated that many of the “most influential” people involved in wrestling in the United States informed him that Referee’s actions “unfairly deprived” Rau of an opportunity to qualify for the Olympics. Rau argued that 1) Referee “should never have been appointed as referee in the first place, and the match should not have proceeded at all until an impartial referee was appointed, particularly once objections were raised;” and 2) “the decisions and behavior of [Referee] during the match were objectionable as a clear display of partiality and misconduct.” Rau requested that the undersigned order the wrestle-off “be declared a nullity in its entirety” and Rau and Stefanowicz be ordered to re-wrestle the wrestle-off or, alternatively, the first match of the wrestle-off be “declared a nullity” and ordered to re-wrestle match one only.

VI. Discussion and Analysis

The undersigned has considered all the facts, allegations, arguments, testimony, and evidence submitted by the Parties in the present proceeding. In drafting and explaining the *Arbitration Award*, the arbitrator refers in this *Arbitration Award* only to the submissions and evidence considered necessary to explain the reasoning in this decision. After considering all evidence

² Referee did not serve as the referee of the second match of the wrestle-off between Rau and Stefanowicz.

³ The Marines announced that the All-Marine Wrestling Team will end after Stefanowicz completes the Olympics. Stefanowicz testified that the Marines have not announced any changes to plans to dismantle the All-Marine Wrestling Team as a result of him qualifying for the Olympics.

submitted, based on the preponderance of the evidence, the undersigned makes the following findings:

A. Standard of Review and Burden of Proof

The applicable standard of review in Section 9 cases is *de novo*. *Crowell v. US Equestrian Federation*, AAA Case No. 77 190 E 00193 09 JENF (May 3, 2009); *Nadmichettu v. US Table Tennis Ass'n*, AAA Case No. 77 190 169 10 JENF (Apr. 23, 2010); *Craig v. USA Taekwondo*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011); *Fogarty v. USA Badminton*, AAA Case No. 01-19-0000-7585 (June 21, 2019). “In exercising *de novo* review in a team selection dispute, the arbitrator ensures that: 1) the athlete is given adequate procedural due process by providing a full and fair opportunity to be heard regarding his claims; and 2) the merits of an NGB’s challenged decision comply with the foregoing requirements of law of private associations by analyzing whether the athlete selection procedures are valid; were followed and applied consistently; its discretionary decision was rational/reasonable (*i.e.*, not arbitrary or capricious) and in good faith (*i.e.*, without any bad faith or bias); and complies with applicable federal and state laws.” *Liu v. USA Table Tennis, Inc.*, AAA Case No. 01-19-0002-0105 (June 20, 2019); *see also Nieto v. USA Track & Field*, AAA Case No. 77 190 00275 08 (July 19, 2008)(stating claimant did not carry the burden of persuasion to show that the NGB rule lacks rational basis); *Wright v. Amateur Softball Assn.*, AAA Case No. 301900046602 (Jan. 23, 2003)(stating “an arbitrator should not disturb the selections by the [NGB] unless the arbitrator finds that the body abused its discretion in the selection process”); *Scott v. Amateur Softball Assn.*, AAA Case No 301901500 (Apr. 14, 2000)(stating “claimant did not meet its burden of proof” that the NGB breached its selection procedures). In Section 9 proceedings based on a selection decision, it is well established that a claimant has the burden of proving his claim by a preponderance of the evidence. *Craig v. USA Taekwondo*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011).

B. Field of Play Doctrine

The Field of Play Doctrine is set forth in Section 9.13 of the USOPC Bylaws. Section 9.13 states as follows:

The final decision of a referee during a competition regarding a field of play decision (a matter set forth in the rules of the competition to be within the discretion of the referee) is not reviewable through or the subject of these complaint procedures unless the decision is (i) outside the authority of the referee to make or (ii) the product of fraud, corruption, partiality or other misconduct of the referee. For the purposes of this Section, the term “referee” includes any individual with discretion to make field of play decisions.

On the field decisions are “best left to field officials, who are specifically trained to officiate the particular sport and are best placed, being on-site, to settle any question relating to it.” *Yang Tae Young v. FIG*, CAS 2004/A/704 (Oct. 21, 2004). Arbitrators should not “interfere with the application of the rules governing the play of the particular game” even when the referee makes

an incorrect decision as long as such decision is not made with prejudice or fraud. *NAOC v. IAAF & USOC*, CAS 2008/A/1641 (Mar. 6, 2009); *Yang Tae Young v. FIG*, CAS 2004/A/704 (Oct. 21, 2004). In *Korean Olympic Committee v. ISU*, the panel stated as follows:

[D]ifferent phrases, such as “arbitrary”, “bad faith”, “breach of duty”, “malicious intent”, “committed a wrong”, and “other actionable wrongs” are used, apparently interchangeably, to express the same test. In the Panel’s view, each of those phrases means more than the decision is wrong or one that no sensible person could have reached. If it were otherwise, every field of play decision would be open to review on its merits. Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence of bad faith. If viewed in this light, each of those phrases means there must be some evidence of preference for, or prejudice against, a particular team or individual.

Korean Olympic Committee v. ISU, CAS OG 02/2007 (Feb. 23, 2002)(internal citations omitted). In *Beaman v. USA Shooting*, the arbitrator stated as follows:

[T]he USAS rules are clear that if a competitor has an objection to conduct occurring at an event it is their obligation to file a protest. No protest was lodged here, neither verbal nor written, though the applicable rules provide for this as the way to resolve these disputes. No procedure was lodged here until this Section 9 proceeding was commenced. Unfortunately for Ms. Beaman, while her concerns might be worthy of broader consideration in the sport or within USAS, her competitive future depends on her filing protests to decisions of referees or conduct of competitors as and when required to do so within a narrow window, or the results become final and incapable of challenge.... By not filing, she put this case clearly in the realm of field of play, and the results became final when Ms. Beaman failed to lodge any protest in accordance with the rules.

Beaman v. USA Shooting, AAA Case No. 01-16-0002-3596 (Aug. 5, 2016); *Murphy v. USA Nat’l Karate-Do Fed., Inc.*, AAA Case No. 01-21-0002-0289 (Mar. 7, 2021)(stating Claimant did not comply with the official protest procedure and, thus, Claimant failed to exhaust administrative remedies before filing a Section 9 arbitration demand).

Here, Rau confirmed during the pre-hearing conference that he is not seeking to overturn any specific decision made by Referee during the first match of the wrestle-off. Rather, he argued the first match of the wrestle-off should be reviewed as a result of “partiality or other misconduct” of the Referee. The alleged “partiality or other misconduct” of the Referee will be reviewed below.

C. Protest Procedures

USAW argued that *Beaman v. USA Shooting* and *Murphy v. USA Nat’l Karate-Do Fed., Inc.* are applicable here because Rau failed to avail himself of the protest procedures set forth in the Procedures. The Procedures provide for the following protest procedures at Section VI:

1. All bouts shall be officiated as prescribed by UWW rules, by an officiating team comprised of a referee, judge, and mat chairman. Their decision on all technical aspects of the bout shall be final and shall not be subject to protest.

a. Mat side video will be made available. Mat side review will be done in accordance with UWW rules. Upon review of action, the decision of the officiating team is final.

b. The mat side computer and video shall be accepted as the official result of the bout, unless the officiating team determines that an error has been made.

2. Requests for information concerning the recording of results, pairing of contestants or scheduling of bouts may be directed to the chief mat official and/or chief pairing master without the filing of a written protest.

3. Protests concerning eligibility of a contestant, adherence to the terms of this document, and other matters of procedure shall be reviewed by a Protest Committee comprised by the following individuals:

a. President of USA Wrestling, or his designee, who shall act as chairperson.

b. One or more members of the USA Wrestling Board of Directors appointed by the chairperson of the Protest Committee. Sport Committee members of the style being protested are ineligible to serve on the Protest Committee.

i. Any member of the Protest Committee shall disqualify him or herself from a protest hearing if they have personal ties to any contestant in the same weight.

ii. Any situation not specifically addressed in this document shall be resolved under standard procedures of USA Wrestling.

Ex. R-D at § VI. Additionally, Section 54 of the UWW *International Wrestling Rules* (“**Wrestling Rules**”) states as follows:

Article 54 – The Protest

No protest after the end of a match or any appeal before CAS or any other jurisdiction against a decision made by the refereeing body may be lodged. Under no circumstances may the result of a match be modified after victory has been declared on the mat.

If the UWW President or the responsible person for refereeing notes that the refereeing body have abused their power to modify a match result, they can examine the video and, with the agreement of the UWW Bureau, sanction those responsible as laid down in the provisions of the Regulations for International Refereeing Body.

Rau stated he protested the appointment of Referee as the referee for the first match of the wrestle-off in the following ways: 1) Andy Bisek, one of Rau's coaches, sent text messages to Matt Lindland and Gary Mayabb prior to beginning the first match of the wrestle-off; 2) Bryan Medlin, Rau's head coach, spoke to Pete Isais during the first match of the wrestle-off; and 3) after the match Mr. Medlin approached Casey Goessel to discuss the appointment of Referee to the first match of the wrestle-off.

Mr. Bisek testified that he sent text messages to Matt Lindland, the head coach of the U.S. Greco-Roman Wrestling Team, and Gary Mayabb, the Manager of Greco-Roman Wrestling Team, that stated respectively as follows:

Isnt [sic] this ref a marine?

Is this ref in raus [sic]match a former marine?

Is that a thing to be considered[?]

Ex. R-A & R-B. Both Mr. Lindland and Mr. Mayabb testified that they did not receive or review these messages until well after the first match of the wrestle-off concluded. These statements did not rise to the level of filing a protest even when, as here, there are no formal procedures that establish the format or requirements of a protest.⁴

Mr. Medlin testified that he spoke to Mr. Isais, the Director of National Events for USAW, in protest of Referee serving as the referee of the first match of the wrestle-off. Mr. Isais testified that he was working the Trials and taking local dignitaries down near the mat when he heard Mr. Medlin yell "how can you let him referee this match?" Mr. Isais testified he had no idea what Mr. Medlin was referencing. There was no further communication between Mr. Medlin and Mr. Isais. This statement did not rise to the level of filing a protest even when, as here, there are no formal procedures that establish the format or requirements of a protest.

Mr. Medlin testified and Mr. Goessel confirmed that Mr. Medlin approached Mr. Goessel, the Head Official of the Trials, after the conclusion of the first match of the wrestle-off to discuss the appointment of Referee. Mr. Goessel stated that they did not have a discussion beyond Mr. Medlin's complaint. Mr. Medlin did not address a specific decision or "technical aspect" of the first match of the wrestle-off as such decisions are not subject to protest as per Section VI(1) of the Procedures and must be challenged in accordance with Article 32 of the Wrestling Rules. The evidence showed that Mr. Medlin's complaint to Mr. Goessel occurred after the first match

⁴ There was no evidence in the record of a protest form or formal procedure explaining the process on how to formally file a protest. In other cases considering protest procedures, the procedures clearly set forth how a protest is to be filed and with whom the protest is to be filed. *Murphy v. USA Nat'l Karate-Do Fed., Inc.*, AAA Case No. 01-21-0002-0289 (Mar. 7, 2021)(stating a protest must be announced "not later than one minute after the end of the bout", placed on the "official protest form", and presented to the "Manager" for review of the "Appeals Jury"). The process on how to officially protest the matters at issue were unclear.

of the wrestle-off concluded and a victory was awarded to Stefanowicz, which was not timely as per Article 54 of the Wrestling Rules. However, the protest procedures were not clear on how a protest was to be filed and with whom to file a protest.

D. Partiality and Misconduct

The focus of Rau's complaint was the alleged impartiality and misconduct of Referee. Rau complained that Referee was a member of the All-Marine Wrestling Team and, thus, was bias in favor of Stefanowicz, also a member of the All-Marine Wrestling Team. The Parties went through the video of the first match of the wrestle-off in excruciating detail many, many times during the hearing. Rau argued that Referee "took over" the match and caused Rau to lose multiple scoring opportunities, which ultimately led to Stefanowicz being determined the victor of the first match of the wrestle-off.

1. Partiality

The evidence showed that Mr. Goessel selected Referee to serve as the referee of the first match of the wrestle-off and Dwayne Henry and Tim Pierson were assigned to serve as the judge and chair, respectively. Mr. Goessel stated the decision to assign Referee to this specific match was "100% me". *Ex. R-F*. Referee did not request to referee the first match of the wrestle-off between Rau and Stefanowicz. Mr. Goessel confirmed he would not have chosen Referee to serve as the referee of the first match of the wrestle-off if he believed in any way that Referee would be biased in favor of either athlete. There is no rule in the Wrestling Rules or any USAW rule that prohibits Referee from serving as a referee in a match where a member of the All-Marine Wrestling Team was competing.⁵

Referee testified that he was a member of the All-Marine Wrestling Team from 1988-1991 and wrestled at the 1992 U.S. Wrestling Olympic Trials as an unattached wrestler. Referee is a highly regarded referee of Greco-Roman wrestling competitions and has served as a referee all around the world. Referee indicated, and Stefanowicz confirmed, that he and Stefanowicz have no personal relationship and do not know each other outside of wrestling matches Referee refereed. Referee has served as a referee in multiple matches where Stefanowicz has competed. Some of which Stefanowicz was declared the victor and others he was not. Referee has had no association with the All-Marine Wrestling Team since leaving the program in 1991 other than serving as a referee for matches.

In addition to serving as the referee for the first match of the wrestle-off between Rau and Stefanowicz, Referee served as a referee in multiple other matches at the Trials including the wrestle-off for the 77 kg division. *Ex. R-F*. Referee was the chair of the wrestle-off between Peyton Walsh of the All-Marine Wrestling Team and Jesse Porter of the New York Athletic Club. Mr. Walsh was unsuccessful in the wrestle-off and, thus, did not advance to the Olympics.

In an effort to establish his position on impartiality and misconduct, in review of the video of the first match of the wrestle-off, Rau indicated the following alleged errors:

⁵ Neither party cited to any case addressing partiality and misconduct in the context of the assignment of or calls and decisions made by a referee.

Ex. C-1 at 2:08 – Leg grab by Stefanowicz

Ex. C-1 at 2:19 – Improper stoppage

Ex. C-1 at 4:05 – Improper stoppage

Ex. C-1 at 4:55 – Referee should have called Stefanowicz for passivity

Ex. C-1 at 5:15 – Referee should have called Stefanowicz for passivity

Ex. C-1 at 7:05 – Referee should not have stopped wrestling and should not have awarded caution points

Ex. C-1 at 8:15 – Referee should not have stopped wrestling

Ex. C-1 at 9:25 – Referee should have called Stefanowicz for passivity

Ex. C-1 at 11:12 – Waited too late to call passivity on Stefanowicz and should not have stood up the athletes

Rau indicated Referee “took over” the first match of the wrestle-off and pointed to a chorus of boos in the crowd and the comments made by the television commentator to confirm his complaints. Rau, however, confirmed that he and his team did not challenge any decisions made by the Referee in accordance with Article 32 of the Wrestling Rules. Rau stated he did not challenge various calls and decisions because “he could not have won” as such calls were “judgment calls” within the discretion of Referee. By not challenging certain calls and decisions made by the Referee, the officials were unable to review video evidence of the disputed calls and decisions and, thus, was unable to overturn any such calls and decisions.

Rau primarily challenged three (3) decisions made by the Referee: 1) failure to call a leg grab against Stefanowicz (*Ex. C-1* at 2:08); 2) improper stoppage on the second throw (*Ex. C-1* at 2:19); and 3) Referee should not have stopped wrestling and should not have awarded caution points (*Ex. C-1* at 7:05). First, the Parties reviewed the alleged leg grab multiple times including in slow motion. The leg grab was not apparent to the undersigned until it was shown in slow motion multiple times and specifically addressed. Lee Mackay, a multi-time Olympic referee, missed the leg grab the first two (2) times he watched the video, but conceded the leg grab was a foul after reviewing the video in slow motion. Rau confirmed he did not challenge the leg grab and, thus, waived any such challenge under Article 32 of the Wrestling Rules.

Second, Rau argued that he should have been considered the victor of the first match of the wrestle-off by technical fall because he completed two (2) throws within the first fifteen (15) seconds of the match giving him eight (8) points. Referee, however, stepped in and blew the whistle in the middle of the second throw citing strangulation. Article 51 of the Wrestling Rules indicates a hold is “illegal” and “strictly prohibited” when a wrestler “hold[s] the head or neck with two hands, as well as all situations and positions of strangulation[.]” *Ex. R-C* at Art. 51. Stefanowicz testified that he was being strangled. Referee, in his judgment, believed that Stefanowicz was being strangled and, thus, he blew the whistle nullifying Rau’s second throw. In accordance with Article 19(f) of the Wrestling Rules, a referee “must never hesitate to

[i]nterrupt the bout at exactly the right time, neither too soon or too late.” *Ex. R-C* at Art. 19(f). The training videos admitted into evidence indicate that the safety of the athlete is paramount and, thus, a referee must intervene to protect the athlete. Being that the whistle was blown, Rau did not have the ability to challenge the call under Article 32 of the Wrestling Rules.

Third, Rau argued that Referee again stopped the athletic contest during a potential scoring opportunity. Rau and Stefanowicz were wrestling near out-of-bounds. As the wrestling progressed, Rau initiated a hold and began to throw Stefanowicz. During the middle of the action, Referee blew his whistle in an effort to stop Rau’s progress, but Rau continued and completed the throw. Rau stated he continued to wrestle because there were multiple matches going on at the same time and he was not certain whether the whistle was from Referee or another match. Referee awarded two (2) caution points to Stefanowicz. The caution points were confirmed by the chair of the first match of the wrestle-off. As a result of awarding caution points, Rau was placed in par terre position, which resulted in Stefanowicz scoring four (4) more points. Mr. Mackay confirmed that the athletes were out-of-bounds and it was proper to blow the whistle. Being that the whistle was blown, Rau did not have the ability to challenge the call under Article 32 of the Wrestling Rules.

Impartiality involves “open-mindedness”, but does not mean there are “no preconceptions” as long as there is a willingness to consider “views that oppose those preconceptions and remain open to persuasion.” *Republican Party of Minn. v. White*, 536 U.S. 765, 775, 779 (2002). Actual bias arises where a prejudice in all probability prevents one from dealing fairly with another. *People v. Julien*, 47 P.3d 1194, 1197-98 (Colo. 2002). Disqualification requires more than a mere relationship. Determining factors are the closeness of the relationship and its bearing on the underlying matter. *Schupper v. People*, 157 P.3d 516, 520 (Colo. 2007). In *Tilelli v. Christenberry*, the court stated as follows:

The scoring of a prize fight is not a routine process, like the scoring of a tennis match. The commission's rules recite the following factors, among others, which must be taken into account by ring officials in rendering their decisions: damaging effect of blows, aggressiveness, defensive work, ring generalship and sportsmanlike actions. At best, these general standards furnish no chart for a mathematical ticking off of points. A boxing official's judgment reflects not only his perceptiveness and experience, but is inevitably colored by his own sense of prize fighting values. Therefore, a substantial scoring differential among ringside officials ordinarily excites no alarm in boxing circles and split decisions are no rarity. In the very match under discussion the commission did not see fit to disturb the card of the referee, who like Judge Agnello, had also voted in favor of Giardella.

Tilelli v. Christenberry, 120 N.Y.S.2d 697, 704 (N.Y. Sup. 1953)(holding incorrectly scoring a boxing match was not a basis for overturning the match). “Arbitrators are not ombudsmen; they are authorized to resolve disputes under contracts and rules, not declare how the world should work in the large.” *Lindland v. U.S. Wrestling Ass’n, Inc.*, 227 F.3d 1000, 1004 (7th Cir. 2000). Judges, and by extension arbitrators, are not “super referees”. *Nat’l Collegiate Athletic Ass’n v. Yeo*, 171 S.W.3d 863, 870 (Tex. 2005).

Here, Rau and Stefanowicz are outstanding competitors who were evenly matched in a wrestle-off to determine who was to represent the United States in the Olympics. Rau is a world-class competitor and believes he won the first match in the wrestle-off. The vast majority of Rau's position falls within the ambit of the field of play doctrine where he challenges "judgment calls" made by Referee. The undersigned is in no position to second guess Referee's decisions that occurred on the mat. Not only is the undersigned not trained to make those decisions, the undersigned is also not permitted to serve as a "super referee" after reviewing the video fifteen (15) times including in slow motion. Many witnesses testified that they watched the video of the first match of the wrestle-off numerous times including one witness who testified that he watched the video thirty (30) times. Referee was not afforded the opportunity to review the video in slow motion while officiating the first match of the wrestle-off. Witnesses who watched the video during the hearing, including highly decorated and trained referees, missed calls in real time such as the alleged leg grab referenced above. Even if the undersigned disagreed with the decisions and calls made by the Referee, the undersigned is in no position to reverse such decisions and calls in this forum. The on-mat decisions made by the Referee are field of play decisions.

Rau did not carry his burden of establishing that Referee was partial in favor of Stefanowicz. Referee's connection with the All-Marine Wrestling Team is far too attenuated to establish bias without more. The evidence adduced during the hearing confirmed that Referee has no relationship with Stefanowicz and has no ongoing connection with the All-Marine Wrestling Team other than officiating wrestling contests. Although it may be advisable to consider a referee's prior affiliations before assignment, there was nothing that prohibited Referee from accepting the assignment to serve as the referee for the first match of the wrestle-off between Rau and Stefanowicz. It is also notable that Rau's head coach, Mr. Medlin, was also a member of the All-Marine Wrestling Team. Although Rau and his coaches disagreed with multiple calls and decisions made by Referee and the outcome of the first match of the wrestle-off, the evidence presented did not show Referee was partial in favor of Stefanowicz. Accordingly, the undersigned finds the evidence does not support a finding of partiality.

2. *Misconduct*

Rau also argued that Referee committed misconduct⁶ when Referee "hit", "shoved", and "yelled" at Rau. The video of the first match of the wrestle-off shows that Rau was on his knees after being cautioned by Referee for continuing to wrestle after the whistle was blown. Referee approached Rau and touched his shoulder. The video was reviewed on multiple occasions in real time and in slow motion. The undersigned did not observe Referee hit or shove Rau. It is unclear whether Referee was yelling at Rau because Referee was wearing a mask and the television microphones did not pick up what was said. Rau testified that Referee said, "You are so f***ing lucky I don't disqualify you." Referee, on the other hand, testified that he was explaining the basis for stopping Rau from wrestling and why he blew the whistle. Even if Referee cursed at Rau, that is not enough to constitute misconduct to overturn the results of the

⁶ Black's Law Dictionary defines "misconduct" as "[a]ny unlawful conduct...which is prejudicial to the rights of parties or to the right determination of the cause...."

first match of the wrestle-off. Accordingly, the undersigned finds the evidence does not support a finding of misconduct.

E. Affected Athlete's Request for Attorney's Fees

Stefanowicz requested that the Arbitrator order Rau to “contribute toward...legal fees” incurred in this matter.⁷ Rule 47(d) of the AAA Commercial Rules states:

The award of the arbitrator(s) may include:

- i. interest at such rate and from such date as the arbitrator(s) may deem appropriate; and
- ii. an award of attorney's fees if all parties have request such an award or it is authorized by law or their arbitration agreement.

In support of his position, Stefanowicz cites *Beaman v. USA Shooting*. *Beaman v. USA Shooting*, AAA Case No. 01-16-0002-3596 (Aug. 5, 2016). In *Beaman*, the arbitrator awarded \$3,000.00 of attorney's fees in favor of the national governing body. The arbitrator stated, in pertinent part, as follows:

This Arbitrator is not of the view that attorneys' fees should be shifted in every Section 9 in favor of the prevailing party. To the contrary, proceeding under the US rule and not the English rule, the power to shift fees should be used sparingly and only in exceptional cases in Olympic-related cases, particularly where fees are to be shifted against an athlete and in favor of a governing body that might be in a better relative position to pay its own freight. Having said that, where there are claims that are so without any legal or factual basis, and where, as here, the evidence suggests that the case was brought by Ms. Beaman's distraught father and coach, who was on site at the event in question and did not exercise any of the rules-provided rights at the time that could have resolved this issue in real time without the need for filing this action, rules of which both he and Ms. Beaman were or should have been aware, this Arbitrator is comfortable shifting some of the burden caused to the NGB resulting from this proceeding to the athlete.

Accordingly, the Arbitrator finds that \$3,000 is a sufficient contribution for Ms. Beaman to make toward the attorneys' fees of USAS, which were undoubtedly a lot more. All potential claimants and respondents in these kinds of cases should take note that they need to be familiar with the rules of their sport, including the rules for challenging decisions, they need to try to follow them in good faith and avail themselves of field of play related processes, and they need to assert claims that have solid legal and factual bases or they will face the same risk.

Beaman v. USA Shooting, AAA Case No. 01-16-0002-3596 at 18 (Aug. 5, 2016).

⁷ Stefanowicz did not request arbitration fees to be shifted, thus the Arbitrator does not address arbitration filing fees.

There have also been other Section 9 cases where fees have been shifted. In *McCandless v. USA Track & Field*, the arbitrator awarded costs and fees to the claimant even though his claim was unsuccessful. *McCandless v. USA Track & Field*, AAA Case No. 01-15-0004-2085 (Feb. 29, 2016). The primary basis for the arbitrator's ruling is set forth as follows:

This was not a mistake in the sense of reasonably applying selection procedures where there might be a difference of opinion; the USATF mistake was grossly negligent in naming Mr. McCandless instead of Mr. Leon and neither Mr. McCandless nor Mr. Leon did anything other than what they were supposed to do in the circumstances. Accordingly, I am awarding a contribution toward the attorney's fees and costs of Mr. McCandless toward the \$12,126.50 being sought by Mr. McCandless on the basis that Mr. McCandless was not the prevailing party, though he was the victim of USATF's mistake.

Id. at 11. In *Pohl v. USA Badminton*, the arbitrator again awarded attorney's fees and costs to the claimant even though claimant was unsuccessful. *Pohl v. USA Badminton*, AAA Case. No. 30-190-00604-03 (Aug. 7, 2003). The arbitrator stated as follows:

In light of the fact that these proceedings were the direct result of USAB's failures throughout the course of these trials, it shall bear all costs of these proceedings, including Pohl's filing and attorney's fees, as well as all costs and fees of the American Arbitration Association and the compensation of the arbitrator.

Id. at 3.

Here, the Arbitrator finds that the Parties shall bear their own attorneys' fees and costs associated with this arbitration. The matters presented were hotly contested and disputed. Although the matter at issue presents field of play issues, Rau presented arguments of partiality and misconduct of the Referee in the first match of the wrestle-off, which were different than the issues presented in *Beaman v. USA Shooting*. The matters at issue resulted from a reasonable disagreement as to partiality of the Referee. Accordingly, the Arbitrator denies Stefanowicz's request for attorneys' fees. Additionally, it is worth noting that Stefanowicz did not present evidence of the attorneys' fees he incurred.

VII. Decision

Based on the foregoing findings and analysis, the undersigned decides and awards as follows:

- All of Claimant's claims and requested relief are denied;
- The Parties shall bear their own attorneys' fees and costs associated with this arbitration.
- The administrative fees and arbitrator compensation for AAA are to be borne as incurred.

- This award is in full settlement of all claims submitted in this arbitration. All claims not expressly granted herein are hereby denied.



Christian Dennie, FCI Arb
Arbitrator

Date: June 1, 2021