



HOLLIS BOSS, CONNIE PETRACEK & GARY ANDERSON
Complainants

v.

NATIONAL RIFLE ASSOCIATION
Respondent

Article VIII, Section 1, Complaint

United States Olympic Committee
Hearing Panel
Summary of Evidence and Recommendation

**USOC HEARING PANEL
SUMMARY OF EVIDENCE AND RECOMMENDATION**

**I.
INTRODUCTION**

This Article VIII Complaint was filed by the COMPLAINANTS on September 21, 1993. Subsequently, the RESPONDENT filed a Motion to Dismiss on procedural, jurisdictional and technical grounds on October 12, 1993. This Hearing Panel ("the Panel") was appointed by USOC President LeRoy Walker in accordance with Chapter VIII, Section 3, (A) of the USOC Bylaws to hear the Motion to Dismiss and render a decision.

The Panel conducted a hearing on November 10, 1993 in Chicago, Illinois on the Motion to Dismiss and, on November 30th, rendered its Decision that the Motion to Dismiss should be denied. A copy of that Decision is attached as Appendix A.

Following this Decision, the RESPONDENT filed an Answer to the Complaint on December 17, 1993. In accordance with Chapter VIII, Section 5 (B) and related Articles and Chapters of the USOC Constitution and Bylaws, President Walker charged this Panel to conduct a hearing on the merits of the Complaint. The Panel was further charged to report to the USOC Board of Directors as outlined in the USOC Constitution and Bylaws and to make a recommendation to the Board of Directors regarding the disposition of the Complaint. A hearing was scheduled for January 5-9, 1994 in Colorado Springs at the Antlers Hotel.

On January 5, 1994, the Parties appeared before the Panel. They had previously submitted documents which included 49 Exhibits from the COMPLAINANTS and 31

Exhibits from the RESPONDENT and witness lists to the Panel for its consideration during the Hearing. The Parties were advised that, in resolution of the Complaint, the Board of Directors may determine that the RESPONDENT (1) is in compliance with the requirements of the USOC Constitution, or (2) is not in compliance and should be placed on probation, or (3) is not in compliance and should have its recognition as an NGB revoked.

The Hearing was conducted in accordance with the hearing procedures set forth in Chapter VI of the USOC Bylaws. Both Parties were allowed opening statements. The Parties were given a reasonable opportunity to present oral and written evidence, to cross-examine witnesses and to present factual or legal claims as desired. The rules of evidence were not strictly enforced and rules of evidence generally accepted in administrative proceedings were applied.

The burden of proof was initially placed on the COMPLAINANTS and they were given the burden of going forward with evidence. After the COMPLAINANTS presented their evidence, the RESPONDENT moved to dismiss the Complaint for failure to sustain the burden of proof. The Panel denied the Motion. The RESPONDENT then presented evidence in support of its position. The COMPLAINANTS were allowed rebuttal testimony. Both Parties were allowed closing statements.

The Hearing was open to the public and was stenographically reported. The Hearing concluded in the afternoon of Friday, January 7, 1994. Following conclusion of the Hearing, the Panel deliberated and now provides this Summary of Evidence and Recommendation.

II.

SUMMARY OF EVIDENCE

A. WITNESSES

The Parties presented evidence and the following witnesses to the Panel:

HOLLIS BOSS, et. al

NRA

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| 1. William Pullum, ICC Chair/
1980-'88 & 3-term NRA Board | 1. Wilson H. Phillips, Jr.,
NRA Treasurer |
| 2. Gary Anderson, former Executive
Director/NRA Operations 1980-'93 | 2. Carl Bernosky, ICC Vice
Chair & Shooting Athlete |
| 3. Robert Foth, Shooting Athlete
& 1992 Olympic Team Silver Medal | 3. Joseph Suarez, NRA
Foundation/Director-Donor
Development. |
| 4. Connie Petracek, Shooting Athlete &
1988 & 1992 Olympic Team Member | 4. Robert Clark, NRA
Chief of Staff |
| 5. Sharee Waldron, Shooting Athlete
& USOC/AAC Representative | 5. Mike McCabe, Esquire
NRA General Counsel |
| 6. Bill Deneke, ICC Chair/ 1988-'94 | |
| 7. Leo Lujan, NRA Board & Director/
Shooter Development for U. S.
Shooting Team | |
| 8. Marsha Beasley, Director/
Shooter Development for U. S.
Shooting Team | |
| 9. Ernie VandeZande, USOC/AAC Rep | |
| 10. Hollis Boss, Acting Chair/U. S.
Shooting Team Foundation | |
| 11. Katrina Granlund, Administrator/
U. S. Shooting Team | |
| 12. Mike English, Shooting Athlete | |

B. SUMMARY OF PARTIES

The Parties were invited, following the Hearing, to provide their own summaries of the evidence. These are attached as Appendices "B" and "C".

C. RECOGNITION OF NGB FOLLOWING THE AMATEUR SPORTS ACT

The Amateur Sports Act of 1978, ("The Act") 36 USC 371-396, provided the basis for recognition or continued recognition of National Governing Bodies ("NGB[s]") for Olympic and Pan-American Sports by the United States Olympic Committee ("USOC"). In addition, the USOC Constitution, Articles IV and VII, contain similar requirements. These requirements were the basis for the recognition of NGBs to USOC membership following passage of The Act. The National Rifle Association ("NRA") was granted continued recognition in the USOC as the member for the sport of shooting following passage of The Act. Testimony and documents reveal that it was recognized at that time that the NRA would be recognized as a "multipurpose" organization. This was the result of the structure of the organization which did not allow it to meet all of the membership requirements of The Act and the USOC Constitution directly. Congress had recognized that such organizations existed prior to passage of The Act and would require special treatment in applying the conditions of membership. In order to be recognized as a member, the NRA is required to delegate the NGB function to an independent committee of the NRA - the International Competitions Committee ("ICC"). The ICC then is expected to fulfill essentially all of the requirements of the NGB with the exception of

being the direct member of the international federation for the sport of shooting and holding not-for-profit corporation status.

D. INITIAL PROBLEMS

The NRA began its status as an NGB following the passage of The Act under the auspices of the "Mustin Charter" which was developed by the NRA to address the relationship between the NRA and the ICC which was to administer the Sport of Shooting. According to testimony, there were problems and issues from the very beginning of the NRA's membership over the independence and role of the ICC. However, testimony also indicated that the early days of the Mustin Charter were the time when the NRA was most in compliance with The Act and USOC Constitution requirements. The testimony of the COMPLAINANTS indicated that the ICC did not like the Mustin Charter, but approved it, by a "slim vote" in the hopes that if the NRA lived up to the terms of the document, the ICC could accept it.

Over the years, problems relating to the independence of the ICC apparently grew. These problems related to administration of the grievance procedure by the NRA, athlete representative nominations by the NRA without ICC involvement, NRA authority over coaching programs, staffing of the ICC, control over funding and budget matters, approval authority over participation in international competition, and general policy making.

E. USOC MEMBERSHIP & CREDENTIALS COMMITTEE REVIEW

Ultimately, these matters were brought to the attention of the USOC Membership & Credentials Committee in September 1990 by certain athlete members of the ICC. The

USOC Membership & Credentials Committee began a series of meetings aimed at identifying the issues and attempting to resolve them. Subsequently, after two years of review, a new Charter was developed for operation of the Sport of Shooting involving the NRA and the ICC. The NRA approved the new Charter, as did the ICC. The testimony indicates that though not all of the original athlete complainants liked the Charter, they were willing to give it a try. The purpose of the Charter was to set out the rules by which the ICC would independently govern NGB functions while at the same time retaining the NRA as the recognized NGB.

F. ICC CHARTER PROBLEMS

Testimony and documents were submitted by the COMPLAINANTS alleging that the NRA either had problems with its compliance with the Charter or was in violation of it within a short period after its adoption. Some of those problems are addressed separately in following sections of this Summary. In general, testimony and documents alleged the following:

- (1) lack of certainty of financial support of the ICC by the NRA;
- (2) an attitude of contempt by the NRA for the ICC and its NGB responsibilities;
- (3) failure to appropriate a portion of NRA membership dues to the ICC;
- (4) lack of meaningful involvement of the ICC in the coaching program;
- (5) lack of meaningful involvement by ICC in the Junior Olympic Programs;
- (6) NRA interference with the ability of ICC to raise funds independently and have support from the NRA in doing so;

- (7) NRA control over ICC authority to meet;
- (8) NRA authority over ICC Secretary;
- (9) problems regarding ownership of mailing list supporting fund-raising efforts on behalf of ICC;
- (10) inappropriate or unauthorized use of Olympic symbols and terminology by NRA;
- (11) obstruction of ICC attempts to have input into grassroots and youth shooting programs;
- (12) not all matters relating to NGB responsibilities are promptly referred to ICC by NRA;
- (13) lack of complete control over ICC staff by ICC;
- (14) inability by the ICC to pursue independent management decisions.

These issues were referred to repeatedly by both Parties in their testimony and in documents presented before the Panel. The RESPONDENT attempted to rebut many of the allegations, claiming either that they did not exist, were mischaracterized, or had been remedied. Taken as a whole, however, the issues raised in the testimony caused serious concerns as to whether the ICC is independent from the NRA.

G. ICC STAFFING

The testimony reveals that, shortly after adoption of this new Charter, issues relating to the independence of the ICC developed. The ICC's Chief Operating Director, Gary Anderson, was removed by the NRA and reassigned as Director of International

Organization Affairs. At the same time, the NRA appointed a new Chief Operating Director and created an additional senior staff position. COMPLAINANTS claim that such actions violated the ICC's need for independent control over staffing and budgeting, and violated the Charter. The RESPONDENT's testimony indicated that NRA staff believed the staffing changes to be justified, and that there had been previous conversations with the Chair of the ICC about the removal of Gary Anderson. The Chair, however, denied that there had been any conversation regarding the removal of Mr. Anderson, other than the Chair mentioning that Mr. Anderson needed to be free to concentrate on his duties without having to focus on conflicts between the ICC and the NRA. The testimony is clear that the ICC itself, as a Committee, was not consulted on the removal of Mr. Anderson as the COO, and did not give their advice and consent to the appointment of a new COO.

In addition, the Chief of Staff for the NRA testified that the NRA had decided about a month before the action to dismiss Mr. Anderson and they did not advise the chair of their intention. The Chief of Staff also testified that he did not believe the Charter requires ICC involvement in the dismissal of a COO, and the NRA has the right to dismiss a COO of the ICC in the future without ICC involvement.

A subsequent meeting of the Executive Subcommittee of the ICC, which the NRA claimed to be illegal, rejected the action on Mr. Anderson and the hiring of his replacement. A full meeting of the ICC later rejected these same actions of the NRA. The ICC is now without a permanent COO, and apparently the acting director is reporting directly to the NRA in Washington, D. C. Mr. Anderson was subsequently terminated

altogether by the NRA for his refusal to agree to terms of a memorandum relating to NRA/ICC relations and his employment.

There was also testimony regarding the influence of the NRA on the staff of the ICC. The testimony was inconclusive as to whether the ICC staff is considered employed by, and therefore responsible to, the ICC or the NRA.

H. ABILITY TO CONDUCT BUSINESS AFFAIRS

The testimony relating to the actions of the NRA relative to the position of Mr. Anderson also focused on the question of the ability of the ICC to conduct its business meetings without authorization by the NRA. When Mr. Anderson was removed from his position as COO, the testimony indicated that the ICC desired to hold a meeting to consider the action of the NRA. The Complainants' testimony was that the NRA blocked such a meeting which necessitated convening an emergency meeting of the ICC Executive Subcommittee. The NRA position was that it had originally approved the full meeting, but discovered it conflicted with an important event requiring the attendance of "key personnel" of the NRA. As a result, no meeting of the full ICC took place until four months after the action in question. The NRA takes the position that the ICC cannot call its own meetings without NRA consent and approval.

I. FUNDING AND MARKETING ISSUES

Testimony regarding funding of the ICC by the NRA was also submitted. The new Charter required annual appropriations to be made by the NRA to the ICC. Testimony

indicated that though the NRA has claimed to be willing to provide whatever amounts are needed to fund ICC programs, they have also been unwilling to commit a fixed dollar amount of support and allow the ICC to budget accordingly. Another source of ICC funding has been fundraising undertaken by the U. S. Shooting Team Foundation ("USSTF"). The NRA proposed taking ICC fundraising in-house, with the objective of raising enough money to fund the ICC without requiring an allocation from NRA general funds. COMPLAINANTS claim that in attempting to persuade the ICC and USSTF to agree to this proposal, the NRA threatened the ICC with a complete cut-off of funding if the ICC did not agree to the NRA proposal. RESPONDENT's position is that NRA staff members were not attempting to threaten, they were communicating their own apprehensions about the response of the NRA Board of Directors if the ICC did not agree.

J. COACHING AND DEVELOPMENT

Testimony revealed contention between the Parties regarding the independence of the ICC in the areas of coaching and athlete development.

Testimony of the COMPLAINANTS indicated that the NRA interfered with the ability of the ICC to conduct coaching programs, Junior Olympic programs and international-style grass roots shooting programs, at least in the opinion of ICC staff responsible for such programs. NRA testimony claimed that such was not the case, but rather, the ICC had either agreed to NRA activities in these areas or the NRA was entitled to carry on programs in these areas in furtherance of its multipurpose responsibilities.

K. CONCLUSION

The testimony, taken as a whole, is clear that the ICC is not independent from the NRA and is not free to conduct the activities required of it in order to fulfill the obligations of administering, developing and supporting the Olympic Sport of Shooting. While the initial concept may have been to meet such obligations in a combined effort between the NRA and the ICC, it appears that the NRA has not been in compliance with the Act from the outset. The testimony indicated that, in spite of recent efforts by the USOC Membership & Credentials Committee, the NRA is not today in compliance with these requirements. The testimony also seems to show that the NRA is unable to free itself from a pattern of behavior involving consistent and recurring violations of the spirit and letter of whatever agreements are reached from time-to-time.

III.

RECOMMENDATION

After careful review of the evidence and issues presented, the Hearing Panel concludes that the NRA is not in compliance with the membership requirements of the Amateur Sports Act of 1978 and/or of the USOC Constitution. The NRA by itself does not, and perhaps cannot, meet these requirements. It is the opinion of the Panel, after hearing all the testimony, that the NRA has not fully met the membership requirements since being admitted as a member of the USOC following the passage of The Act. When the NRA was admitted, it was recognized that the NRA must delegate to an independent


committee the authority and responsibility of the NGB for the sport of shooting since it was a multipurpose organization which, by its nature, could not meet all of the requirements of an NGB. That independent committee is, therefore, required to comply with the requirements of the Act and the USOC Constitution. The committee that has been so designated by the NRA is the ICC.

Based on complaints registered by athlete members of the ICC, the USOC Membership & Credentials Committee spent substantial time over the past several years addressing the question of whether the ICC was, in fact, independent from the NRA. The USOC Membership & Credentials Committee's conclusion was that it was not and that changes must be made in order to remedy the situation. In the end, a number of changes were made and, although not completely acceptable to the athlete complainants, an agreement was reached regarding how the NRA would operate regarding the independence of the ICC. This agreement is referred to as the ICC Charter, or the Charter. The Panel has examined the conduct of the RESPONDENT and has concluded that the ICC has not been allowed to function independently in a manner consistent with compliance with The Act, the USOC Constitution or the ICC Charter. Therefore, the NRA is not in compliance with the requirements of The Act and the USOC Constitution.

The Panel is of the opinion that the failure of the NRA to meet its membership requirements is of such a nature, both in the past and during the present, that extreme measures must be taken in order to properly support the sport of shooting in the United States and the athletes engaged in the sport. The problems existing in the present

system cannot be rectified without substantial changes in the governance structure and operating procedures of the NRA, changes that the NRA has been shown to be unable, or unwilling to make, as testimony and exhibits as well as the above described attempts to do so by the USOC Membership & Credentials Committee have established.

This Panel, therefore, unanimously recommends that the membership of the NRA for the sport of shooting be revoked. The Panel also recommends that the USOC immediately assume the responsibility of administering the sport and move expeditiously to seek a new member qualified to administer the sport.



Sandy Baldwin, Chair

Walter Bush

George Schaefer

Bonny Warner

Christopher "Tiff" Wood

March 9, 1994