

UNITED STATES OLYMPIC COMMITTEE

HERBERT PEREZ,

Petitioner,

v.

UNITED STATES TAEKWONDO UNION, INC.

Respondent.

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DECISION



October 25, 1995

I.

BACKGROUND

The Amateur Sports Act and the USOC Constitution and Bylaws provide for several processes by which an organization or individual may register a complaint against an NGB with respect to compliance with the USOC Constitution and Bylaws as well as the Amateur Sports Act, or to challenge their status to be the NGB, or to ask for mediation of such complaints. Included in these processes is the ultimate right to seek arbitration before the American Arbitration Association ("AAA"). These rights are outlined in Article VIII and Chapters VI, VII and VIII of the USOC Constitution and Bylaws, and Section 205, (36 USC 395) of the Amateur Sports Act. These processes require that certain conditions, also outlined in these documents, be met.

The PETITIONER in this matter has filed various documents requiring the review of the USOC. They are:

1. COMPLAINT,
2. COMPLAINT AMENDED JULY 27, 1995,
3. BRIEF IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS.

The RESPONDENT filed a Motion to Dismiss as well as a Response to Brief in Opposition to Respondent's Motion to Dismiss.

In accordance with the USOC Bylaws (Chapters VII & VIII), the USOC President, Dr. LeRoy Walker, appointed a panel of five voting members of the USOC Board of Directors for the purpose of deciding the procedural and jurisdictional issues raised in this matter as well as any matters which the Panel determines to be related. The Panel members are:

Charles U. Foster, Chair and

Terry Kent,
Nancy Wightman,
Robert Marbut and
Edward Burke.

A hearing date of October 5, 1995 was established in Atlanta, Georgia. The Panel was present and chaired by Charles Foster. General Counsel, Ronald T. Rowan, advised the panel. USTU was present with its Executive Director, Robert K. Fujimura, and its counsel, Michael McNamee, Michael Turner and Cynthia Koehler. Herbert Perez represented himself.

The Parties or their representatives were given the opportunity to provide oral argument for one hour each. The Hearing was open to the public and was stenographically recorded. The burden of proof was on the USTU to sustain its Motion to Dismiss. The USTU was allowed to proceed first, Herbert Perez responded. USTU was allowed a brief rebuttal. In addition, the Panel asked questions of the Parties. The Hearing began at 7:00 o'clock in the evening of October 5, 1995 and completed at 9:30 o'clock in the evening. At the conclusion, the Chair of the Panel advised the Parties that the Panel would take the matter under consideration and both Parties agreed that the Panel would have 20 days to provide its written decision. The Panel went into Executive Session to discuss the matter and adjourned at 10:45PM.

II.

ISSUES CONSIDERED

A. Failure to Comply With Necessary Procedural Requirements. Both the Amateur Sports Act and Article VIII of the USOC Constitution require certain elements to be contained in the Complaint:

1. must be signed under oath;

2. shall be filed with the USOC Executive Director by certified mail;
3. names and addresses of the parties;
4. the alleged grounds of noncompliance;
5. supporting evidence or documentation forming the basis of the complaint;
6. the relief sought.

The Parties provided both written and oral arguments on these issues.

B. USOC Lacks Jurisdiction. Both the Amateur Sports Act and the USOC Constitution and Bylaws require that either an Article VIII Challenge to an NGB status or Complaint requiring that it comply with USOC member requirements be preceded by the Party "exhausting all remedies available under the organic documents of the NGB . . . unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay."

The Parties provided both written and oral arguments on this issue.

C. Exhaustion of Remedies. Both the Amateur Sports Act and the USOC Constitution and Bylaws require that either an Article VIII Challenge to an NGB status or Complaint requiring that it comply with USOC member requirements be preceded by the Party "exhausting all remedies available under the organic documents of the NGB . . . unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay."

The Parties provided both written and oral arguments on this issue.

III.

DECISION

The Panel, after having considered all of the written documents submitted by the Parties, which are incorporated herein by reference, as well as the oral arguments presented at the Hearing, and answers to questions proposed to the Parties by the Panel, unanimously concurs in the following decision:

A. Exhaustion of Remedies. The Panel is of the opinion that the USTU, through a purported disciplinary process, has created a special status for only one member of the USTU. The Panel is disturbed by this action. This action is reflected in the May 19, 1994 Memorandum of the USTU to Herb Perez (attached, Exhibit 1). The Panel is of the opinion that either Mr. Perez has no remedy within the USTU to pursue a complaint procedure mandated by the USOC Constitution and Bylaws, or that any availability of such remedies is so confused by this memorandum that Mr. Perez is not able to determine what his remedies are, and that the Panel must hold for Perez on this point. Perez has exhausted his remedies, or demonstrated their unavailability.

B. Jurisdiction. The Panel has carefully reviewed the decision of the Federal District Court for the Southern District of Ohio (attached, Exhibit 2). The Panel agrees with the decision of the Court as it relates to the issues raised and the characterization of the issues. The Panel has no right or authority to attempt to overturn that decision. The USOC has no jurisdiction over the Ohio Court and the matters raised in that case.

However, that does not mean that the Panel has no jurisdiction over the issues which Perez has raised in this proceeding nor does the Federal Court Decision make such a finding. It is clear to the Panel that the Amateur Sports Act of 1978 provides the authority and jurisdiction over the issues raised in this matter, and in fact, the obligation to review such matters (36 U.S.C. 371 attached, Exhibit 3). The USOC has jurisdiction over this Complaint.

C. Failure to comply with certain procedural requirements. The Panel has reviewed each point raised by USTU. The Panel finds summarily for Perez on any points not reviewed below:

1. The Amended Complaint was not signed under oath. Mr. Perez' argument that notarization is the equivalent of signing a document under oath is not persuasive. It is contrary to the law of most, if not all states, and is not the intent of Article VIII.
2. The Amended Complaint did not describe the efforts made by Mr. Perez to exhaust remedies. The description by Mr. Perez of his actions and those of the USTU relative to matters other than those considered by the Panel are inadequate to demonstrate that he has met that burden. Mr. Perez should have alluded to the points raised in paragraph II C of this document and must do so in order for this matter to be heard.
3. The Amended Complaint does not contain supporting evidence or documentation forming the basis of the Amended Complaint. Making a statement

that a member organization does not meet member requirements doesn't make it so. At the hearing, facts and testimony must prove such failure. In fairness to the party accused and to the process, some evidence is required in order to justify the levying of a complaint and at least a minimum of evidence must be stated in the complaint in order for the complaint to go forward. Reciting a provision of the USTU Bylaws does not and has not met this requirement. No other evidence or documentation has been adequately provided.

4. The Relief Sought. The injunctive relief requested in paragraph 104 and 105 is not provided for in the USOC Constitution and Bylaws and the USOC has no such authority to provide such relief.

With regard to points 1 through 4 above the Panel has carefully considered its obligation under Article VIII, the merits of the arguments, the possible relief and the equities. It has determined that the Complaint, Amended or otherwise, cannot go forward as presently stated. It is however, reluctant to dismiss. The Panel, therefore, holds this hearing open for 60 days from the date of this decision to allow the Complainant to complete his complaint and cure its deficiencies before deciding the issue. Failure to do so will result in the dismissal of this Complaint. The Panel reserves the right to determine

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October 25, 1995
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whether any further procedures will be implemented regarding its decision and resulting from further actions of the Complainant. The Motion to Dismiss is Denied at this time.


Charles U. Foster

Charles U. Foster, Chair

Terry Kent, Panel Member
Nancy Wightman, Panel Member
Robert Marbut, Panel Member
Edward Burke, Panel Member

Ronald T. Rowan, Counsel to Panel

Dated this 25th day of October, 1995.

ORIGINAL
AS PASSED
IN MAY 19, 1994
BOG MEETING

SEE ATTACHED

MEMORANDUM

DATE: MAY 19, 1994
RE: Herbert Perez

**U.S. TAEKWONDO UNION
BOARD OF GOVERNORS' RESOLUTION:
May 19, 1994**

"In the matter of the complaint against Herbert Perez, the Board of Governors, pursuant to its authority under Article 3, Section 1 of the USTU Bylaws, hereby amends and modifies the decision of the hearing panel as follows.

His membership, which shall have limited rights, shall be reinstated and suspension modified to provide that he shall have only those rights of a member of the USTU which are protected and explicitly stated under Article IX, of the USOC Constitution being the following:

Mr. Perez shall not be permitted to exercise or enjoy any other rights of membership and this section shall be strictly construed. Specifically and without limitation, he may hold no office, title, committee position or any other official function within the USTU or within any State Taekwondo Association. He shall not be a member of the AAC and any designation of him as a USTU representative to the USOC is revoked. He shall have no voting rights at any level, on any issue, within the USTU or any State Taekwondo Association. He may not attend meetings for the Executive Committee, Board of Governors or Committee Meetings on any level. He shall not have the right to file complaints under Article XXVI except as regards the rights specifically granted to him above.

He shall have the right to compete at any U.S. Taekwondo Union sanctioned event provided he fulfills all of the requirements (including, but not limited to payment of entry fees, retaining amateur status, etc.) to which all athletes are subject.

He shall have the right to participate as a coach of the individual athletes (and with the consent and request of those athletes) at any U.S. Taekwondo Union sanctioned event, provided he fulfills all of the requirements to which all coaches are subject, including payment of fees, obtaining required certifications, etc..

He shall have the right to submit his name and be considered for a position as coach of any team which the U.S. Taekwondo Union sends to any competition. He shall make such submissions in writing to the Chair of the Coaching Science Committee, with copies to the Executive Director and President and the Chair of the AAC."

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES
TAEKWONDO UNION;

Plaintiff(s).

Case No. C-3-94-231

- vs -

District Judge Sandra S. Beckwith
Magistrate Judge Michael R. Merz

HEREBERT PEREZ, et al.,

Defendant(s).

REPORT AND RECOMMENDATIONS; ORDER REGARDING TIMING OF
OBJECTIONS

Plaintiff, the United States Taekwondo Union, Inc., ("USTU"), brought this action to enjoin Defendants, Herbert Perez and the American Arbitration Association ("AAA"), from proceeding with an arbitration scheduled on Mr. Perez's demand to resolve a dispute he has with the USTU. The action is before the Court on Plaintiff's Motion for Preliminary Injunction and Defendant's responsive Motion to Compel Arbitration. The Court took evidence and heard oral argument on that motion on August 4-5, 1994. The parties are agreed that the issue before the Court is the arbitrability of Mr. Perez's dispute with the USTU.

Although advised of the hearing and a formal party to this action, the AAA did not participate. The AAA takes the position, for understandable policy reasons, that it is not a necessary party to proceedings to determine arbitrability and will abide by this Court's decision on that question whether or not it is a party.

PEREZ V USTU
USOC EXHIBIT #2

Motions for injunctive relief are dispositive motions under 28 U.S.C. §636(b). In the absence of unanimous consent under §636(c), which has not been given here, magistrate judges act on such motions only on a report and recommendation basis.

Upon initial filing of the lawsuit, the parties agreed to a stay of the arbitration until August 20, 1994, pending the outcome of the motion for preliminary injunction. Because of the proximity of the hearing to expiration of the agreed stay, scheduled thus by agreement of the parties, the time for objections must be shortened. It is accordingly ORDERED that any objections to this Report must be filed and served (by hand or facsimile transmission) not later than August 11, 1994. Any response to objections by another party shall be filed and served (by hand or facsimile transmission) not later than August 16, 1994.

JURISDICTION

Defendant initially objected that this Court lacked jurisdiction of his person, but waived that potential defense orally on the record at the time of the hearing.

Federal courts are courts of limited subject matter jurisdiction; they are empowered to hear only those cases which are within the judicial power of the United States as defined in the United States Constitution and as further granted to them by Act of Congress. Therefore there is a presumption that a federal court lacks subject matter jurisdiction until it has been demonstrated. *Turner v. President, Directors and Co. of the Bank of North America*, 4 Dall. 8, 1 L. Ed. 718 (1799). Facts supporting subject matter jurisdiction must be affirmatively pleaded by the person seeking to show it. *Bingham v. Cabot*, 3 U.S. 382 (3 Dall. 382), 1 L. Ed. 646 (1798). The burden of proof is on the party asserting jurisdiction if it is challenged. *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 182-83, 56 S. Ct. 780, 80 L. Ed. 1135 (1935). A federal court is further obliged to note lack of subject matter jurisdiction *sua sponte*. *Mansfield, C. & L M. Ry. v. Swan*,

111 U.S. 379, 4 S. Ct. 510, 28 L. Ed. 462 (1884); *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 29 S. Ct. 42, 53 L. Ed. 126 (1908); *Sumner v. Mata*, 449 U.S. 539, 548, n.2, 101 S. Ct. 764, 770, n.2, 66 L. Ed. 2d 722 (1981).

Plaintiff pled subject matter jurisdiction under 28 U.S.C. §1331, the general federal question statute. To support jurisdiction under that statute, a claim must "arise under" federal law. For a claim to arise under federal law it must generally be federal law which creates the cause of action upon which suit is brought. *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 36 S. Ct. 585, 60 L. Ed. 987 (1916)(Holmes, J.). Plaintiff asserts (Complaint, Doc. #1, ¶28) the Court has subject matter jurisdiction by virtue of the Amateur Sports Act of 1978, 36 U.S.C. §§382 and 391(b)(3), by virtue of 28 U.S.C. §2201, and by virtue of Fed. R. Civ. P. 57.

The Federal Rules of Civil Procedure on their face eschew any effect on subject matter jurisdiction. Fed. R. Civ. P. 82. 28 U.S.C. §2201, the declaratory judgment statute, authorizes a form of remedy, but does not create subject matter jurisdiction. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671-672, 70 S. Ct. 876, 879, 94 L. Ed. 1194 (1950). Finally, neither cited section of the Amateur Sports Act of 1978 purports either to create a cause of action or to confer subject matter jurisdiction on the federal courts. The Federal Arbitration Act, mentioned frequently during the hearing without being pleaded, does not create subject matter jurisdiction to hear arbitration claims; an independent basis of subject matter jurisdiction must be established. *Mengel Co. v. Nashville Paper Product & Spec. Workers Union*, 221 F. 2d 644 (6th Cir. 1955). I conclude Plaintiff has not established that this Court has subject matter jurisdiction under 28 U.S.C. §1331.

However, the USTU is an Ohio nonprofit corporation organized under Chapter 1702, Ohio Revised Code, and has its principal place of business in Colorado. Mr. Perez is a citizen of New Jersey, so the parties are of diverse citizenship. It appears from testimony at the hearing that the amount in controversy requirement of \$50,000 in 28

U.S.C. §1332 is satisfied by the expenses USTU will incur in defending the arbitration proceedings which will occur absent injunctive relief and/or by the value of the relief it could be forced to give Mr. Perez if he is successful in the arbitration. *See Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co.*, 239 U.S. 121 (1915). However, the parties are reminded that subject matter jurisdiction cannot be created by waiver. USTU should amend its Complaint to allege diversity of citizenship, including the amount in controversy. If Mr. Perez in response to an amended complaint denies that the amount in controversy is in excess of \$50,000, the Court will conduct a supplementary hearing on this issue.

MERITS OF THE CONTROVERSY

HISTORY OF THE DISPUTE BETWEEN THE PARTIES

Defendant Herbert Perez is a superb practitioner of the sport of taekwando, achieving the pinnacle of athletic achievement, an Olympic gold medal at the Barcelona Olympic Games in 1992.¹ Now in his thirties, he has practiced the sport since he was in the fifth grade. He teaches the sport to others, many of whom have also achieved excellence in performance.

Plaintiff USTU is the national governing body in the United States for the sport of taekwando. As noted above, it is organized as an Ohio nonprofit corporation and maintains its principal place of business in Colorado at the same location as the United States Olympic Committee ("USOC")

In addition to activities as a taekwando athlete, Mr. Perez has been quite active in the governance of his sport through the USTU. At the time this controversy

¹Taekwando was classified as a demonstration sport for the 1988 and 1992 Olympic Games. The various classifications of sports for the Games was not disclosed by the evidence.

arose, he was on the Board of Governors, the Executive Committee, the Athletes' Advisory Council, the Law and Legislation Committee, and the National Coaching Staff and Technical Research Committee, all boards or standing committees provided for in the USTU's Bylaws (Plaintiff's Ex. 1; hereinafter "PX ___"). He also serves as the USTU athlete's representative to the USOC and as a member of the USOC Games Preparation Committee.

In August, 1993, Mr. Perez was the USTU Men's Team Coach for the World Taekwondo Championships at Madison Square Garden in New York City. In addition, he was the local organizer and manager for USTU and signed contracts on its behalf in connection with the event. National President Hwa Chong asked him to sell some tickets to the event on behalf of the USTU and a controversy arose between him and the USTU over the disposition of those tickets.

The Executive Committee referred the controversy to a Fact Finding Committee composed of Sok Ho Kang, a vice president of USTU, and Kyu B. Lim, President of the Texas state taekwondo organization. These gentlemen prepared and signed on November 24, 1993, an internal complaint (PX 2) under the USTU Bylaws alleging essentially that Mr. Perez's handling of the tickets constituted misuse and misappropriation of USTU funds. The complaint was delivered to Michael Turner, Chair of the Law and Legislation Committee, as required by the Bylaws. Mr. Turner determined that the complaint had not been sworn to, and on January 21, 1994, that omission was corrected.

Conversations then began between Mr. Perez and Joseph Lloyd, legal counsel to USTU, who advised the hearing panel appointed by the president to hear the complaint. The parties dispute virtually every aspect of these conversations, including whether Mr. Perez was furnished "discovery" of evidence against him, the appropriate venue for the hearing, whether Mr. Perez was trying to avoid the hearing, whether the USTU through Mr. Lloyd was trying reasonably to accommodate those who would participate in the hearing or was instead trying to "railroad" Mr. Perez. The Court attempts

no findings of fact as to what actually happened during this period as the exact details are not material to a decision of the question before it.

Eventually a hearing was held at the Chicago O'Hare Airport on March 12, 1994. Mr. Perez did not attend. The hearing panel of three² rendered an eight-page proposed statement of findings and recommendations on March 18, 1994 (PX 3). On May 18, 1994, the panel's decision was made final (Defendant's Exhibit 8; hereinafter "DX __").

Prior to the hearing, Messrs. Perez and Lloyd had attempted to settle the dispute; however, a draft agreement prepared by Mr. Lloyd was unacceptable to Mr. Perez (DX 4). After the proposed findings were released, the USOC became involved; its executive director, Dr. Harvey Schiller, recommended a mediator and the USOC committed \$500 to commence the mediation process (DX 7). Messrs. Lloyd and Perez met with Judge Joe Cannon, a former Colorado judge acting as a mediator. Mr. Lloyd believed they had reached an agreement, but Mr. Perez had to catch a plane before they could print out a copy for signature. When Mr. Perez eventually received it, it was not acceptable. The USOC limited its involvement to the \$500 financial support of mediation.

The USTU Board of Governors held a meeting on May 19, 1994, at which it adopted a Resolution which reads as follows:

In the matter of the complaint against Herbert Perez, the Board of Governors, pursuant to its authority under Article 3, Section 1 of the USTU Bylaws, hereby amends and modifies the decision of the hearing panel as follows

His membership, which shall have limited rights, shall be reinstated and suspension modified to provide that he shall have only those rights of a member of the USTU which are protected and explicitly stated under Article IX of the USOC Constitution being the following:

Mr. Perez shall not be permitted to exercise or enjoy any other rights of membership and this section shall be strictly construed. Specifically and without limitation, he may hold

²Mr. Perez had successfully challenged participation on the panel by Deborah Holloway.

no office, title, committee position or any other official function within the USTU or any State Taekwondo Association. He shall not be a member of the AAC [Athletes' Advisory Council] and any designation of him as a USTU representative to the USOC is revoked. He shall have no voting rights at any level, on any issue, within the USTU or any State Taekwondo Association. He may not attend meetings for the Executive Committee, Board of Governors or Committee Meetings on any level. He shall not have the right to file complaints under Article XXVI except as regards the rights specifically granted to him above.

He shall have the right to compete at any U.S. Taekwondo Union sanctioned event provided he fulfills all of the requirements (including but not limited to payment of entry fees, retaining amateur status, etc.) to which all athletes are subject.

He shall have the right to participate as a coach of the individual athletes (and with the consent and request of those athletes) at any U.S. Taekwondo Union sanctioned event, provided he fulfills all the requirements to which all coaches are subject, including payment of fees, obtaining required certifications, etc.

He shall have the right to submit his name and be considered for a position as a coach of any team which the U.S. Taekwondo Union sends to any competition. He shall make such submissions in writing to the Chair of the Coaching Science Committee, with copies to the Executive Director and President and the Chair of the AAC.

(PX 4).

On May 23, 1994, Mr. Perez filed his Demand for Arbitration (DX 9) with the AAA and this lawsuit followed on May 31, 1994 (Complaint Doc. #1).

Mr. Perez amended his Demand for Arbitration on June 3, 1994 (PX 6). In his Amended Demand, Mr. Perez asserts that he and the USTU have agreed to arbitration by virtue of Article XXXI of the USTU Bylaws which provides in pertinent part:

Section 1. In any claim or controversy wherein the Corporation, through its Officers, Board of Governors, Executive Committee, or any of its duly constituted

representatives, rules adverse to a party who filed an action, claim, or complaint, that party may submit such action, claim, controversy, or complaint to the American Arbitration Association (hereinafter "Association") for binding arbitration under its Commercial Arbitration Rules, filing the action not later than one (1) month after the final ruling of the Corporation.

Mr. Perez asserts in the Amended Demand an additional agreement to arbitrate pursuant to the Amateur Sports Act of 1978, but cites for that proposition Article IX of the USOC Constitution which provides in pertinent part:

Section 1. No member of the USOC may deny or threaten to deny any amateur athlete the opportunity to compete in the Olympic Games, the Pan American Games, a World Championship competition, or such other protected competition as defined in Article I, Section 2(G); nor may any member, subsequent to such competition, censure, or otherwise penalize, (1) any such athlete who participates in such competition, or (2) any organization which the athlete represents. The USOC shall, by all lawful means at its disposal, protect the right 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.

Section 2. Any amateur athlete who alleges that he/she has been denied by a USOC member a right established by Article IX, Section 1, shall immediately inform the Executive Director of the USOC, who shall cause an investigation to be made and steps to be taken to settle the controversy without delay. Without prejudice to any action that may be taken by the USOC, if the controversy is not settled to the athlete's satisfaction, the athlete may submit to any regional office of the American Arbitration Association for binding arbitration, a claim against such USOC member documenting the alleged denial not later than six (6) months after the date of denial. ... By maintaining membership in the USOC, each USOC member agrees that any such aforesaid controversy may be submitted to binding arbitration as provided in this Section and furthermore agrees to be bound by the arbitrators' award as a result thereof.

Section 4. The rights granted to athletes under Sections 1 through 3 of the Article shall equally apply to any coach, trainer, manager, administrator, or other official seeking to participate in the conduct of any of the international amateur athletic competitions designated, or referred to, in Section 1.

(USOC Constitution and Bylaws, PX 5A as in effect to and including March 19, 1994, PX5 as in effect from March 20, 1994).

The issues which Mr. Perez seeks to have an arbitrator decide are as follows:

1. Did the USTU act in conformity with the requirements of the Amateur Sports Act in providing for the "swift and equitable" resolution of disputes with one of its members?
2. Did the United States Taekwando Union Law and Legislation Chairperson act in accordance with the USTU Bylaw Article XXVI complaint procedures, and should it [sic] have dismissed the complaint titled Kang, Lim v Herbert Perez filed January 22, 1994?
3. Was the complaint titled Kang, Lim v. Herbert Perez filed out of time under the provisions set forth in the USTU Bylaws Article XXVI?
4. Was the complaint facially invalid and lacking in any factual basis?
5. Did the USTU violate its contractual, statutory, and fiduciary duties to Herbert Perez and to the USTU membership at large by removing him from his elected and appointed positions within the USTU, as well as within the U.S. Olympic Committee, without legal cause?
6. Does the United States Taekwando Union owe/owe [sic] Herbert Perez \$2,194.50 for returned tickets?

(Amended Demand for Arbitration, PX 6).

Where parties agree to submit any conflicts, breaches, or other grievances to an arbitrator, they are bound by that agreement, *Dean Witter Reynolds, Inc. v. McCoy*.

995 F.2d 649 (6th Cir. 1993), citing, *AT&T Technologies, Inc., v. Communication Workers of America*, 475 U.S. 643, 648-49 (1986). However, the questions of whether certain parties are contractually bound to arbitrate and what issues may be arbitrated are for the courts to decide; "a party cannot be forced to 'arbitrate the arbitrability issue.'" *Litton Financial Printing v. NLRB*, ___ U.S. ___, 111 S. Ct. 2215, 2226, 115 L. Ed. 2d 177 (1991); *Roney & Co. v. Kassab*, 981 F. 2d 894 (6th Cir. 1992).

The issues on which Mr. Perez has demanded arbitration can be appropriately classified as follows: Issue 1 purports to be a question of statutory interpretation — what is the meaning of the Amateur Sports Act? Issues 2 and 3 ask the arbitrator to interpret the USTU Bylaws. Issue 4 asks the arbitrator to determine the correct resolution of the 1993 World Championship tickets' issue. Issue 6, also related to Mr. Perez's funding of certain expenses at the 1993 World Championships, asks for an award of money. Issue 5 asks the arbitrator to decide if USTU's removal of Mr. Perez from various corporate positions violates unspecified statutory, contractual, and fiduciary duties to Mr. Perez.

The first basis of asserted agreement to arbitrate, USTU Bylaws Article XXXI, is not available to Mr. Perez. That article provides for arbitration at the request of any member who has filed an internal complaint and against whom the Board of Governors or other governing entities has ruled. The only internal complaint filed relating to this matter is the complaint filed by Messrs. Kang and Lim against Mr. Perez and the decision was in their favor.

The second asserted basis of agreement, USOC Article IX, requires much more complex analysis.

USTU is the national governing body ("NGB") for the sport of taekwondo. To maintain that status under the Amateur Sports Act, it must comply with the USOC Constitution and Bylaws which provide in pertinent part:

(C) No amateur sports organization is eligible to be recognized nor is it eligible to continue to be recognized as a National Governing Body unless it ...

(3) agrees to submit to binding arbitration conducted in accordance with the commercial rules of the American Arbitration Association in any controversy involving its recognition as a National Governing Body as provided for in Article VIII of this Constitution, or involving the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official to participate in amateur athletic competition as provided for in Article IX of this Constitution;

(Quoted from Article IV - Membership, Section 4. Olympic and Pan American Sports Organizations (National Governing Bodies), PX5, p. 5, ll 33-34, 43-48).

The USOC in turn is obliged to impose dispute resolution requirements on its members by 36 U.S.C. §382b which provides:

In its constitution and bylaws, the Corporation [defined as the USOC in 36 U.S.C. §371] shall establish and maintain provisions for the swift and equitable resolution of disputes involving any of its members and relating to the opportunity of an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic Games, the Pan-American Games, world championship competition, or other such protected competition as defined in such constitution any bylaws.

That the resolution technique must be arbitration is further specified in 36 U.S.C. §391(b) which provides:

No amateur sports organization is eligible to be recognized or is eligible to continue to be recognized as a national governing body unless it

(3) agrees to submit, upon demand of the Corporation, [USOC] to binding arbitration conducted in accordance with the commercial rules of the American Arbitration Association in any controversy involving its recognition as a national

governing body, as provided for in section 395 of this title, or involving the opportunity of any amateur athlete, coach, trainer, manager, administrator or official to participate in amateur athletic competition, as provided for in the Corporation's constitution and bylaws;

Testimony at the hearing established that the USOC has approved the USTU Constitution and Bylaws, thus determining that they comply on their face with the USOC Constitution and the Amateur Sports Act. The USTU has thus plainly agreed to submit some disputes to arbitration. Conversely, it appears the USOC has demanded no more of NGB's than the statute requires and USTU has not agreed to arbitrate more matters than the USOC requires.

If Mr. Perez believes that the USTU, in resisting arbitration of his claims, has violated its obligations under the USOC Constitution and Bylaws, that instrument provides him a mechanism of relief. Under Article VIII he has the right to file a complaint with the USOC to compel USTU to comply with its agreement under Article IV, §4(C) to submit to arbitration. Apparently he did file some sort of complaint with the USOC, a copy of which has not been provided to the Court. Despite elaborate provisions in the USOC Constitution for handling such complaints, it declined to do anything more than attempt to facilitate mediation by nominating Judge Cannon as a mediator and advancing \$500 for the costs of the process. Had it found that the USTU was not in compliance, it would have had the obligation to place it on probation or revoke its designation as an NGB. The fact that it did not do so is at least some evidence that it did not regard Mr. Perez's demand as coming within the scope of matters USTU is obliged to arbitrate.

After review of the statutes, constitutions, and bylaws presented, the Court concludes the determinative question is whether the matters on which Mr. Perez seeks arbitration are matters

involving the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official to

participate in amateur athletic competition as provided for in Article IX of this [USOC] Constitution;

Because none of the issues on which arbitration is demanded involve such an opportunity, I conclude the USTU has not agreed to arbitrate them.

The purpose of Congress in adopting the Amateur Sports Act was not to regulate amateur athletics generally; rather, it focused on certain "protected competitions" in which competing athletes were designated as representing the United States, for example, the Olympics and Pan-American Games. Moreover, Congress did not intend to require generally that national governing bodies arbitrate all disputes between themselves and their members; rather, it sought to provide "A means to guarantee an athlete's right to compete." (See Report of the President's Commission on Olympic Sports, H.R. Report No. 95-1627, 95th Cong., 2d Sess. 9, reprinted in 1978 U.S.C.C.A.N. 7482.)

The gist of Mr. Perez's argument is that all of his issues involve his opportunity to compete in future protected competitions.

That is plainly incorrect as to Issues 1, 4, and 6: Mr. Perez's opportunity to compete is not impacted at all by what an arbitrator may find to be a correct interpretation of the Amateur Sports Act, what the correct resolution of the 1993 World Championship tickets' dispute is, or whether the USTU owes Mr. Perez \$2,194.50 in reimbursable expenses. Indeed, Mr. Perez's counsel did not argue to these points at all.

Instead, argument focused on Issue 5.³ Mr. Perez argues removal from corporate positions within USTU involves his opportunity for competition because being on those various corporate bodies substantially increases his chances of being designated as a coach, manager, trainer, or administrator. For example, he claimed in his testimony that, during his tenure on the Coaching Science Committee, all national coaches had been chosen from that body, with one exception.⁴ As a member of the Committee, he would have a

³Issues 2 and 3 concern the process by which the USTU arrived at its suspension decision and thus are subsidiary to Issue 5.

⁴He admitted on cross examination that several other persons, not on the committee, had been named national coaches in recent years.

better opportunity to advance his position as a potential coach with other committee members. As a member of the Board of Governors and the Executive Committee, he would have a better chance to convince others on those groups to approve a slate of coaches with his name on it. Additionally, he argues that he receives a great deal of his support for competing from a corporate sponsor, Macho Products; that relationship is threatened by his removal from involvement with the USTU. Finally, he argues that his various corporate positions are directly protected by Article IX because they involve his being an "administrator" of the USTU and therefore of the competitions for which it selects competing athletes, coaches, etc.

The difficulty with this argument is that it proves too much. Any adverse action by the USTU against Mr. Perez may negatively impact his position within the sport. By his interpretation, any member of the USTU who wanted to be appointed to a committee but whom the President did not appoint would be entitled to arbitrate that question. The USOC does not require an NGB to arbitrate any dispute over an adverse action, but only those "involving the opportunity ... to participate in [protected] amateur athletic competition...." The ordinary and natural reading of those words is not that they require arbitration of any dispute about the governance of an NGB.

In its Resolution suspending Mr. Perez, the USTU Board of Governors carefully carved out and preserved to Mr. Perez the rights that are protected by Article IX of the USOC Constitution and Bylaws. In addition to protecting those rights as a class, they spelled out his right to compete as an athlete, to be a coach at USTU sanctioned events, and to apply for a position as a coach of "any team which the [USTU] sends to any competition." (PX 4). It further preserved to him the right to file internal USTU complaints regarding any infringement of these rights and implicitly the right to arbitration under Art. IX of any dispute about these preserved rights.

I conclude that the issues on which Mr. Perez has demanded arbitration are not issues which the USTU has agreed in any way to arbitrate. Rather, they are matters of internal governance or common law contract disputes.⁵

APPROPRIATENESS OF PRELIMINARY INJUNCTIVE RELIEF

The factors to be considered in determining whether to issue a preliminary injunction are

- 1) Whether the plaintiffs have shown a strong or substantial likelihood or probability of success on the merits;
- 2) Whether the plaintiffs have shown irreparable injury;
- 3) Whether the issuance of a preliminary injunction would cause substantial harm to others;
- 4) Whether the public interest would be served by issuing a preliminary injunction.

NAACP v. City of Mansfield, 866 F. 2d 162, 166 (6th Cir. 1989); *Frisch's Restaurant, Inc. v. Shoney's, Inc.*, 759 F. 2d 1261, 1263 (6th Cir. 1985); *In re DeLorean Motor Co.*, 755 F. 2d 1223, 1228 (6th Cir. 1985).

As indicated by the foregoing analysis, I believe the USTU has shown a strong probability of success on the merits. Indeed, the parties have not suggested any additional discovery that will be necessary before the case can be fully adjudicated so that close to a complete evidentiary record is probably already before the Court.

Being compelled to participate in arbitration when one has not agreed to do so constitutes irreparable harm. *Nordin v. Nutri-Systems, Inc.*, 897 F. 2d 339 (8th Cir. 1990); *Patne, Webber, Inc. v. Hartmann*, 921 F. 2d 507 (3d Cir. 1990). Conversely, the only harm to Mr. Perez from issuing a preliminary injunction is that, if the injunction is dissolved after final hearing, he will have been delayed in obtaining an arbitration hearing.

⁵ As to the contract matters, both parties have remedies in the ordinary course of law or they could agree specially to arbitrate. Whether Mr. Perez may have remedies on the governance questions as a member under Ohio Revised Code Ch. 1702 is an issue on which the parties did not take a position at the hearing and on which I likewise offer no opinion.

Since the delay until final hearing is not expected to be long and the Court does not expect that an arbitrator will interpret the organic documents of USTU to permit a member to continue to hold corporate positions when a large majority, almost unanimous,⁶ of its Board of Governors has voted to remove him, there is no substantial harm to Mr. Perez in issuing the preliminary injunction.

I finally conclude that, while there is probably not much impact, the public interest is served by having the USTU's correct interpretation of its organic documents enforced promptly.

CONCLUSION

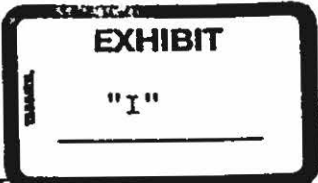
In accordance with the foregoing analysis, I recommend that Defendant Herbert Perez and all those in active concert with him be enjoined during the pendency of this action from proceeding to arbitration of any of the issues raised by Mr. Perez in his Amended Demand for Arbitration (PX 6). I recommend that the USTU be required to post a bond of \$500 pursuant to Fed. R. Civ. P. 65 before the preliminary injunction becomes effective. I further recommend that Defendant's Motion to Compel Arbitration be DENIED.

August 6, 1994.



Michael R. Merz
UNITED STATES MAGISTRATE JUDGE

⁶Mr. Lloyd testified the May 19, 1994, vote was virtually unanimous and no contravening evidence was offered.



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

SEP 13 1994

UNITED STATES TAEKWANDO
UNION,

Plaintiff(s),

Case No. C-3-94-231

- vs -

District Judge Sandra S. Beckwith
Magistrate Judge Michael R. Merz

HERBERT PEREZ, et al.,

Defendant(s).

SUPPLEMENTAL REPORT AND RECOMMENDATIONS

This case is before the Court upon Plaintiff's Motion for Preliminary Injunction (Doc. #3) and Defendant's responsive Motion to Compel Arbitration (Doc. #13). Evidence was taken on August 4-5, 1994, and an original Report and Recommendations filed August 8, 1994 (Doc. #17). Plaintiff United States Taekwando Union ("USTU") and Defendant Herbert Perez each filed Objections (Doc. ##21, 22) and the motions have been recommitted by District Judge Beckwith (Doc. #23).

USTU'S OBJECTIONS

USTU objects only to the recommended legal conclusion that this Court does not have subject matter jurisdiction under 28 U.S.C. §1331.

Consideration of this issue in the original Report was somewhat cursory as the parties had not briefed the question. The Court noted that neither the Federal Arbitration Act, 9 U.S.C. §§1, et seq., nor the Declaratory Judgment Act, 28 U.S.C.

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§2201, creates subject matter jurisdiction, but did not essay any extended analysis under 28 U.S.C. §1331.

Plaintiff's Objections supply the needed analysis. *In Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 77 L. Ed. 2d 420, 103 S. Ct. 2841 (1983), the Supreme Court reiterated the well-pleaded complaint rule which requires that federal question jurisdiction appear on the face of the well-pleaded complaint and prevents invoking federal jurisdiction to deal with an anticipated federal defense. In the same case, the Court reiterated that §1331 gives the district courts power to hear "only those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." 103 S. Ct. at 2856.

USTU concedes that the federal Amateur Sports Act does not create a private right of action. (Objections, Doc. #21, citing *Behagen v. Amateur Basketball Ass'n. of United States*, 884 F. 2d 524 (10th Cir. 1989); *Oldfield v. Athletic Congress*, 779 F. 2d 505 (9th Cir. 1985); *Michels v. United States Olympic Committee*, 741 F. 2d 155 (7th Cir. 1984)). However, as appears from the face of the Amended Complaint, USTU's right to relief necessarily, indeed entirely, depends upon resolution of questions of federal law. As is readily seen from examining all of Defendant Perez's arguments in this case, his demand for arbitration is entirely dependent on an asserted interpretation of federal law, the Amateur Sports Act, and its imposition on national governing bodies of Olympic sports of the duty to arbitrate certain disputes with athletes. To put it another way, this Court's substantive conclusion that Mr. Perez is not entitled to compel arbitration is completely dependent upon the Court's analysis of the Amateur Sports Act and the Constitution of the United States Olympic Committee, which re-imposes the obligations of the Amateur Sports Act on National Governing Bodies.

It does not matter to the jurisdictional analysis that Plaintiff USTU brought this action to obtain a declaration that Mr. Perez was not entitled to arbitrate his disputes

[I]t is now quite settled that federal jurisdiction exists also of a suit for a declaratory judgment that the other party does not have a right under federal law he is claiming. The federal nature of the claim appears on the face of the complaint for a declaratory judgment and the historical test is thought satisfied since the precise issue could have been litigated in a coercive action in federal court by the party claiming the federal right, and only the parties have been transposed.

Wright, Miller & Cooper, FEDERAL PRACTICE AND PROCEDURE, Jurisdiction 2d § 3566 at 93-94, citing *Franchise Tax Board*, 103 S. Ct. at 2851.

Despite an opportunity to do so under Fed. R. Civ. P. 72(b), Mr. Perez has not disputed this analysis.

I therefore find Plaintiff USTU's Objections WELL TAKEN and recommend this Court find it has subject matter jurisdiction of this action under 28 U.S.C. §1331.

MR. PEREZ'S OBJECTIONS

Mr. Perez's Objections (Doc. #22) largely reiterate the arguments he and his counsel made orally during the evidentiary hearing or in his Motion to Compel. They were dealt with at length in the original Report and do not, in my judgment, require substantial additional analysis. Several points are worth making, however:

The central point of the original Report is that the Amateur Sports Act makes arbitrable only a limited number of disputes — those involving an athlete's right to compete in certain specified competitions such as the Olympic Games. Mr. Perez's core argument is that the discipline imposed on him by USTU which he seeks to set aside in arbitration affects his ability to compete in such games. Assuming that is true, it is also immaterial. Congress did not purport to make arbitrable every act by a national governing body that affects or might affect an athlete's ability to compete, only those which directly involve the athlete's right to compete. Mr. Perez offers the analogy "If a lawyer is denied

membership to a bar association or is precluded from participation on its committees, his ability to practice law will be prejudiced." (Objections, Doc. #22, at 10). That is certainly true. However, our system does not imply from this fact that a lawyer has the same due process rights to protect his membership in a bar association as he does to prevent disbarment. Congress prescribed arbitration for some, but not all, of the disputes between a national governing body and its athletes. None of the disputes between Mr. Perez and the USTU come within that class because none of them involve his right to compete in the Olympics or other such contests.

In his Objections to the Report's irreparable harm analysis, Mr. Perez asserts:

The most egregious irreparable harm that will befall Defendant Perez should he be enjoined from arbitration of his dispute will be his lack of any other recourse. He will have had his livelihood destroyed without the opportunity to appear to a neutral organization for impartial third-party review. A federal court exercising its equity powers should not allow the USTU's abuse of its authority to go unchecked and deny Mr. Perez his day in court before the American Arbitration Association. (Emphasis added.)

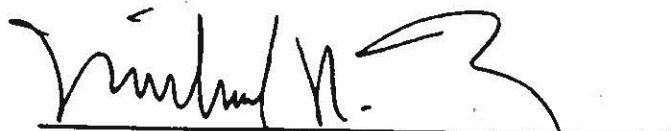
(Objections, Doc. 322, at 19). This analysis is mistaken. If this Court enjoins arbitration, the courts — which are certainly "neutral organization[s] for impartial third-party review" — will remain completely open to Mr. Perez. Denial of arbitration is not denial of any remedy.

CONCLUSION

In accordance with the foregoing analysis, I recommend that the Court conclude it has subject matter jurisdiction and that Defendant Herbert Perez and all those in active concert with him be enjoined during the pendency of this action from proceeding to arbitration of any of the issues raised by Mr. Perez in his Amended Demand for Arbitration (PX 6). I again recommend that the USTU be required to post a bond of \$500 pursuant to

Fed. R. Civ. P. 65 before the preliminary injunction becomes effective, a recommendation to which no objection has been made. I further again recommend that Defendant's Motion to Compel Arbitration be DENIED.

March 10, 1995.



Michael R. Merz
UNITED STATES MAGISTRATE JUDGE

B
PT
4-19-95

EXHIBIT
"J"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION AT DAYTON

FILED
APR 19 1995
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
DAYTON

UNITED STATES TAEKWANDO
UNION,

Plaintiff(s),

Case No. C-3-94-231

- vs -

District Judge Sandra S. Beckwith
Magistrate Judge Michael R. Merz

HERBERT PEREZ, et al.,

Defendant(s).

ORDER FOR FINAL JUDGMENT

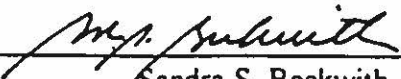
On April 3, 1995, the Magistrate Judge entered an Order (Doc. #33) to all parties to show cause by April 14, 1995, why this case should not be finally disposed of on the following basis:

1. Pursuant to Fed. R. Civ. P. 65(a)(1)(2), trial on the merits would be consolidated with the hearing on the preliminary injunction and final judgment entered in accordance with the Magistrate Judge's two reports and recommendations;
2. USTU's claims under Ohio Revised Code Chapter 1702 would be dismissed without prejudice;
3. All claims of USTU or Mr. Perez against the American Arbitration Association would be dismissed without prejudice, since it has indicated its intention to abide by any declaratory relief the Court enters; and
4. Any claims of USTU for attorney fees or costs would be reserved for the ordinary post-judgment process under Fed. R. Civ. P. 54.

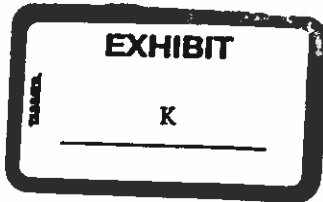
No party has objected to this recommended disposition. Accordingly, it is hereby ORDERED that:

1. Defendant Herbert Perez be, and he hereby is, permanently enjoined from arbitrating any of the issues raised in his Amended Demand for Arbitration referenced in this case;
2. USTU's claims under Ohio Revised Code Chapter 1702 are dismissed without prejudice;
3. All claims of USTU or Mr. Perez against the American Arbitration Association are dismissed without prejudice; and
4. Any claims of USTU for attorney fees or costs are reserved for the ordinary post-judgment process under Fed. R. Civ. P. 54.

April 15, 1995.



Sandra S. Beckwith
UNITED STATES DISTRICT JUDGE



FILED

APR 19 1995

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
DAYTON

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**
Western Division at Dayton

UNITED STATES TAEKWANDO UNION

JUDGMENT IN A CIVIL CASE

vs.

HERBERT PEREZ, ET AL

CASE NUMBER: C3-94-231
Judge Sandra S. Beckwith
Magistrate Judge Michael Merz

- Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to Judge Beckwith's Order for Final Judgment filed on April 19, 1995, Defendant Herbert Perez is permanently enjoined from arbitrating any of the issues raised in his Amended Demand for Arbitration referenced in this case; that USTU's claims under Ohio Revised Code Chapter 1702 are dismissed without prejudice; that all claims of USTU or Mr. Perez against the American Arbitration Association are dismissed without prejudice; and any claims of USTU for attorney fees or costs are reserved for the ordinary post-judgment process under Fed. R. Civ. P. 54.

This case is hereby terminated.

Date: April 19, 1995

KENNETH J. MURPHY, CLERK

Andy F. Quisumbing

(By) Andy F. Quisumbing, Deputy Clerk

PUBLIC LAW 95-606 - NOVEMBER 8, 1978

92 STAT. 3045 - 92 STAT. 3058 INCLUSIVE

Public Law 95-606
95th Congress

An Act

To promote and coordinate amateur athletic activity in the United States, to recognize certain rights for United States amateur athletes, to provide for the resolution of disputes involving national governing bodies, and for other purposes.

Nov. 8, 1978
(S. 2727)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Amateur Sports Act of 1978".

Amateur Sports
Act of 1978.
36 USC 371 note

OLYMPIC COMMITTEE REORGANIZATION

SECTION 1. (a) The Act entitled "An Act to incorporate the United States Olympic Association", approved September 21, 1950 (36 U. S. C. 371 et seq.), hereinafter in this Act referred to as "the Act", is amended in the first section ---

36 USC 371

(1) by striking out "That the following persons, to wit:" and inserting in lieu thereof the following:

"TITLE I - CORPORATION

"SEC. 101. The following persons, to wit:"

(2) in the first sentence by striking out "corporation" before the period and inserting in lieu thereof "Corporation"; and

(3) by amending the last sentence thereof to read as follows: "The Corporation shall maintain its principal offices and national headquarters in such place in the United States as is determined by the Corporation, and may hold its annual and special meetings in such places as the Corporation shall determine."

(b) The Act is further amended by striking out sections 2 through 12 and inserting in lieu thereof the following:

"SEC. 102. A majority of the persons named in section 101 of this Act, or their successors, are hereby authorized to meet to complete the organization of the Corporation by the adoption of a constitution and bylaws, the election of officers, and by doing all things necessary to carry into effect the provisions of this Act.

36 USC
372-382
36 USC 372

PEREZ V USTU
USOC EXHIBIT #3

PUBLIC LAW 95-606 - NOVEMBER 8, 1978

1 "SEC. 103. As used in this Act, the term ---

Definitions.
36 USC 373

2 "(1) 'amateur athlete' means any athlete who meets the
3 eligibility standards established by the national governing body for
4 the sport in which the athlete competes;

5 "(2) 'amateur athletic competition' means a contest, game,
6 meet, match, tournament, regatta, or other event in which amateur
7 athletes complete;

8 "(3) 'amateur sports organization' means a not-for-profit
9 corporation, club, federation, union, association, or other group
10 organized in the United States which sponsors or arranges any
11 amateur athletic competition;

12 "(4) 'Corporation' means the United States Olympic
13 Committee;

14 "(5) 'international amateur athletic competition' means any
15 amateur athletic competition between any athlete or athletes
16 representing the United States, either individually or as part of a
17 team, and any athletic or athletes representing any foreign country;

18 "(6) 'national governing body' means an amateur sports
19 organization which is recognized by the Corporation in accordance
20 with section 201 of this Act; and

21 "(7) 'sanction' means a certificate of approval issued by a
22 national governing body.

23 "SEC. 104. The objects and purposes of the Corporation shall be to---

Objects and
purposes.
36 USC 374.

24 "(1) establish national goals for amateur athletic activities and
25 encourage the attainment of those goals;

26 "(2) coordinate and develop amateur athletic activity in the
27 United States directly relating to international amateur athletic
28 competition, so as to foster productive working relationships among
29 sports-related organizations;

30 "(3) exercise exclusive jurisdiction, either directly or through
31 its constituent members or committees, over all matters pertaining to
32 the participation of the United States in the Olympic Games and in
33 the Pan-American Games, including the representation of the United
34 States in such games, and over the organization of the Olympic
35 Games and the Pan-American Games when held in the United
36 States;

37 "(4) obtain for the United States, either directly or by
38 delegation to the appropriate national governing body, the most
39 competent amateur representation possible in each competition and
40 event of the Olympic Games and of the Pan-American Games;

41 "(5) promote and support amateur athletic activities involving
42 the United States and foreign nations;

43 "(6) promote and encourage physical fitness and public

PUBLIC LAW 95-606 - NOVEMBER 8, 1978

1 participation in amateur athletic activities;

2 "(7) assist organizations and persons concerned with sports
3 in the development of amateur athletic programs for amateur
4 athletes;

5 "(8) provide for the swift resolution of conflicts and disputes
6 involving amateur athletes, national governing bodies, and amateur
7 sports organizations, and protect the opportunity of any amateur
8 athlete, coach, trainer, manager, administrator, or official to
9 participate in amateur athletic competition;

10 "(9) foster the development of amateur athletic facilities for
11 use by amateur athletes and assist in making existing amateur
12 athletic facilities available for use by amateur athletes;

13 "(10) provide and coordinate technical information on physical
14 training, equipment design, coaching, and performance analysis;

15 "(11) encourage and support research, development, and
16 dissemination of information in the areas of sports medicine and
17 sports safety;

18 "(12) encourage and provide assistance to amateur athletic
19 activities for women;

20 "(13) encourage and provide assistance to amateur athletic
21 programs and competition for handicapped individuals, including,
22 where feasible, the expansion of opportunities for meaningful
23 participation by handicapped individuals in programs of athletic
24 competition for able-bodied individuals; and

25 "(14) encourage and provide assistance to amateur athletes
26 of racial and ethnic minorities for the purpose of eliciting the
27 participation of such minorities in amateur athletic activities in which
28 they are underrepresented.

29 "SEC. 105.(a) The Corporation shall have perpetual succession and power
30 to---

36 USC 375.

31 "(1) serve as the coordinating body for amateur athletic activity
32 in the United States directly relating to international amateur athletic
33 competition;

34 "(2) represent the United States as its national Olympic
35 committee in relations with the International Olympic Committee and
36 the Pan-American Sports Organization;

37 "(3) organize, finance, and control the representation of the
38 United States in the competitions and events of the Olympic Games
39 and of the Pan-American Games, and obtain, either directly or by
40 delegation to the appropriate national governing body, amateur
41 representation for such games;

42 "(4) recognize eligible amateur sports organizations as
43 national governing bodies for any sport which is included on the

PUBLIC LAW 95-606 - NOVEMBER 8, 1978

1 program of the Olympic Games or the Pan-American Games;

2 "(5) facilitate, through orderly and effective administrative
3 procedures, the resolution of conflicts or disputes which involve any
4 of its members and any amateur athlete, coach, trainer, manager,
5 administrator, official, national governing body, or amateur sports
6 organization and which arise in connection with their eligibility for and
7 participation in the Olympic Games, the Pan-American world
8 championship competition, or other protected competition as defined
9 in the constitution and bylaws of the Corporation;

10 "(6) sue and be sued;

11 "(7) make contracts;

12 "(8) acquire, hold, and dispose of real and personal property
13 as may be necessary for its corporate purposes;

14 "(9) accept gifts, legacies, and devices in furtherance of its
15 corporate purposes;

16 "(10) borrow money to carry out its corporate purposes, issue
17 notes, bonds, or other evidences of indebtedness therefor, and
18 secure the same by mortgage, subject in each case to the laws of
19 the United States or of any State;

20 "(11) provide financial assistance to any organization or
21 association, other than a corporation organized for profit, in
22 furtherance of the purposes of the Corporation;

23 "(12) approve and revoke membership in the Corporation;

24 "(13) adopt and alter a corporate seal;

25 "(14) establish and maintain offices for the conduct of the
26 affairs of the Corporation;

27 "(15) publish a newspaper, magazine, or other publication
28 consistent with its corporate purposes; and

29 "(16) do any and all acts and things necessary and proper to
30 carry out the purposes of the Corporation.

31 "(b) The Corporation shall adopt and may amend a constitution and
32 bylaws not inconsistent with the laws of the United States or of any State,
33 except that the Corporation may amend its constitution only if it--

34 "(1) publishes in its principal publication a general notice of
35 the proposed alteration of the constitution, including the substantive
36 terms of the alteration, the time and place of the Corporation's
37 regular meeting at which the alteration is to be decided, and a
38 provision informing interested persons that they may submit
39 materials as authorized in paragraph (2); and

40 "(2) gives to all interested persons, prior to the adoption of any
41 amendment, an opportunity to submit written data, views, or
42 arguments concerning the proposed amendment for a period of at
43 least 60 days after the date of publication of the notice.

PUBLIC LAW 95-606 - NOVEMBER 8, 1978

1 "SEC. 106. (a) Eligibility for membership in the Corporation shall be
2 determined in accordance with the constitution and bylaws of the
3 Corporation.

36 USC 376.

4 "(b) In its constitution and bylaws, the Corporation shall establish and
5 maintain provisions with respect to its governance and the conduct of its
6 affairs for reasonable representation of ---

7 "(1) amateur sports organizations recognized as national
8 governing bodies in accordance with section 201 of this Act;

9 "(2) amateur athletes who are actively engaged in amateur
10 athletic competition or who have represented the United States in
11 international amateur athletic competition within the preceding 10
12 years;

13 "(3) amateur sports organizations which conduct a national
14 program or regular national amateur athletic competition in two or
15 more sports which are included on the program of the Olympic
16 Games or the Pan-American Games on a level of proficiency
17 appropriate for the selection of amateur athletes to represent the
18 United States in international amateur athletic competition; and

19 "(4) individuals not affiliated or associated with any amateur
20 sports organization who in the Corporation's judgment represent the
21 interests of the American public in the activities of the Corporation.

22 "SEC. 107. The Corporation shall be nonpolitical and, as an organization,
23 shall not promote the candidacy of any person seeking public office.

36 USC 377.

24 "SEC. 108. The Corporation shall have no power to issue capital stock or
25 to engage in business for pecuniary profit or gain.

36 USC 378.

26 "SEC. 109. The Corporation may acquire any or all of the assets of the
27 existing unincorporated association, known as 'The United States Olympic
28 Association', upon discharging or satisfactorily providing for the payment
29 and discharge of all the liabilities of such unincorporated association.

36 USC 379.

30 "SEC. 110. (a) Without the consent of the Corporation, any person who
31 uses for the purpose of trade, to induce the sale of any goods or services,
32 or to promote any theatrical exhibition, athletic performance, or
33 competition---

36 USC 380.

34 "(1) the symbol of the International Olympic Committee,
35 consisting of 5 interlocking rings;

36 "(2) the emblem of the Corporation, consisting of an
37 escutcheon having a blue chief and vertically extending red and
38 white bars on the base with 5 interlocking rings displayed on the
39 chief;

40 "(3) any trademark, trade name, sign, symbol, or insignia
41 falsely representing association with, or authorization by, the
42 International Olympic Committee or the Corporation; or

43 "(4) the words 'Olympic', 'Olympiad', 'Citius Altius Fortius', or

PUBLIC LAW 95-606 - NOVEMBER 8, 1978

1 any combination or simulation thereof tending to cause confusion, to
2 cause mistake, to deceive, or to falsely suggest a connection with
3 the Corporation or any Olympic activity;

4 shall be subject to suit in a civil action by the Corporation for the remedies
5 provided in the Act of July 5, 1946 (60 Stat. 427; popularly known as the
6 Trademark Act of 1946). However, any person who actually used the
7 emblem in subsection (a) (2), or the words, or any combination thereof, in
8 subsection (a) (4) for any lawful purpose prior to September 21, 1950, shall
9 not be prohibited by this section from continuing such lawful use for the
10 same purpose and for the same goods or services. In addition, any person
11 who actually used, or whose assignor actually used, any other trademark,
12 trade name, sign, symbol, or insignia described in subsections (a) (3) and
13 (4) for any lawful purpose prior to enactment of this Act shall not be
14 prohibited by this section from continuing such lawful use for the same
15 purpose and for the same goods or services.

16 "(b) The Corporation may authorize contributors and suppliers of
17 goods or services to use the trade name of the Corporation as well as any
18 trademark, symbol, insignia, or emblem of the International Olympic
19 Committee or of the Corporation in advertising that the contributions, goods,
20 or services were donated, supplied, or furnished or for the use of, approved,
21 selected, or used by the Corporation or United States Olympic or Pan-
22 American team or team members.

23 "(c) The Corporation shall have exclusive right to use the name
24 'United States Olympic Committee'; the symbol described in subsection (a)
25 (1); the emblem described in subsection (a) (2); and the words 'Olympic',
26 'Olympiad', 'Citius Altius Fortius' or any combination thereof subject to the
27 preexisting rights described in subsection (a).

28 "SEC. 111. As a condition precedent to the exercise of any power or
29 privilege granted or conferred under this Act, the Corporation shall file in the
30 office of the secretary of state, or similar office, in each State the name and
31 post-office address of an authorized agent of the Corporation in such State
32 upon whom local process or demands against the Corporation may be
33 served.

34 "SEC. 112. The right to alter, amend, or repeal this Act at any time is
35 hereby expressly reserved.

36 "SEC. 113. (a) The Corporation shall, on or before the first day of June in
37 each year, transmit simultaneously to the President and to each House of
38 Congress a detailed report of its operations for the preceding calendar year,
39 including a full and complete statement of its receipts and expenditures and
40 a comprehensive description of the activities and accomplishments of the
41 Corporation during the preceding year. Copies of the report shall be made
42 available by the Corporation to interested persons at a reasonable cost.

43 "(b) The Corporation shall, on or before the first day of June in each

15 USC 1051
note.

36 USC 381.

36 USC 382.

Reports to
President and
Congress.
36 USC 382a.

Reports to

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1 year, transmit simultaneously to the Speaker of the House of
2 Representatives and to the President of the Senate a detailed report of
3 those grants authorized to the Corporation pursuant to the provisions of
4 section 211 of the Act and a full and complete statement of the
5 expenditures of such funds made available. The report shall be referred to
6 the Committee on Appropriations of each House and shall include a
7 detailed and comprehensive description of those programs which the
8 Corporation anticipate it will finance during the next fiscal year out of such
9 funds made available pursuant to the provisions of section 211 of the Act.
10 The Corporation shall continue to transmit the report required under this
11 subsection (b) until the total sums made available under section 211 of the
12 Act have been expended.

Speaker of Hous
and President c
Senate.

13 "SEC. 114. In its constitution and bylaws, the Corporation shall establish
14 and maintain provisions for the swift and equitable resolution of disputes
15 involving any of its members and relating to the opportunity of an amateur
16 athlete, coach, trainer, manager, administrator, or official to participate in
17 the Olympic Games, the Pan-American Games, world championship
18 competition, or other such protected competition as defined in such
19 constitution and bylaws."

36 USC 382b.

20
21 NATIONAL GOVERNING BODIES

22
23 SEC. 2. The Act, as amended by section 1 of this Act, is further amended
24 by adding at the end thereof the following new title:

25
26 "TITLE II - NATIONAL GOVERNING BODIES

27
28 "SEC. 201. (a) For any sport which is included on the program of the
29 Olympic Games or the Pan-American Games, the Corporation is authorized
30 to recognize as a national governing body an amateur sports organization
31 which files an application and is eligible for such recognition, in accordance
32 with the provisions of subsection (b) of this section. The Corporation shall
33 recognize only one national governing body for each sport for which an
34 application is made and approved. Prior to the recognition of a national
35 governing body under the authority granted under this title and in
36 accordance with the procedures and requirements of this section, the
37 Corporation shall hold a hearing open to the public on the application for
38 such recognition. The Corporation shall publish notice of the time, place,
39 and nature of the hearing. Publication shall be made in a regular issue of
40 the Corporation's principal publication at least 30 days, but not more than
41 60 days, prior to the date of the hearing.

36 USC 391.

Notice.

42 "(b) No amateur sports organization is eligible to be recognized or is
43

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1 eligible to continue to be recognized as a national governing body unless
2 it---

3 "(1) is incorporated under the laws of any of the several
4 States of the United States or the District of Columbia as a not-for-
5 profit corporation having as its purpose the advancement of amateur
6 athletic competition, and has the managerial and financial capability
7 to plan and execute its obligations;

8 "(2) submits an application for recognition, in such form as the
9 Corporation shall require, as a national governing body and, upon
10 application, submits a copy of its corporate charter and bylaws and
11 any additional information as is considered necessary or appropriate
12 by the Corporation;

13 "(3) agrees to submit, upon demand of the Corporation, to
14 binding arbitration conducted in accordance with the commercial
15 rules of the American Arbitration Association in any controversy
16 involving its recognition as a national governing body, as provided for
17 in section 205 of this title, or involving the opportunity of any amateur
18 athlete, coach, trainer, manager, administrator or official to
19 participate in amateur athletic competition, as provided for in the
20 Corporation's constitution and bylaws;

21 "(4) demonstrates that it is autonomous in the governance of
22 its sport, in that it independently determines and controls all matters
23 central to such governance, does not delegate such determination
24 and control, and is free from outside restraint, and demonstrates that
25 it is a member of no more than one international sports federation
26 which governs a sport included on the program of the Olympic
27 Games or the Pan-American Games;

28 "(5) demonstrates that its membership is open to any
29 individual who is an amateur athlete, coach, trainer, manager,
30 administrator, or official active in the sport for which recognition is
31 sought, or to any amateur sports organization which conducts
32 programs in the sport for which recognition is sought, or to both;

33 "(6) provides an equal opportunity to amateur athletes,
34 coaches, trainers, managers, administrators, and officials to
35 participate in amateur athletic competition, without discrimination on
36 the basis of race, color, religion, age, sex, or national origin, and with
37 fair notice and opportunity for a hearing to any amateur athlete,
38 coach, trainer, manager, administrator, or official before declaring
39 such individual ineligible to participate;

40 "(7) is governed by a board of directors or other such
41 governing board whose members are selected without regard to
42 race, color, religion, national origin or sex, except that, in sports
43 where there are separate male and female programs, it provides for

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1 reasonable representation of both males and females on such board
2 of directors or other such governing board;

3 "(8) demonstrates that its board of directors or other such
4 governing board includes among its voting members individuals who
5 are actively engaged in amateur athletic competition in the sport for
6 which recognition is sought or who have represented the United
7 States in international amateur athletic competition in the sport for
8 which recognition is sought within the preceding 10 years, and that
9 the membership and voting power held by such individuals is not
10 less than 20 percent of such membership and voting power held in
11 that board of directors or other such governing board;

12 "(9) provides for reasonable direct representation on its board
13 of directors or other such governing board for any amateur sports
14 organization which, in the sport for which recognition is sought,
15 conducts, on a level of proficiency appropriate for the selection of
16 amateur athletes to represent the United States in international
17 amateur athletic competition, a national program or regular national
18 amateur athletic competition, and ensures that such representation
19 shall reflect the nature, scope, quality, and strength of the programs
20 and competitions of such amateur sports organization in relation to
21 all other such programs and competitions in such sport in the United
22 States;

23 "(10) demonstrates that none of its officers are also officers of
24 any other amateur sports organization which is recognized as a
25 national governing body;

26 "(11) provides procedures for the prompt and equitable
27 resolution of grievances of its members;

28 "(12) does not have eligibility criteria relating to amateur status
29 which are more restrictive than those of the appropriate international
30 sports federation; and

31 "(13) demonstrates, if it is an amateur sports organization
32 seeking recognition as a national governing body, that it is prepared
33 to meet the obligations imposed on a national governing body under
34 section 202 of this Act.

35 "(c) (1) Except as provided in paragraph (2), any amateur sports
36 organization which on the date of enactment of this title is recognized by
37 the Corporation to represent a particular sport shall be considered to be the
38 national governing body for that sport. Such an organization is exempt for
39 a period of 2 years from the date of enactment of this title from meeting the
40 requirements of subsection (b) of this section, and during the 2-year period
41 shall take the necessary actions to meet such requirements if it desires to
42 retain its recognition. After the expiration of the 2-year period, such an
43 organization shall continue as the national governing body for that sport

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1 unless the Corporation determines that such organization is not in
2 compliance with the requirements of subsection (b) of this section, in which
3 event the Corporation shall ---

4 "(A) suspend the recognition of such national governing
5 body;

6 "(B) revoke the recognition of such national governing
7 body; or

8 "(C) extend the 2-year period for not longer than 1
9 year, if the national governing body has proven by clear and
10 convincing evidence that, through no fault of its own, it needs
11 additional time to comply with such requirements.

12 If, at the end of the extension period referred to in subparagraph (C) of this
13 paragraph, the national governing body has not complied with such
14 requirements, the Corporation shall revoke the recognition of such national
15 governing body. Any such national governing body aggrieved by the
16 Corporation's determination under this subsection may submit a demand for
17 arbitration in accordance with section 205 (c) of this title.

18 "(2) Notwithstanding the provisions of paragraph (1), the Corporation
19 may suspend or revoke the recognition of a national governing body during
20 the 2-year period if such suspension or revocation is for the same reason
21 as the Corporation could have revoked or suspended such national
22 governing body prior to the date of the enactment of this title.

23 "(d) Within 61 days after recognizing an amateur sports
24 organization as a national governing body, in accordance with
25 subsection (a) of this section, the Corporation shall recommend and
26 support in any appropriate manner such national governing body to
27 the appropriate international sports federation as the representative
28 of the United States for that sport.

29 "SEC. 202. (a) For the sport which it governs, a national governing body is
30 under duty to---

36 USC 392.

31 "(1) develop interest and participation throughout the United
32 States and be responsible to the persons and amateur sports
33 organizations it represents;

34 "(2) minimize, through coordination with other amateur sports
35 organizations, conflicts in the scheduling of all practices and
36 competitions;

37 "(3) keep amateur athletes informed of policy matters and
38 reasonably reflect the views of such athletes in its policy decisions;

39 "(4) promptly review every request submitted by an amateur
40 sports organization or person for: a sanction (A) to hold an
41 international amateur athletic competition in the United States; or (B)
42 to sponsor United States amateur athletes to compete in
43 international amateur athletic competition held outside the United

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1 States, and determine whether to grant such sanction, in accordance
2 with the provisions of subsection (b) of this section;

3 "(5) allow an amateur athlete to compete in any international
4 amateur athletic competition conducted under its auspices or that of
5 any other amateur sports organization or person, unless it
6 establishes that its denial was based on evidence that the
7 organization or person conducting the competition did not meet the
8 requirements stated in subsection (b) of this section;

9 "(6) provide equitable support and encouragement for
10 participation by women where separate programs for male and
11 female athletes are conducted on a national basis;

12 "(7) encourage and support amateur athletic sports programs
13 for handicapped individuals and the participation of handicapped
14 individuals in amateur athletic activity, including, where feasible, the
15 expansion of opportunities for meaningful participation by
16 handicapped individuals in programs of athletic competition for able-
17 bodied individuals;

18 "(8) provide and coordinate technical information on physical
19 training, equipment design, coaching, and performance analysis; and

20 "(9) encourage and support research, development, and
21 dissemination of information in the areas of sports medicine and
22 sports safety.

23 "(b) As a result of its review under subsection (a) (4) of this section,
24 if a national governing body does not determine by clear and convincing
25 evidence that holding or sponsoring an international amateur athletic
26 competition would be detrimental to the best interest of the sport, the
27 national governing body shall promptly grant to an amateur sports
28 organization or person a sanction to---

29 "(1) hold an international amateur athletic competition in the
30 United States, if such amateur sports organization or person---

31 "(A) pays to the national governing body any required
32 sanctioning fee, if such fee is reasonable and
33 nondiscriminatory;

34 "(B) demonstrates that---

35 "(i) appropriate measures have been taken to
36 protect the amateur status of athletes who will take
37 part in the competition and to protect their eligibility to
38 compete in amateur athletic competition,

39 "(ii) appropriate provision has been made for
40 validation of records which may be established during
41 the competition,

42 "(iii) due regard has been given to any
43 international amateur athletic requirements specifically

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1 applicable to the competition,

2 "(iv) the competition will be conducted by
3 qualified officials,

4 "(v) proper medical supervision will be provided
5 for athletes who will participate in the competition, and

6 "(vi) proper safety precautions have been taken
7 to protect the personal welfare of the athletes and
8 spectators at the competition, and

9 "(C) submits to the national governing body an audited
10 or notarized financial report of similar events, if any,
11 conducted by the amateur sports organization or person; or

12 "(2) sponsor United States amateur athletes to compete in
13 international amateur athletic competition held outside the United
14 States, if such amateur sports organization or person---

15 "(A) pays to the national governing body any required
16 sanctioning fee, if such fee is reasonable and
17 nondiscriminatory;

18 "(B) submits a letter from the appropriate entity which
19 will hold the international amateur athletic competition
20 certifying that---

21 "(i) appropriate measures have been taken to
22 protect the amateur status of athletes who will take
23 part in the competition and to protect their eligibility to
24 compete in amateur athletic competition,

25 "(ii) appropriate provision has been made for
26 validation of records which may be established during
27 the competition,

28 "(iii) due regard has been given to any
29 international amateur athletic requirements specifically
30 applicable to the competition,

31 "(iv) the competition will be conducted by
32 qualified officials,

33 "(v) proper medical supervision will be provided
34 for athletes who will participate in the competition, and

35 "(vi) proper safety precautions have been taken
36 to protect the personal welfare of the athletes and
37 spectators at the competition; and

38 "(C) submits a report of the most recent trip, if any, to
39 a foreign country which the amateur sports organization or
40 person sponsored for the purpose of having United States
41 amateur athletes compete in international amateur athletic
42 competition.
43

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1 "SEC. 203. For the sport which it governs, a national governing body is
2 authorized to---

36 USC 393.

3 "(1) represent the United States in the appropriate
4 international sports federation;

5 "(2) establish national goals and encourage the attainment of
6 those goals;

7 "(3) serve as the coordinating body for amateur athletic activity
8 in the United States;

9 "(4) exercise jurisdiction over international amateur athletic
10 activities and sanction international amateur athletic competition held
11 in the United States and sanction the sponsorship of international
12 amateur athletic competition held outside the United States;

13 "(5) conduct amateur athletic competition, including national
14 championships, and international amateur athletic competition in the
15 United States, and establish procedures for the determination of
16 eligibility standards for participation in such competitions, except for
17 that amateur athletic competition specified in section 206 of this title;

18 "(6) recommend to the Corporation individuals and teams to
19 represent the United States in the Olympic Games and the Pan-
20 American Games; and

21 "(7) designate individuals and teams to represent the United
22 States in international amateur athletic competition (other than the
23 Olympic Games and the Pan-American Games) and certify, in
24 accordance with applicable international rules, the amateur eligibility
25 of such individuals and teams.

26 "SEC. 204. The Corporation may review all matters relating to the
27 continued recognition of a national governing body and may take such
28 action as it considers appropriate, including, but not limited to, placing
29 conditions upon the continued recognition of the national governing body.

Review.
36 USC 394.

30 "SEC. 205. (a) (1) Any amateur sports organization or person which
31 belongs to or is eligible to belong to a national governing body may seek
32 to compel such national governing body to comply with the requirements of
33 sections 201(b) and 202 of this title by filing a written complaint with the
34 Corporation. Such organization or person may take such action only after
35 having exhausted all available remedies within such national governing
36 body for correcting deficiencies, unless it can be shown by clear and
37 convincing evidence that those remedies would have resulted in
38 unnecessary delay. The Corporation shall establish procedures for the filing
39 and disposition of complaints received under this subsection. A copy of the
40 complaint shall also be served on the applicable national governing body.

Complaints.
36 USC 395.

41 "(2) Within 30 days after the filing of the complaint, the
42 Corporation shall determine whether the organization has exhausted
43 its remedies within the applicable national governing body, as

Filing
procedures.

1 provided in paragraph (1) of this subsection. If the Corporation
2 determines that any such remedies have not been exhausted, it may
3 direct that such remedies be pursued before the Corporation will
4 further consider the complaint.

5 "(3) (A) Within 90 days after the filing of a complaint under
6 paragraph (1) of this subsection, if the Corporation determines that
7 all such remedies have been exhausted, it shall hold a hearing to
8 receive testimony for the purpose of determining if such national
9 governing body is in compliance with the requirements of sections
10 201(b) and 202 of this title.

Hearing.

11 "(B) If the Corporation determines, as a result of the
12 hearings conducted pursuant to this subsection, that such
13 national governing body is in compliance with the
14 requirements of sections 201(b) and 202 of this title, it shall
15 so notify the complainant and such national governing body.

16 "(C) If the Corporation determines, as a result of
17 hearings conducted pursuant to this subsection, that such
18 national governing body is not in compliance with the
19 requirements of sections 201(b) and 202 of this title, it shall---

20 "(i) place such national governing body on
21 probation for a specified period of time, not to exceed
22 180 days, which it considers necessary to enable such
23 national governing body to comply with such
24 requirements, or

25 "(ii) revoke the recognition of such national
26 governing body.

27 "(D) If the Corporation places a national governing
28 body on probation pursuant to this paragraph, it may extend
29 the probationary period if the national governing body has
30 proven by clear and convincing evidence that, through no fault
31 of its own, it needs additional time to comply with such
32 requirements. If, at the end of the period allowed by the
33 Corporation, the national governing body has not complied
34 with such requirements, the Corporation shall revoke the
35 recognition of such national governing body.

36 "(b) (1) Any amateur sports organization may
37 seek to replace an incumbent as the national
38 governing body for a particular sport by filing with the
39 Corporation a written application for such recognition.
40 Such application shall be filed (A) within the 1-year
41 period after the final day of any Olympic Games, in the
42 case of a sport for which competition is held in the
43 Olympic Games or in both the Olympic and Pan-

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1 American Games; or (B) within the 1-year period after
2 the final day of any Pan-American Games, in the case
3 of a sport for which competition is held in the Pan-
4 American Games and not in the Olympic Games. If
5 two or more organizations file applications for the same
6 sport, such applications shall be considered in a single
7 proceeding.

8 "(2) Any application filed under this subsection
9 shall be filed with the Corporation by registered mail.
10 The Corporation shall establish procedures for the filing
11 and disposition of applications received under this
12 subsection. A copy of any such application for
13 recognition shall also be served on the applicable
14 national governing body. The Corporation shall inform
15 the applicant for recognition that its application has
16 been received.

17 "(3) Within 180 days after receipt of an
18 application filed under this subsection, the Corporation
19 shall conduct a formal hearing to determine the merits
20 of the application. The Corporation shall publish notice
21 of the time and place of such hearing in a regular issue
22 of its principal publication at least 30 days, but not
23 more than 60 days, prior to the date of the hearing. In
24 the course of such hearing, the applicant and the
25 national governing body shall be given a reasonable
26 opportunity to present evidence supporting their
27 respective positions. During such hearing, the
28 applicant amateur sports organization must establish
29 by a preponderance of the evidence that it meets the
30 criteria for recognition as a national governing body
31 under section 201(b) of this title, and that ---

32 "(A) the national governing body does not
33 meet the criteria of section 201(b) or 202; or

34 "(B) it more adequately meets the criteria
35 of section 201(b), is capable of more adequately
36 meeting the criteria of section 202, and provides
37 or is capable of providing a more effective
38 national program of competition, than the
39 national governing body in the sport for which it
40 seeks recognition.

41 "(4) Within 30 days of the close of the hearing required
42 under this subsection, the Corporation shall ---

43 "(A) uphold the right of the national

Hearing.

1 governing body for its sport;

2 "(B) revoke the recognition of the national
3 governing body and declare a vacancy in the
4 national governing body for that sport;

5 "(C) revoke the recognition of the national
6 governing body and recognize the applicant as
7 the national governing body; or

8 "(D) decide to place the national
9 governing body on probation of not to exceed
10 180 days, pending the compliance of the
11 national governing body, if such national
12 governing body would have retained recognition
13 except for a minor deficiency in one of the
14 requirements of section 201(b) or 202 of this
15 title.

16 If the national governing body does not comply within
17 the prescribed time period, the Corporation shall
18 revoke the recognition of the national governing body
19 and either recognize the applicant as the national
20 governing body, or declare a vacancy in the national
21 governing body for that sport.

22 "(5) Within 61 days after recognizing an amateur
23 sports organization as a national governing body, in
24 accordance with this subsection, the Corporation shall
25 recommend and support in any appropriate manner
26 such national governing body to the appropriate
27 international sports federation as the representative of
28 the United States for that sport.

29 "(c) (1) The right to review by any party
30 aggrieved by a determination of the Corporation under
31 the requirements of this section or section 201(c) shall
32 be to any regional office of the American Arbitration
33 Association. Such demand for arbitration shall be
34 submitted within 30 days of the determination of the
35 Corporation. Upon receipt of such a demand for
36 arbitration, the Association shall serve notice on the
37 parties to the arbitration and on the Corporation, and
38 shall immediately proceed with arbitration according to
39 the commercial rules of the Association in effect at the
40 time of the filing of the demand, except that ---

41 "(A) the arbitration panel shall consist of
42 not less than three arbitrators, unless the parties
43 to the proceeding mutually agree to a lesser

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1 number;

2 "(B) the arbitration hearing shall take
3 place at a site selected by the Association,
4 unless the parties to the proceeding mutually
5 agree to the use of another site; and

6 "(C) the arbitration hearing shall be open
7 to the public.

8 "(2) The arbitrators in any arbitration are
9 empowered to settle any dispute arising under the
10 provisions of this Act prior to making a final award, if
11 mutually agreed to by the parties to the proceeding
12 and achieved in a manner not inconsistent with the
13 constitution and bylaws of the Corporation.

14 "(3) Each contesting party may be represented
15 by counsel or by any other duly authorized
16 representative at the arbitration proceeding. The
17 parties may offer any evidence which they desire and
18 shall produce any additional evidence as the arbitrators
19 believe necessary to an understanding and
20 determination of the dispute. The arbitrators shall be
21 the sole judges of the relevancy and materiality of the
22 evidence offered. Conformity to legal rules of evidence
23 shall not be necessary.

24 "(4) All decisions by the arbitrators shall be by
25 majority vote unless the concurrence of all is expressly
26 required by the contesting parties.

27 "(5) Final decision of the arbitrators shall be
28 binding upon the involved parties, if such award is not
29 inconsistent with the constitution and bylaws of the
30 Corporation.

31 "(6) The hearings may be reopened, by the
32 arbitrators upon their own motion or upon the motion
33 of any contesting party, at any time before a final
34 decision is made, except that, if any contesting party
35 makes such a motion, all parties to the decision must
36 agree to reopen the hearings if such reopening would
37 result in the arbitrators' decision being delayed beyond
38 the specific period agreed upon at the beginning of the
39 arbitration proceedings.

40 "SEC. 206. Any amateur sports organization which conducts amateur
41 athletic competition, participation in which is restricted to a specific class of
42 amateur athletes (such as high school students, college students, members
43 of the Armed Forces, or similar groups or categories), shall have exclusive

36 USC 396.

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1 jurisdiction over such competition. If such an amateur sports organization
2 wishes to conduct international amateur athletic competition to be held in
3 the United States, or sponsor international amateur athletic competition to
4 be held outside the United States, it shall obtain a sanction from the
5 appropriate national governing body."
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7 Approved November 8, 1978.
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29 LEGISLATIVE HISTORY:
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31 HOUSE REPORT No. 95-1627 (Comm. on the Judiciary).

32 SENATE REPORT No. 95-770 (Comm. on Commerce, Science, and
33 Transportation).

34 CONGRESSIONAL RECORD, Vol. 124 (1978):

35 May 8, considered and passed Senate.

36 Sept. 26, considered and failed of passage in House.

37 Oct. 11,13, considered and passed House, amended.

38 Oct. 15, Senate concurred in House amendment.

39 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No.
40 45:

41 Nov. 8, Presidential statement.
42
43