

UNITED STATES OLYMPIC COMMITTEE

Michael Farry	)	
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Complainant,	)	
	)	
v.	)	DECISION
	)	
USRowing	)	
	)	
Respondent.	)	June 29, 2007

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I. INTRODUCTION

On July 24, 2006, Michael Farry filed a Complaint against USRowing pursuant to Article VIII, Section 8.1, of the USOC Bylaws and Section 220527 of the Ted Stevens Olympic and Amateur Sports Act (36 USC § 220501-220529), (the “Act”). USRowing is the National Governing Body for rowing in the United States, as recognized by the United States Olympic Committee (“USOC”). In his Complaint, Farry specifically alleges that USRowing is not in compliance with Section 220524(3) of the Act, which states that an NGB shall “keep amateur athletes informed of policy matters and reasonably reflect the views of the athletes in its policy decisions.”

In accordance with Article VIII, Section 8.1 B of the USOC Bylaws, USOC Chair, Peter Ueberroth, appointed a Hearing Panel of five members for the purpose of hearing this matter. The Panel members are:

- James McCarthy, Chair  
USOC Board of Directors
- Ron Radigonda  
USOC National Governing Body Council, USA Softball
- Virginia Jasontek  
USOC National Governing Body Council, USA Synchronized Swimming

- Robert Latham  
USOC Multisport Organizations Council, USA Rugby
- Courtney Johnson  
USOC Athletes' Advisory Council, US Water Polo

The Hearing Panel has before it USRowing's Motion to Dismiss the Complaint, originally filed on August 3, 2006. In its Motion to Dismiss, USRowing asserts that Farry did not comply with the procedural requirements for filing an Article VIII Complaint as set forth in Article VIII, Section 8.1 of the USOC Bylaws and that Farry did not exhaust his administrative remedies prior to filing his Complaint as is required by Section 220527(b)(1) of the Act and Article VIII, Section 8.1 E of the USOC Bylaws. The Hearing Panel originally granted USRowing's Motion to Dismiss on September 8, 2006. However, for reasons explained later, on May 4, 2007 the Hearing Panel vacated its September 8 ruling and set a hearing for May 15, 2007 to further hear argument and consider evidence on USRowing's Motion to Dismiss.

For the reasons set forth below, it is the determination of the Hearing Panel, by unanimous decision, to grant the Motion to Dismiss. In its consideration of this matter, the Hearing Panel reviewed the Complaint, US Rowing's Motion to Dismiss, Farry's Opposition to the Motion to Dismiss, US Rowing's Post-Hearing Statement, witness testimony, various affidavits, additional materials submitted by the parties, and the July 14, 2006 Order issued by the American Arbitration Association ("AAA") hearing panel. The Panel also considered the oral arguments presented by the parties. All members of the Hearing Panel reviewed and approved this written Decision.

## II. THE COMPLAINT

Farry alleges in his Complaint that USRowing is not in compliance with Section 220524(3) of the Act, which states that an NGB shall “keep amateur athletes informed of policy matters and reasonably reflect the views of the athletes in its policy decisions.” Specifically, Farry alleges that “a majority of the ‘athletes’ eligible to compete in the lightweight men’s four event at the 2006 World Championship are of the view that the U.S. entry in that event should be selected through open trials.”<sup>1</sup> Farry contends that this could be confirmed through an independent confidential poll of the lightweight men athletes.

The Hearing Panel understands that the real issue underlying Farry’s Complaint is how to best select athletes to represent the US in the lightweight men’s four boat that will participate at the 2006 World Rowing Championships (and presumably how to best select US athletes to compete at other international rowing competitions). USRowing promulgated selection procedures for the lightweight men’s four boat that provided for the selection of athletes through a selection camp. Farry believes that athletes should be chosen through a trials event.

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<sup>1</sup> Although not ruling on the underlying issue raised in Farry’s Complaint, the Hearing Panel makes the following comment. Section 220523(7) of the Act states that each NGB has the authority to “designate individuals and teams to represent the United States in international amateur athletic competition (other than the Olympic Games, the Paralympic Games and the Pan-American Games)....” Regarding the Olympic, Paralympic and Pan American Games, pursuant to Section 220523(6) of the Act, an NGB has the authority to recommend to the USOC individuals and teams to represent the United States. In fulfilling this obligation, numerous NGBs use selection camps, and subjective criteria, to choose athletes for international competitions.

## II. PROCEDURAL HISTORY

The procedural history of this matter is lengthy. However, a summary of that history is necessary in order to provide a full understanding of this case.

Farry first filed an Article VIII Complaint with the USOC on January 16, 2006 asserting that USRowing had failed to “reasonably reflect the views of the athletes” in its policy decisions. The January 16 Article VIII Complaint was rejected by the USOC General Counsel, without a USOC hearing panel having been convened, as being deficient for procedural reasons in that it did not comply with the filing requirements set forth in Article VIII, Section 8.1 A of the USOC Bylaws.

Farry then filed a claim with the AAA on February 2, 2006 asserting the same grounds as he asserted in his January 16 Article VIII Complaint. USRowing moved to dismiss Farry’s AAA claim on jurisdictional grounds. On July 14, 2006 the AAA hearing panel issued an Order granting USRowing’s Motion to Dismiss<sup>2</sup>. The AAA

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<sup>2</sup> The AAA hearing panel in its July 14, 2006 Order explained the basis for dismissal as follows: “The statutory basis for this motion is 36 USC 220527(b)(1) and the USOC Bylaws that reflect its requirement that a claimant either exhaust administrative remedies available through the National Governing Body (“NGB”) or show, by clear and convincing evidence, that doing so would have resulted in unnecessary delay. There is no dispute that Claimant here did not exhaust any NGB remedies. Because we have granted Respondent’s motion to dismiss, the issues of whether any such avenues, if they exist at all, would have afforded Claimant a meaningful hearing and whether Claimant has met his burden of establishing unnecessary delay is not squarely before us.”

Hearing Panel also granted Farry leave until July 24, 2006 to file a new complaint with the USOC.<sup>3</sup>

In compliance with the AAA hearing panel's order, Farry refiled his Article VIII Complaint with the USOC on July 24, 2006.<sup>4</sup> On August 1, 2006 the Hearing Panel issued a Scheduling and Procedural Order. On August 3, 2006 USRowing filed a Motion to Dismiss Farry's Article VIII Complaint and on August 7, 2006 Farry filed an Opposition to the Motion. Pursuant to the Scheduling and Procedural Order, argument on the Motion to Dismiss was scheduled for August 9, 2006 by telephone conference call. However, Farry notified the Panel on August 8, 2006 by email that he could not be present for argument, and stated that his prior submissions would sufficiently convey his arguments. The Panel convened on August 9 to consider Farry's inability to be present for argument. The Panel concluded that Farry's participation would be necessary in making a ruling on the Motion. The Panel also did not want to proceed unless Farry had been provided with every opportunity to have his arguments heard. Accordingly, the Panel issued a Scheduling Order on August 9, 2006 rescheduling argument on the Motion to Dismiss for August 16, 2006 provided that the parties would be available on that date.

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<sup>3</sup> The AAA hearing panel stated in its July 14, 2006 Order: "Claimant is granted leave to file a new complaint with the USOC within 10 days of the date of this Order containing the prerequisites for a complaint set forth in Article VIII of the USOC Bylaws, including but not limited to describing in detail how he has exhausted all remedies available to him under the organic documents of Respondent or why doing so would have resulted in unnecessary delay. Alternatively, if Claimant remains convinced that the complaint he has already filed meets all prerequisites contained in Article VIII [of] the USOC Bylaws, then Claimant may renew his pending complaint by written notice to the USOC within 10 days of the date of this Order. If Claimant fails or refuses to either file a new complaint or renew his pending complaint within such 10 day period, then our grant of Respondent's motion to dismiss shall become final and unconditional."

<sup>4</sup> In filing his July 24, 2006 Complaint, Farry merely attached a copy of his January 16, 2006 Complaint to a cover letter which he submitted to the USOC CEO. Thus, the January 16 and the July 24 Complaints are identical in every aspect.

On August 16, 2006 the Hearing Panel held oral argument on the Motion to Dismiss by telephone conference call. All Panel members were on the call. Farry was on the call representing himself. USRowing was present, represented by Steven Smith and Matthew Barnett of the law firm Holme Roberts & Owen. The call lasted approximately one hour. Both parties were heard and responded to questions asked by the Panel. At the conclusion of the argument, the Panel informed both parties that they would have the opportunity to submit further written materials on the Motion to Dismiss. Both parties submitted additional materials for the Panel's consideration on August 17, 2006.<sup>5</sup>

On September 8, 2006 the Panel issued a Decision granting USRowing's Motion to Dismiss.

Farry then filed an appeal with the AAA on October 9, 2006 seeking to reverse the Hearing Panel's September 8 Decision. In Farry's appeal, he asserted that the Hearing Panel "refused to allow for the production of information which was central to a finding of fact upon which the Hearing Panel's decision hinged." Specifically, Farry stated that he wanted to provide evidence on whether or not USRowing had a grievance panel available to hear his complaint.<sup>6</sup> He further stated that it was crucial that he be

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<sup>5</sup> As part of his submission, Farry produced an unsworn statement from Greg Ruckman. As part of its submission USRowing produced a sworn affidavit from Donovan Langford, President of USRowing.

<sup>6</sup> Farry did not raise this as an issue in his Article VIII Complaint filed on January 16, 2006 and re-filed on July 24, 2006, or in the papers that he filed with the Hearing Panel in response to USRowing's Motion to Dismiss, which he filed on August 7, 2006. It was only at argument on August 16, 2006 that Farry raised this as an issue.

allowed to cross-examine Donovan Langford, President of USRowing, who had submitted an affidavit in favor of USRowing's Motion to Dismiss.<sup>7</sup>

Additionally, Farry claimed that the USOC Hearing Panel was in error in having failed to stenographically record the August 16, 2006 argument on USRowing's Motion to Dismiss.<sup>8</sup>

The Hearing Panel, being sensitive to Farry's contention that he had additional evidence that could be relevant to the Motion to Dismiss, issued an Order on May 4, 2007 sua sponte, in which it determined to reconsider its September 8 Decision. Accordingly, the September 8 Decision was vacated and the Panel stated that it would allow both Farry and USRowing to provide further evidence and argument on USRowing's Motion to Dismiss. The Panel commented in its May 4 Order that a party should not feel that he or she was not fully heard, especially a party who is appearing pro se.

The May 4 Order also set forth a scheduling order setting argument on the Motion to Dismiss for May 15, 2007. The May 4 Order provided that the parties were to submit any documentary evidence, and any testimony in the form of a sworn affidavit that they wanted the Hearing Panel to consider, by May 11, 2007. Additionally, the Hearing Panel declared that any person who submits testimony by affidavit shall be available on May 15, 2007 for cross-examination by the other party. Further, the Hearing Panel ordered

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<sup>7</sup> Both the Ruckman statement and Langford affidavit related to whether or not a hearing panel was available to hear Farry's Article VIII Complaint. After his August 17 submission, Farry did not make a request to the Hearing Panel to submit additional information or to cross-examine Langford. Likewise, USRowing did not make a request to submit additional information or to cross-examine Ruckman.

<sup>8</sup> Farry never made a request to the USOC Hearing Panel that argument on the Motion to Dismiss be stenographically recorded. Further, Article VIII, Section 8.1 F of the USOC Bylaws does not require that argument on preliminary motions, such as a motion to dismiss, be stenographically recorded.

that Langford and Ruckman be available for cross-examination on May 15, 2007. Finally, the Hearing Panel allowed USRowing and Farry until May 18, 2007 to submit a final brief on the Motion to Dismiss.

On May 7, 2007 USRowing notified the Hearing Panel by email that it would make Langford available on May 15. On May 9, 2007 Farry sent an email with a letter attached dated May 8, 2007 in which he provided a lengthy response to the Hearing Panel's May 4, 2007 Order. In his letter Farry reiterated his position that USRowing did not have a grievance panel available to hear his internal grievance. On May 8, 2007 the Hearing Panel sent out a second notice to the Parties reminding them of the date and time of argument on the Motion to Dismiss. The notice also confirmed a time for Langford's cross-examination and requested that Farry provide a time when Ruckman would be available. On May 10, 2007 Farry sent an email to the Hearing Panel in which he stated,

"I am not willing to proceed before the USOC's Hearing Panel until their incorrect account of events to this point has been corrected."

The Hearing Panel sent a further email communication to the parties on May 11, 2007, advising them that the Hearing Panel intended to proceed with argument on the Motion to Dismiss on May 15. The Hearing Panel also allowed that if there were extenuating circumstances requiring the need for additional time to submit documentary evidence or affidavit testimony, the parties should so notify the Panel, and the Panel would consider granting a request for late submissions. Further, on account of Farry's request that the argument be stenographically recorded, the Hearing Panel notified the parties that it would secure the services of a court reporter to record and transcribe the



hearing. Farry sent an email response on May 14, 2007, in which he attached a letter dated May 13, 2007. In his May 13 letter Farry stated,

“the USOC’s Hearing Panel’s Order of May 4<sup>th</sup> misrepresents the history of this case, I am not willing to proceed before them until this is corrected.”

On May 15, 2007 the Hearing Panel again notified the parties by email that the Panel intended to proceed with argument on the Motion to Dismiss. The Panel further added that the Panel would allow Farry and USRowing,

“to voice any objections or questions they have regarding the Hearing Panel’s Order of May 4, 2007, in so far as the objections or questions relate to the Motion to Dismiss or to the Hearing Panel’s determination to vacate its September 8, 2006 Decision.”

The Hearing Panel heard nothing further from Farry.

The Hearing Panel convened argument on the Motion to Dismiss on May 15, 2007 by telephone conference call as scheduled. Farry did not appear. USRowing was present, represented by Steven Smith and Sarah L. Horvitz of the law firm Holme Roberts & Owen. Glenn Merry, Executive Director of USRowing, was also on the call.

Farry did not make Ruckman available for cross-examination. USRowing submitted the sworn affidavits of Langford and of Kristopher A. Grudt, chair of USRowing’s grievance panel, and made them available for cross-examination. Langford also testified in person and answered a number of questions posed to him by the Hearing Panel. USRowing also submitted three documents for consideration by the Hearing Panel.

The Hearing Panel’s May 4, 2007 Order also allowed the parties to submit final briefs by May 18, 2007. USRowing submitted a post-hearing brief on its Motion to Dismiss. Farry submitted nothing.

#### IV. MOTION TO DISMISS

In its Motion to Dismiss, USRowing states two grounds for dismissal. First, it asserts that Farry did not file a proper complaint because the Complaint did not meet the requirements as set forth in Article VIII, Section 8.1 of the USOC Bylaws. Second, USRowing asserts that Farry failed to comply with Section 220527(b)(1) of the Act and Article VIII, Section 8.1 E of the USOC Bylaws, which requires that as a prerequisite to filing a complaint, Farry must a) exhaust his administrative remedies by filing a grievance or b) show by clear and convincing evidence that filing a grievance would have resulted in unnecessary delay.

Farry, in his Opposition to the Motion, does not dispute that he did not exhaust his administrative remedies with USRowing by filing an internal grievance with USRowing. However, he claims that since USRowing failed to maintain a standing grievance panel as required by USRowing's Bylaws, it was impossible for him to proceed with the grievance process. Farry further claims that because the comment period on the selection procedures for the lightweight men's four event was to end on January 27, 2006 there was no time for him to exhaust his internal remedies with USRowing prior to the close of the comment period.

##### A. Section 220527(b)(1) and Section 8.1 E Requirements.

The Hearing Panel will first consider USRowing's contention that Farry failed to comply with Section 220527(b)(1) of the Act and Article VIII, Section 8.1 E. of the USOC Bylaws. Those Sections provide that a complainant may file a complaint with the USOC only a) after having exhausted all remedies available under the organic documents

of the NGB, or b) by showing through clear and convincing evidence that those remedies would have resulted in unnecessary delay.

1. Failure to Exhaust Administrative Remedies

There is no dispute that Farry did not exhaust his administrative remedies. Farry never filed a grievance with USRowing. Farry does not dispute this or contend that he exhausted his administrative remedies. Accordingly, the Hearing Panel finds that Farry did not exhaust his administrative remedies.<sup>9</sup>

2. Unnecessary Delay

Since Farry did not exhaust his administrative remedies, the issue before the Hearing Panel is, if he had filed a grievance, would it have resulted in unnecessary delay.<sup>10</sup>

a. USRowing's Greivance Procedures

US Rowing's grievance procedures are set out in Article IX, Sections 56 through 73 of its Bylaws. Section 56 states that the grievance procedures:

“shall be used for the swift and equitable resolution of grievances brought by those who believe themselves aggrieved by (1) an action of

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<sup>9</sup> This was also the finding of the AAA hearing panel. In its July 14, 2006 Order the AAA hearing panel stated, “[t]here is no dispute that Claimant here did not exhaust any NGB remedies.”

<sup>10</sup> Farry filed two Complaints with the USOC. The first was filed on January 16, 2006, which was rejected, and the second was filed on July 24, 2006 pursuant to the AAA hearing panel's July 14, 2006 Order. The Complaints were identical. The question raised is whether there would have been an unreasonable delay when Farry first filed his Article VIII Complaint on January 16, or whether the Hearing Panel should make this determination in light of the July 24 filing. These are two different time frames, with two different factual circumstances to be considered. On January 16, the comment period for the selection procedures had not yet closed and the procedures had not yet been finalized. By July 24, all of those events were in the past. Thus, USRowing makes the argument that when the July 24 Complaint was filed, since the procedures for the men's lightweight four boat had been approved and the team chosen, there was no impending time limitation. Accordingly, USRowing asserts that, based on the July 14 filing, requiring Farry to exhaust his administrative remedies would not cause unreasonable delay. However, in order to give every benefit to Farry regarding which filing date should be considered, the Hearing Panel will use the January 16 filing date.

USRowing...where such action is alleged to violate the aggrieved's rights under the USRowing Constitution, these Bylaws, or applicable law governing amateur sport, or is otherwise inconsistent with the best interests of the sport of rowing.”

The following sections of Article IX of USRowing's Bylaws detail the procedures to be followed in filing and processing a grievance. Thus, there is no question that Farry had available to him procedures pursuant to which he could have filed and had his grievance heard. Further, Article IX of USRowing's Bylaws sets forth certain time parameters for the processing and hearing of a grievance.

b. Availability of Grievance Panel

Farry contends, however, that USRowing failed to maintain a standing grievance panel as required by USRowing's Bylaws. Based on this contention, Farry argues that pursuing a grievance with USRowing would have caused unreasonable delay. Farry bases his contention on Ruckman's unsworn statement dated August 16, 2006 and two emails from Langford to Ruckman dated January 24, 2006 and January 31, 2006.<sup>11</sup>

At the May 15 hearing on the Motion to Dismiss, USRowing submitted an affidavit from Langford, an affidavit from Grudt, chair of USRowing's grievance panel, a document dated April 1, 2004 identifying a roster of ten Grievance Panel members, an email from Glenn Merry to Grudt dated March 15, 2006 informing Grudt that as chair of the grievance panel he should be prepared to appoint a hearing panel of three individuals to hear Ruckman's grievance, and an email from Glenn Merry to Grudt dated March 15, 2006 attaching Ruckman's grievance.

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<sup>11</sup> Ruckman had filed an internal grievance against USRowing in January of 2006. The two emails from Langford to Ruckman pertained to the appointment of a hearing panel to hear Ruckman's grievance.

US Rowing responds to Farry's arguments as follows. First, USRowing states that there was a ten person standing grievance panel in place at the time that Farry filed his Article VIII Complaint on January 16, 2006 with the USOC. Second, USRowing contends that Farry never filed a grievance with USRowing or approached USRowing about filing a grievance, and so his assertion that there was no hearing panel to hear his grievance is nothing more than speculative argument. USRowing states that since a grievance was never filed with USRowing, there is no factual basis upon which Farry can rely that a hearing panel would not have been appointed to hear his case. USRowing contends that if Farry had filed a grievance, a three person hearing panel would have been appointed from the ten person standing grievance panel to hear Farry's grievance, pursuant to USRowing's Bylaws. Third, USRowing states that Farry's interpretation of the Langford emails to Ruckman is inaccurate. Fourth, USRowing asserts that Farry could not have relied upon the Langford emails when he filed his January 16 Article VIII Complaint with the USOC, since those emails were generated some eight and fifteen days after Farry filed his Article VIII Complaint with the USOC.

During the May 15 hearing Langford testified that he was elected President of USRowing in March 2004. As President of USRowing, it was his responsibility to appoint a grievance panel every other year, in March of even numbered years. Since he was not familiar with the members of the grievance panel when he was elected in 2004, he decided to keep the ten existing grievance panel members for an additional two years. He further testified that the panel's term would then have run from March 2004 through February 2006. When questioned by the Hearing Panel, Langford identified the ten persons who were on the USRowing's grievance panel in January 2006. Langford also

explained that if Farry had filed a grievance with USRowing three of these individuals would have been appointed by the chair of the grievance panel to hear Farry's grievance.

When asked to explain the difference between a grievance panel and a hearing panel, Langford explained,

“[t]he grievance panel consists of ten individuals who are really the pool from which we would choose three members of a hearing panel to actually address a grievance. So the grievance panel is the larger pool. The hearing panel is specific to that individual case.”

He also related that the hearing panel for a particular case would be appointed by the chair of the grievance panel.

The first email that Farry relies upon, from Langford to Ruckman, is dated January 24, 2006 and reads as follows:

“Hi Greg, I just became aware of the ‘grievance’. We will begin the process and Glenn [Merry] will notify you as to the makeup of the Grievance Panel when it is formed.”

When Langford was questioned as to this email, he testified as follows. First Langford stated that he had been notified in January 2006 that Ruckman had filed a grievance against USRowing. In his January 24 email Langford further stated that he was merely informing Ruckman that a hearing panel would be appointed to hear Ruckman's grievance. However, Langford acknowledged that he “probably was using the wrong term” when he said “grievance panel” in his email. Langford explained,

“What I meant at that point was we needed to form a hearing panel of three people from the entire grievance panel of ten.”

The second email that Farry relies upon, from Langford to Ruckman, is dated January 31, 2006 and reads as follows:

“Greg, I am required to assemble a panel every two years (in even numbered years) so it is time to assemble a panel for the next term. I have begun the process and hope to complete it very soon.”

As to this email, Langford testified that,

“I know from one experience that these hearing panels can actually work for quite some period of time....So here we are at the end of January. It seemed like in 30 days I was going to (inaudible), I was going to have to assemble or at least reconfirm with everyone that they were still willing to serve as members of the grievance panel.”

Langford’s concern was that any grievance panel member appointed to hear Ruckman’s internal grievance be willing to continue to serve on the hearing panel, even though his or her term on the grievance panel would expire if not reappointed.

Langford went on to explain that of the ten individuals, six were reappointed to the grievance panel, and four new individuals were appointed, for the term commencing in March of 2006 and running through February 2008.

Langford also related that Ruckman never proceeded with his grievance, and so a hearing panel to hear his case was never appointed. Langford believed that the grievance was resolved through a mediated settlement.

Grudt stated in his sworn affidavit that,

“In January, 2006, when Mr. Farry filed his Article VIII complaint with the USOC, there was a Grievance Panel in place, and a Hearing Panel could easily have been appointed. I have personal knowledge of this fact because I was on the Grievance Panel at that time.”

Grudt also stated in relation to the Ruckman grievance,

“On March 15, 2006, I received an email from Glenn Merry, Executive Director of USRowing, indicating that Greg Ruckman had filed a grievance which was being investigated under the USRowing grievance procedure. This e-mail further indicated that a Hearing Panel may be needed. As chair of the Grievance Panel, I selected and contacted three people to serve on the Hearing Panel. I was later informed that the case had been resolved and the Hearing Panel would not be needed.”

The Hearing Panel also reviewed USRowing's Bylaws. Article IX, Section 62 of those Bylaws state that a grievance panel of ten individuals shall be appointed by the President of USRowing in March of each even numbered year for a term of two years until their successors are appointed and qualify. From these ten individuals a hearing panel of three, one of whom shall be an athlete, shall be appointed to hear the grievance.

Thus, based on the evidence presented and after a review of USRowing's Bylaws, the Hearing Panel rejects Farry's contention that USRowing did not have a grievance panel, from whom three individuals could have been appointed, to hear his internal grievance, if in fact he had filed such a grievance. Contrary to Farry's assertion, a standing grievance panel of ten individuals was in place when he filed his January 16, 2006 Article VIII Complaint with the USOC. Pursuant to Section 63 of USRowing's Bylaws, and according to Langford and Grudt's testimony, three individuals from that grievance panel would have been appointed to hear Farry's internal grievance. Since a grievance panel was in place, and since three individuals were available to hear Farry's grievance, no unnecessary delay would have resulted from empanelling a hearing panel to hear Farry's grievance.

c. Comment Period

Farry further contends that because the comment period was to end on January 27, 2006 his grievance could not have been heard prior to the close of the comment period.<sup>12</sup> The Hearing Panel rejects this argument for two reasons. First, the January 27 date was

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<sup>12</sup> The Hearing Panel finds this argument somewhat disingenuous since USRowing states, and Farry does not deny, that Farry never commented on the procedures during the comment period, which ran from January 14 to 27, 2006. It appears that for whatever reason Farry declined the opportunity to provide direct input to USRowing regarding his opinion as how athletes to the men's lightweight men's four boat should be selected.



just the cutoff date for comment. The procedures were not approved until sometime in February by USRowing's Board<sup>13</sup> and the trial camp did not commence until the end of May, which would have given Farry an opportunity to have his grievance heard.

Second, the urgency of Farry's grievance depends on how his claim is characterized. Farry alleges that USRowing is not fulfilling its obligation as an NGB because it is in violation of Section 220524(3) of the Act, which states that an NGB shall "keep amateur athletes informed of policy matters and reasonably reflect the views of the athletes in its policy decisions." Taken on its face, this claim has no time limitation that, as long as the grievance was heard timely, would have caused unreasonable delay. Farry's attempt to bypass the exhaustion requirement because selection procedures were to be approved is misplaced. If Farry believed that his opportunity to compete was in jeopardy, he could have brought an Article IX Complaint with the USOC, pursuant to the USOC Bylaws, which would have afforded him the opportunity to have his right to compete claim heard before an AAA arbitrator on an expedited basis.<sup>14</sup> There is no exhaustion requirement in an Article IX proceeding. However, Farry chose instead to pursue an Article VIII action, which determines whether or not an NGB is fulfilling its

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<sup>13</sup> The Hearing Panel notes that the procedures were drafted by USRowing's High Performance Committee. That Committee has twenty per cent athlete representation as is required by Article XVII, Section 17.7 of the USOC Bylaws. All of the athlete members of the High Performance Committee approved the procedures. Additionally, although not officially on the Committee, the USOC AAC Athlete Representative and the USOC Alternate AAC Representative also approved the procedures. February 14, 2006 letter from Jay Feenan to Board Members. USRowing's Board also has twenty per cent athlete representation as is required by Section 220522(a)(10) of the Act and Article XVII, Section 17.7 of the USOC Bylaws.

<sup>14</sup> Further, Article IX, Section 70 of USRowing's Bylaws provides that if the grievant challenges a rule or decision affecting the eligibility of an individual member of USRowing, then his or her grievance may be expedited.

obligations for continued recognition as an NGB. As such, Farry was required to first exhaust his administrative remedies.

### 3. Importance of the Exhaustion Requirement

Finally, the Hearing Panel wishes to comment on the importance of the exhaustion requirement. First, it is a requirement of the Act. Not only does Section 220527(b)(1) of the Act require exhaustion, but Section 220522(a)(13) of the Act provides that an NGB shall maintain procedures for the prompt and equitable resolution of grievances of its members. Accordingly, Congress has deemed it important that complainants exhaust their administrative remedies.

Second, there are valid policy reasons for requiring members of NGBs to first pursue their complaints through an administrative proceeding. The exhaustion requirement enables an NGB to make an initial determination on matters within its control and expertise. It also affords an NGB the opportunity to review its actions, and thereby, if the complaint is valid, to either resolve or correct its mistakes. Further, it minimizes the necessity for intervention by a subsequent hearing body, in this case the USOC, or the AAA. Finally, it preserves the administrative process and discourages disregard of the NGB's grievance procedures. Thus, as a matter of sound policy, the administrative process would have been better served had Farry filed a grievance pursuant to USRowing's grievance procedures, rather than his bypassing this process and proceeding directly to the USOC by filing a complaint pursuant to Article VIII.

#### B. Proper Complaint

In light of the Hearing Panel's determination to grant USRowing's Motion to Dismiss on the grounds that Farry did not comply with Section 220527(b)(1) of the Act

and Article VIII, Section 8.1 E. of the USOC Bylaws, requiring that he first exhaust his administrative remedies, or show that to do so would have resulted in unnecessary delay, a ruling on USRowing's other claim that Farry's Complaint should be rejected because it did not meet the minimum filing requirements for complaints as set forth in Article VIII, Section 8.1 of the USOC Bylaws is not necessary. The Hearing Panel therefore makes no ruling on that argument for dismissal.

#### V. OTHER MATTERS

Two other issues are before the Hearing Panel on which the Panel wishes to comment. Further, the Hearing Panel wishes to comment on Farry's refusal to participate in the argument on the Motion to Dismiss.

First, Farry alleges in his January 23 cover letter to his Article VIII Complaint that athletes do not participate in the selection procedure process for "fear of retribution." This is a serious charge. However, other than his own assertion, Farry offers no evidence that USRowing has ever taken retaliatory action against athletes who have voiced their opinions regarding selection procedures. In fact, the contrary seems to be true as USRowing provides for comments for athletes on selection procedures and includes athletes on its High Performance Committee, which is tasked with drafting those procedures. Farry should take care in making statements that impugn the character of USRowing and those individuals who are involved in the selection procedure process. Also, USRowing needs to be cognizant, as do all NGBs, that any action of retribution is unacceptable.

Second, USRowing contends that Farry's intentions in filing this Article VIII Complaint, and the manner in which he has proceeded, are not above reproach.

USRowing cites a number of reasons for making this claim, which the Hearing Panel will not delve into, but which the Hearing Panel takes seriously. Filing a complaint with the USOC pursuant to Article VIII of the USOC Bylaws is a serious matter. That process should not be abused. It puts into motion an administrative process that consumes time and resources, not the least of which is the time and energy expended by the five-person hearing panel, all of whom are volunteers, in fulfilling their duties as panel members. Also, it diverts an NGB's attention from its obligations as an NGB, which include governing its sport, implementing programs to advance athlete performance, providing athlete support, and increasing participation opportunities for athletes. Further, defending complaints requires the expenditure of limited NGB resources that could better be used for the benefit of athletes. Complaints that are well founded, and which raise serious issues relating to an NGB's governance are one thing. USRowing should handle such complaints in a professional and efficient manner, and in accordance with the written procedures contained in its Bylaws. However, complaints that are filed for the purpose of harassment are frowned upon and will not be tolerated.

Lastly, the Hearing Panel is perplexed that Farry refused to appear at the May 15, 2007 argument on USRowing's Motion to Dismiss. After all, it was Farry who demanded to cross-examine Langford. However, when he was provided an opportunity to do so, he refused to participate. Further, Farry refused to present his witness, Ruckman, for cross-examination by USRowing at the May 15 argument. This behavior by Farry is unacceptable. The Hearing Panel has spent considerable time on this matter, as well as has USRowing. Further, the Hearing Panel has attempted to afford Farry every opportunity for him to present his case. However, it appears that Farry is only interested

in participating on his terms and when he views it as advantageous to his interests. Because of Farry's actions, the Hearing Panel questions his motivation in bringing this Article VIII Complaint and the Hearing Panel wonders if it is, as USRowing claims, merely a way for Farry to harass USRowing and cause it to expend money in defending itself, money that could better be used to support its athletes.

VI. COSTS

The Hearing Panel is inclined to assess Farry with those costs and fees incurred by USRowing in preparing for and appearing at the May 15 argument on the Motion to Dismiss. Although the Hearing Panel has decided that it will not do so, Farry is put on notice that if there are further proceedings associated with this matter, the Hearing Panel may assess costs if it determines that such assessment is justified.

VII. CONCLUSION

In conclusion, the Hearing Panel grants USRowing's Motion to Dismiss for the reason that Farry did not comply with Section 220527(b)(1) of the Act and Article VIII, Section 8.1 E. of the USOC Bylaws, requiring that he first exhaust his administrative remedies, or show that to do so would have resulted in unnecessary delay. Accordingly, the Complaint filed by Farry is hereby dismissed.

Dated this 29th day of June, 2007.

  
James McCarthy, Chair

Ron Radigonda, Panel Member  
Virginia Jasontek, Panel Member  
Robert Latham, Panel Member  
Courtney Johnson, Panel Member

