

DECISION OF THE HEARING PANEL
IN THE ARBITRATION OF
JOSEPH BOUSCAREN
AND
FRANCIS REININGER

July 11, 1988

APPENDIX I

BACKGROUND

Pursuant to Section 104 of the Amateur Sports Act of 1978, the United States Olympic Committee ("USOC"), has delegated to the United States Rowing Association ("USRA"), the responsibility for selecting athletes to represent the United States in the rowing competition at the 1988 Olympics. USRA exercises that authority primarily through its Olympic Rowing Committees. Consistent with that authority, the Men's Olympic Rowing Committee ("MORC") developed a two-tiered camp process for choosing the athletes to row in the four-man sculling event (the "Olympic Quad"). MORC named Jim Dietz as coach for the Olympic Quad and set a "precamp" for the period June 1 through June 21 in New London, Connecticut, followed by a final selection camp July 12 through July 24, also in New London.

Among the athletes attending the precamp were Rob Whirling, John Kissik, Greg Springer, Joe Bouscaren, Francis Reiningger, Bob Reiningger, Greg Montesi, Jack Frackelton, John Strotback, Kurt Bausback, Jim Moulton and Jess Parks. At the beginning of the precamp, Dietz identified the purpose of the camp as the selection of the top eight contenders for positions on the Olympic Quad with those eight being reduced to the final team during the second camp. Toward the end of the camp four of the participants, Bouscaren, Montesi, and both Reininggers withdrew from the camp, citing coaching and procedural errors in the camp process.

On June 24, 1988 two of those four individuals (Bouscaren and Francis Reiningger) filed a written grievance with USRA. That written grievance alleged that the method in which

the precamp had been conducted was fatally flawed for three reasons: 1) certain camp participants favored by Diets and Kris Korzeniewski, the head coach for USRA men's rowing program, were being given protected status that would lead to automatic positions on the Olympic Quad, 2) Diets and his assistant, Burt Afflebaum, were not qualified to coach the Olympic Quad because they had no elite level coaching experience and poor records at the collegiate level, and 3) over time the selection procedures had been misrepresented to the athletes for the purpose of protecting the coach and his personal preferences. The written grievance sought relief in the form of the replacement of the camp process with open trials to determine the representatives of the United States in the Olympic Quad; other forms of relief were also later identified by the grievants during the hearing and subsequent brief.

Given that 1) the grievance involved the eligibility of athletes to participate in international competition, 2) many of the principals to the grievance were present in Indianapolis for the U.S. National Championships conducted on Thursday, June 23 through Sunday, June 26, 1988, and 3) the final selection camp for the Olympic Quad was scheduled to begin on July 12, 1988, every effort was made to expedite the processing of the grievance in a manner consistent with Article XI of USRA By-Laws (the "Grievance Procedure"). The first step in that process was the appointment on June 24, 1988, of Paula Oyer, Executive Director of USRA, to conduct an investigation of the grievance. Consistent with the provisions of the Grievance Procedure, that appointment was made by USRA President, Peter Zandbergen. On the

day of her appointment, Oyer sent copies of the grievance by federal express to the Chairman of MORC, Bruce Ibbetson, and hand delivered copies to Dietz and Korzeniowski. Upon receipt of the grievance, Korzeniowski and Dietz both agreed to provide written responses to the allegations of the grievance. Dietz delivered his response to Oyer on Sunday, June 26, and Korzeniowski delivered his on Wednesday, June 29.

Once the investigation had commenced, the grievants submitted to Oyer a list of questions they wanted her to ask of Dietz, Korzeniowski and other participants in the camp. On Sunday, June 26, Oyer reviewed those questions with Dietz, Korzeniowski, Moulton, Whirling, Frackelton, Kissik and Bryson.

After completing her investigation on Sunday, June 26, 1988, Oyer attempted to mediate the dispute to the satisfaction of the parties. Despite discussing possible resolutions with the parties, no agreement was reached. Oyer then requested that the chairman of the Grievance Committee appoint a hearing panel. Grievance Committee chairman, Christopher Allsopp, appointed a three-person hearing panel consisting of himself, William Belden and Anne Warner.

The hearing was set for Philadelphia, Pennsylvania on July 1, 1988. Prior to the hearing, the grievants, Dietz, Norton Schlachter, past chairman and representative of MORC to the hearing, and the members of the hearing panel received a hearing notebook which included the following documents:

- a) June 29, 1988 report from Paula Oyer summarizing her investigation of the grievance,
- b) Grievance procedures of USRA (Article XI of USRA By-Laws),
- c) The procedures to be followed at the hearing,
- d) The written grievance,
- e) Diets' response to the grievance,
- f) Korzeniewski's response to the grievance,
- g) Schlachter's response to the grievance,
- h) June 28, 1988 memorandum from Ibbetson to the Grievance Committee commenting on the grievance,
- i) June 21, 1988 letter to Schlachter from Andy Suddath commenting on the grievance,
- j) A typed version of the questions submitted by the grievants to Oyer, and Oyer's notes reflecting the responses she received to those questions,
- k) Summary prepared by the grievants outlining the differences in the selection process as published in the newsletter and as implemented,
- l) Additional comments submitted by the grievants while in Indianapolis at the Nationals,
- m) Summary of comments from other quad camp members who were not invited to return to the final camp,
- n) Copies of athlete newsletters from December, 1987 through May, 1988,
- o) The Olympic Trials' rules as published by USRA,
- p) USOC team selection method questionnaire as responded to by USRA's international program manager, Pat McNerney,

- q) January 25, 1988 letter from Jim Page, Assistant Director of International Games Preparation for the United States Olympic Committee, to Pat McNerney approving the selection of quadruple sculls team "at the proposed selection camp by seat racing",
- r) An undated document titled "USRA/MORC Selection Subcommittee",
- s) A May 5, 1988 memorandum from Dr. Ralph Hale, Chairman of USOC Games Preparation Committee, to NGB presidents, executive directors and Olympic team head coaches and managers attaching the Olympic team selection guidelines adopted by USOC's Game Preparation Committee.

All of the materials included in the hearing notebook were admitted as part of the hearing record. Consistent with USRA grievance procedures, the Hearing Panel was not provided with information regarding the substance of the resolutions of the grievance offered by Oyer during the mediation process.

The Hearing Panel convened in a conference room in the Provident National Bank in Philadelphia, Pennsylvania, at approximately 9:30 a.m., on Friday, July 1, 1988. The hearing convened at approximately 10:30 a.m. The hearing was transcribed by a court reporter and the transcript of those proceedings was received by the counsel for the hearing panel on July 8, 1988. Present at the hearing, in addition to the members of the hearing panel, were John B. Swarbrick, Jr., counsel to the panel, the grievants and Jim Dietz. During the hearing an open telephone line was maintained between the hearing room and Schlachter.

As a concession to the need to expedite the proceedings, the following procedures were implemented. First, rather than having grievants present their entire case in chief, each point of grievants' case was considered in turn, with Dietz and Schlachter given the opportunity to respond to those points as they were raised. Secondly, no effort was made to apply any evidentiary rules which might result in the exclusion of evidence offered by the parties. Instead the hearing panel notified the parties that objections with regard to relevance would be noted by the panel and considered when deciding the weight to be given to the evidence. Lastly, the parties were encouraged to structure their cases to allow the hearing to conclude by the day's end in order to ensure that a final decision could be issued by the panel prior to July 12, the day on which the final camp was scheduled to begin.

FINDINGS

1. It is reasonable to expect that great care will be taken in designing the process for selecting the athletes to represent the United States in the rowing competition at the Olympics. The significance of the Olympics in the careers of most athletes, and the importance of selecting the best possible team to represent our country, require that the selection process be designed in a way that gives all participating athletes the opportunity to perform to their maximum ability. A process which can readily be perceived by the participants as being unfair, regardless of whether or not it is in fact unfair, does not meet that criteria. It places those athletes believing themselves to be the victims of an unfair process at a very real competitive disadvantage. The hearing panel believes that Dietz acted in good faith in conducting the precamp, but finds that the selection process which is the subject of this grievance was nevertheless flawed for each of the following reasons.

First, the information published by USRA regarding the process for qualifying for the Olympic Quad was at best ambiguous and at worst inconsistent. The January Athlete Newsletter includes under the list of dates relevant to the selection of the Olympic Quad the following entries:

June 1	Precamp to form 4x boats for the Nationals
June 8-11	1x Olympic trial
June 13	Invite remaining scullers after 1x trials
June 22-26	Nationals
July 7-10	Lucerne (fastest 4x at nationals will go)
July 12-24	Final 4x selection camp

The June 13 entry reasonably created the impression that attendance at the precamp was not a prerequisite to qualification for the final selection camp. Subsequent communications from MORC established a contrary rule, requiring participation in the precamp as a prerequisite to qualifying for the final camp. Furthermore, the July 7 entry regarding the process for selecting the boat to represent the United States at Lucerne was subsequently changed to indicate that the first place "camp quad" boat at Nationals would compete at Lucerne. That implied a significant change in the purpose of the precamp about which more is discussed later in this opinion. Predictably, these changes gave rise to questions about the motive for the changes and undermined the participants' confidence in the preparations for the camps.

There was also a significant difference in the quality of the equipment being used to evaluate the rowers at the precamp. While the nature and effect of those differences is subject to dispute, the fact of the differences is not. Similarly, the hearing panel believes that the conduct of the camp in tidal waters interfered with any effort to systematically evaluate the performances of the participants. Consistent with its view that the appearance of unfairness can be as objectionable as actual bias in the selection process, the hearing panel believes the camp was adversely affected by both the discrepancy in equipment and the location of the camp.

2. The bulk of the testimony at the hearing revolved around the relative merits of one method of evaluating performance versus another. Grievants argued extensively that historical competitive data, which they viewed as a better

predictor of performance than seat racing, had been ignored by Dietz, and that the method by which Dietz conducted seat races and evaluated the results of those seat races was flawed. The hearing panel believes it is unnecessary to address those issues and wishes to stress that it does not ascribe to any deficiencies in the selection process the motives read into them by the grievants. On the contrary, the hearing panel believes that when viewed in a manner consistent with what he understood to be his principal task -- the identification of the eight best scullers at the camp -- the processes established by Dietz and his conduct of the camp were rationally related to that goal. The problem is that the purpose of the precamp as identified by Dietz was inconsistent with and undermined by a schedule of events established by MORC.

The process employed by Dietz was set-up to determine the top 8 scullers. At the same time, however, Dietz was required to identify distinct boats for competition at the nationals in order to determine who would go to Lucerne. Thus applying a process designed to identify the top eight, Dietz was required to try to identify the top four scullers. Adequate information to make that determination (as Dietz himself conceded during the hearing), was simply not available at the end of the precamp. The hearing panel thus concludes that the scheduling of the Lucerne trip between the two selection camps was ill-advised and a major contributor to the perception of unfairness that underlies this grievance.

3. The hearing panel rejects the grievants' notion that the selection process for the Olympic Quad should be achieved through a trials system. As when selecting any team from among individuals who do not normally participate as a team (as is true in selecting the Olympic basketball or baseball teams), the hearing panel believes that subjective criteria, including but not limited to reactions to the pressures of competition, rowing styles, qualifications for a particular seat in the boat, compatibility and leadership, are necessary parts of the process. Subjectivity in the selection of the Olympic Quad cannot and should not be eliminated. When subjective criteria such as these are included in a selection process, however, it is imperative that the process be designed to a) clearly identify and maximize the role played by other objective criteria and b) limit the opportunity for any abuse of discretion in applying the subjective criteria.

The hearing panel finds the USOC memo of May 4, 1988 to be especially instructive on the latter point. The hearing panel agrees with that memo's guideline that,

Discretionary choices cannot be made by one person alone. Although it is understood that coaches will play an active role in determining discretionary positions, each NGB must have a review committee for any discretionary choices.

The hearing panel finds regrettable the fact that USOC did not issue its guidelines until after USRA's Olympic selection procedures had already been submitted to and approved by USOC. If communicated in a more timely manner these guidelines might have resulted in MORC altering its selection processes in a manner which would have avoided the problems which are at the root of this grievance.

4. At the hearing, grievants submitted a document (Exhibit 1) identifying their concerns with the grievance process. The hearing panel believes it is important to address those concerns in this opinion. Most of the concerns reflect the expedited nature of this process. The hearing panel finds it laudable that from the date the grievance was filed through the time of the hearing in Philadelphia, only seven days passed. Timing was critical in this grievance. The written grievance was filed on June 24, 1988 and the outcome of the grievance was likely to have an effect on the final selection camp scheduled to begin only 18 days later.

The selection of Executive Director Oyer to investigate the grievance was a concession to that need to expedite the proceedings in order to ensure an opinion before July 12, 1988. Oyer was the one most familiar with the facts of the grievance and most familiar with the recently adopted Grievance Procedures. Furthermore, because the Grievance Procedure designates her as the one charged with conducting the mediation, the appointment of her as investigator eliminated the step of the investigator submitting a written report to the Executive Director to use in the mediation. Her obligations with the national championships may have limited the time she had available to conduct the investigation, but the hearing panel is satisfied that the net result of these competing tensions was an adequate investigation.

The need to expedite the grievance procedure in the interest of protecting the grievants' opportunity to qualify for the Olympics is also at the core of their complaint about the adequacy of the time to prepare for the hearing. The hearing panel believes that the issuance of an opinion prior to the start

of the final camp was vital to protect the rights of the grievants, and is satisfied that this goal has been achieved without any significant reduction in the ability of either party to present a cogent case at the hearing.

Grievants' concern about the objectivity of this panel is, we believe, answered by both the substance of this opinion and the fact that it was achieved by unanimous vote. Their contention that no athlete members were represented on the panel is factually inaccurate; all three members of the hearing panel are athlete members of USRA.

CONCLUSIONS

1. Grievants should be invited to participate in the final selection camp for the Olympic Quad, and the hearing panel strongly encourages their participation.

2. All participants in the camp must have the benefit of equal equipment. If for any reason equal equipment is not available, all athletes participating in the camp should share equally in the use of the available equipment.

3. The final camp should be conducted only in still (i.e. nonriver and nontidal) water.

4. As much as possible, objective criteria should be used to evaluate the candidates, and that criteria should be set forth in writing and provided to each participant in the camp. That explanation should include not only the criteria to be used, but also the weight to be given to that criteria.

5. Two selectors should be appointed by the Executive Committee of USRA to attend the camp. Neither selector shall be a member of MORC and at least one should be an athlete member of USRA. The role of the selectors shall be to review the application of the selection criteria and share with Diets the responsibility for the final selection -- Diets and each selector having one vote with the majority vote prevailing.

These findings and conclusions are issued this 11th day of July, 1988.

Chris Allsopp
Bill Belden
Anne Warner