USATF,	)	
	)	
Grievant,	)	
	)	
vs.	)	Grievance
	)	
LIONEL LEACH, Youth Division Chair/ Youth Athletics Committee Chair,	)	
	)	
Respondent.	)	

and

USATF	)	
	)	
Grievant,	)	
	)	
vs.	)	Disciplinary Action
	)	
Lionel Leach (Youth Division Chair/ Youth Athletics Committee Chair), et al.,	)	
	)	
Respondents.	)	

Appearances:

Panelists:	John Bahakel, Chair Alisa Harvey Jeff Porter
USATF:	Norman Wain, Esq. Anthony Prather, Esq. Donald Woodard, Esq.
Assisted by:	Sarah Austin
Respondents:	David Greifinger, Esq. Crystal Wildeman, Esq. Christopher Lee, Esq.

ARBITRATION AWARD

This matter came on to be heard by a National Athletics Board of Review ("NABR") three (3) member Panel pursuant to Regulation 21 of the USATF Operating Procedures. Initially, the Panel was seated to hear the grievance filed by USA Track & Field against Lionel Leach, the Youth Division/Youth Athletics Committee Chair. During the pre-hearing conference held on the 13th day of June 2016, the parties consented to combine the grievance with the disciplinary action filed by USATF against Lionel Leach, the Youth Division/Youth Athletics Committee Chair and Ron Mascarenas, Kenneth Ferguson, Dorothy Dawson, Linda Ellis, Linda Phelps, Norrine Richardson, Henry McCallum, David Reinhardt, Inez Finch, March Jones, Mary Elizabeth Aude and Jacqueline White as members of the Youth Executive Committee.

ISSUES

1. Are the CEO and Board of USATF or their designees the proper parties to select vendors and/or enter into contracts which affect USATF?

2. Did Lionel Leach, as Youth Division Chair/Youth Athletic Committee Chair, overstep his authority by asserting himself in the overall event registration vendor selection process?

3. Did Respondents, Leach and members of the Youth Executive Committee's, conduct surrounding the selection of a vendor to provide registration services for the four national youth championships exceed the scope of volunteer roles, impact the viability of those championships and negatively impact USATF's ability to fulfill its obligations to its vendors and sponsors?

4. Did USATF violate Article 14-E of the USATF Bylaws and Section

220522(a)(8) of the Ted Stevens Olympic and Amateur Sports Act by suspending Respondents prior to notice and an opportunity for a hearing?

ARGUMENTS

USATF argues that it's National Office members are the proper parties with authority to enter into contractual agreements and handle the event registration process selection for all of its various sport committees and that its CEO is charged with ensuring that all contracts and other legal commitments of USATF are signed by the authorized USATF officers as set forth in Article 12-A-7 of the USATF Bylaws. It also argues that USATF Bylaw, Article 12-A-8 designates the CEO as the one responsible for the commercial aspects of USATF and USATF Bylaw, Article 12-A-9 requires the CEO to take the necessary steps to protect USATF and the sport's integrity.

USATF argues that Respondent, Leach, overstepped his authority by asserting himself in the overall event registration vendor selection process creating liability concerns for USATF. It is further argued that Respondent, Leach, overstepped his authority when announcing the selection of a vendor whose services would impact the entire organization.

USATF further argues that Respondents challenged USATF's decision to use Athletic.net as the event registration system for the 2016 youth championship events by: 1) cancelling (in name only) four (4) of the six (6) youth zonal meets and allowing a substitute meet to be conducted utilizing a different event registration system; 2) by communicating to members to boycott the use of Athletic.net; 3) by publishing videos claiming that the Athletic.net system was not operational; 4) by circulating a petition encouraging members to object to the use of the Athletic.net service; and, 5) by distributing a Resolution discouraging use of Athletic.net. In addition, USATF avers that the actions of Respondents subjected it to potential legal actions as well as caused

disharmony among members. USATF avers that immediate suspension of Respondents was necessary to protect USATF from liability to third parties and to protect the sport's integrity.

Respondents argue that USATF is estopped from taking any action against them because USATF failed to communicate the contents of the Athletic.net contract with the Youth Committee during its negotiation phase as called for in Article 18-I of the USATF Bylaws. Respondents further argue that they have the right to conduct and manage youth meets as set forth in Regulation 15-C-1-a of the USATF Operating Regulations and in doing so have the authority to contract with vendors. Respondents also argue that USATF should have allowed notice and an opportunity for a hearing prior to imposing a suspension of Respondents.

FINDINGS OF FACT

USA Track & Field, Inc. ("USATF") is a non-profit corporation acting as the National Governing Body ("NGB") for Athletics in the United States under the Ted Stevens Olympic and Amateur Sports Act, as authorized by the United States Olympic Committee. The purposes of USATF are: 1) Developing interest and participation in Athletics in the United States at all levels; 2) Promoting Athletics and athletes by conducting competitions and other events, and cooperating with and encouraging other organizations that may do so; 3) Fielding the most competent United States individuals and teams for international competition in Athletics and providing support and conditions that ensure optimal performance to Athletes at all levels; 4) Generating public awareness, appreciation, and support for Athletics and for USATF, creating opportunities for athletes and Athletics events, and generating sponsorships to help fulfill its purposes and duties; and, 5) Promote diversity of representation at all levels of

participation in its activities.[1]

USATF is charged with exercising authority and jurisdiction over domestic competition, including national championships and international competition in the United States, and establishing procedures for determining eligibility standards for participating in these competitions, except for any sports organization which conducts Athletics competition, participation in which is restricted to a specific class of athletes such as high school students, college students, members of the Armed Forces, or similar groups or categories.[2]

USATF membership is made up of Individuals, Clubs/organizations, National Sports Organizations and others.[3]

Respondents, Lionel Leach, Ron Mascarenas, Kenneth Ferguson, Dorothy Dawson, Linda Ellis, Linda Phelps, Norrine Richardson, Henry McCallum, David Reinhardt, Inez Finch, March Jones, Mary Elizabeth Aude and Jacqueline White (Collectively "Respondents") are individuals who are volunteer members of USATF. They also participate in some manner as members of the USATF Youth Division/Youth Executive Committee ("YEC") or in concert with the YEC.

Prior to the current CEO's term, Leach had been allowed to take an active role in selecting vendors and negotiating agreements. The testimony revealed that CEO, Max Siegel and Leach met and discussed changing that pattern and practice. The National Office would handle the commercial aspects of USATF's business and the Youth Committee would conduct and manage its championships. This agreement coincides with Article 12-A-8, wherein the CEO would be responsible for managing all of the

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[1] USATF Bylaws, Article 3.

[2] USATF Bylaws, Article 4-D-1-b. and Article 4-D-3.

[3] USATF Bylaws, Article 5.

commercial aspects of USATF.

During the spring/summer of 2015, USATF was in discussions with Active Network, LLC to provide a variety of programs, including event registrations as part of a potentially lucrative revenue sharing deal. USATF also stood to gain access to over 500,000 athletes who were part of the Active Network database with potential to become members of USATF. Active Network's system recognized and would work with the HyTek meet management system the then current system used by most of the youth member groups.

In October 2015, some of Respondents met with and began negotiating a deal with Direct Athletics owner of the Meet Pro meet management software and Direct Athletics on-line meet registration. At the end of October, 2015, one of the Respondents distributed an e-mail advising that the youth division would be using Meet Pro meet management software and Direct Athletics online registration for all youth Association, Regional, Zonal and National Championships and that the Computer Committee would play a key role in that transition. When word of the apparent selection by the USATF Youth Division to change its meet management software one of the venders negotiating a sponsorship deal with USATF National Office, Active Network, contacted USATF and expressed its concern about the announcement and advised of problems with compatibility between its event registration product and Meet Pro software.

In November, 2015, USATF's COO, Renee Washington ("Washington"), and Respondent, Lionel Leach ("Leach"), were part of conference call that addressed a number of topics one of which was the search for an event registration provider. Both Washington and Leach acknowledged that the Coach O (the then current on-line event registration provider) contract would expire at the end of the year. Leach stated that he was negotiating with Direct Athletics for event registration. Washington shared that USATF was conducting due diligence toward selecting a new event registration

provider. Leach suggested that USATF consider Direct Athletics and attempted to forward information to Washington about Direct Athletics via electronic mail. Neither Washington nor Leach shared with the other any of the meaningful contents of the contracts they were negotiating but only spoke in general terms. Minutes of a youth Computer Committee meeting reflect that Leach instructed the committee to keep information about negotiations (with Direct Athletics) within the group until details and decisions had been made.[4]

The Meet Pro software personnel were allowed to address the Youth Committee at its workshop at the 2015 USATF annual meeting in Houston, Texas, to the exclusion of other software providers. Without the authorization of USATF, Respondents openly announced that USATF youth would be using Meet Pro as its required meet management software. Active Network broke off discussions with USATF and ending the possibility of a sponsorship. Upon learning of the formal announcement regarding Meet Pro, the USATF Association Committee Chair, Karen Krsak, expressed concerns about the problems the change in software would cause and the costs to the various Associations.

USATF's National Office staff entered into a one (1) year deal with for Athletic.net to act as the event registration service provider for the 2016 Youth Championships.[5] The contract describes the scope of work to include all Association, Regional and National Championship youth events. On January 11, 2016, USATF released an announcement of the selection of Athletic.net as the on-line registration provider. Some of the Respondents expressed their displeasure with the timing of the Athletic.net announcement and that the youth Computer Committee was not a part of the selection process.

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[4] USATF Exhibit 29.

[5] Respondent's Exhibit 3.

In an act of resistance to the use of Athletic.net, the youth Computer Committee found that a registrant could make incorrect entries into the registration system whereupon Leach and the Respondents then declared the Athletic.net software not operational.[6] A number of the Respondents acknowledge that there were registration events that the software allowed which were contrary to the intended design, however, the problems were not insurmountable and could be corrected. There were similar problems when the Coach O on-line registration was first utilized.

In a further act of resistance, Leach posted a youtube video alleging safety concerns and problems with the on-line registration system which necessitated the need to cancel four (4) of its six (6) youth zonal meets.[7] Athletes from the cancelled zones were allowed to direct advance to the national championships. The Host zone and Northeast Zone were required to compete for advancement slots to the national championships. The assertion that the Athletic.net on-line registration service was not operational was inaccurate. Complaints escalated from the Associations committee members, club coaches, parents and others relative to cancellation of some but not all of the zonal meets, direct advancement of athletes, uncertainty of which event registration provider to use and who was in control of USATF events. The dissemination of information through youtube and e-mail that Athletic.net was not operational and the cancelling of zonal meets were potential legal concerns for USATF and interfered with its business affairs.

USATF filed a grievance on February 2, 2016, against Lionel Leach, Youth Division Chair/Youth Athletics Committee Chair seeking declaratory relief as to the respective rights of USATF National Office and Leach regarding who is the proper party

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[6] There are special requirements set out in USATF Competition Rules, Section VI, dealing with youth based upon age and gender. A registrant could improperly register.

[7] The testimony was that although 4 "zonal" meets were cancelled the athletes were allowed to compete on the same day, in the same venue, registering under a different on-line registration service, without their performance affecting their ability to advance to the nationals.

to manage the commercial aspects of USATF, select vendors and/or enter into contracts which affect USATF. USATF also grieved that Mr. Leach overstepped his authority by asserting himself in the event registration vendor selection process when he selected Meet Pro as the meet management software for all of the youth division, he negotiated contract terms with Direct Athletics for event registration services and he interfered with USATF business affairs.

A mediation relative to the grievance was conducted pursuant to Regulation 21-G of the USATF Operating Procedures. The mediation was unsuccessful.

While the grievance was pending, Leach and the YEC conducted meetings to discuss how to handle the differences they were experiencing. Some of the discussed items included possible boycotting the use of Athletic.net, objecting to the manner in which Athletic.net was selected and objecting to the attempted exercise of jurisdiction by the National Office in Association and Regional Championships. The Respondents then drafted a Resolution[8] effectively asking members to resist the use of Athletic.net. The Respondents also drafted a Petition[9] encouraging members to object to the use of Athletic.net. Some Respondents testified that the Petition was an effort to send an indirect message to the National Office. In May Leach published another youtube video in a further effort to further encourage resistance of the use of Athletic.net. There was testimony that at times there was no stopping Leach.

Hershey and Athletic.net expressed concern over the actions of Leach suggesting possible breaches of contract and damages. Local organizing committees began to anticipate that the conduct of the youth committee would negatively impact their championship event participation and income and voiced their concerns to the National Office staff. Some asked for financial assistance from USATF based upon

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[8] USATF Exhibit 11.

[9] USATF Exhibit 10.

anticipated losses. USATF felt that it was in immediate danger legally and financially and after Board approval suspended the Respondents on May 25, 2016, in an effort to avoid additional potential exposure.

On May 26, 2016, Respondents filed a Complaint with the United States Olympic Committee seeking revocation of the suspensions, revocation of USATF as an NGB or placement of USATF on probation and for expedited relief.[10]

In accordance with USATF Operating Regulation 21-B, a Hearing Panel of three (3) members was proposed for the purposes of hearing the instant grievance against Leach. The proposed Panel members were: John Bahakel, Chair, Alisa Harvey, member at large and Jeff Porter, active athlete.

After notice to all parties of the proposed Panel members neither USATF nor Respondents voiced an objection to the composition of the Hearing Panel.

On June 3, 2016, USATF filed a disciplinary complaint against Respondents.

On June 13, 2016, a pre-hearing conference was conducted. During the pre-hearing conference the parties mutually agreed to the consolidation of the grievance and the disciplinary action. The parties discussed the obligations, attention and time needed by the Grievant, the Grievant's counsel, the Respondents' counsel and one of the Panel members relative to the U. S. Olympic Track & Field Trials, the Olympic Games as well as the parties desire to conduct discovery. Based upon those discussions the parties agreed to delay the hearing on the merits of both the grievance and disciplinary matter until after an October 31, 2016, discovery cutoff. The hearing was scheduled for November 14, 2016. Neither party objected to the November setting.

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[10] USATF Exhibit 21.

A mediation relative to the disciplinary action was unsuccessful in resolving the disciplinary action.

On November 7, 2016, in a pre-hearing conference the parties stipulated that the matter of the grievance and the matter of the disciplinary matter were arbitrable.

An in-person hearing was begun on November 14, 2016.

CITATIONS

ARTICLE 12
NATIONAL OFFICE MANAGEMENT

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7. Legal documents and commitments: Ensure that all contracts and other legal commitments of USATF are signed by the authorized USATF officers after approval by established procedures. Consistent with Article 18-I Contracts, unless the Board otherwise directs, the CEO or another USATF staff member the CEO designates and the Chair (where appropriate) shall sign all contracts and commercial agreements;

8. Commercial aspects: The CEO shall be responsible for managing all commercial aspects of USATF;

9. Protect USATF interests: Take actions, under the Board's direction, reasonably necessary to protect USATF from liability to third parties or to protect USATF's and the sport's integrity. The CEO may act under this paragraph without first consulting the Board only under extraordinary, time-sensitive circumstances, and shall consult with the President, Board Chair and other appropriate individuals in connection with the action;

ARTICLE 14
DISCIPLINARY AUTHORITY AND GRIEVANCES

A. Disciplinary authority: USATF shall have the authority to discipline any member, delegate, athlete, coach, manager, official, trainer, member of any committee, and any other person or entity participating in Athletics who, by

neglect or by conduct, (i) acts in a manner detrimental to the purposes of USATF or Athletics, (ii) has violated any of the Bylaws, Operating Regulations, or Rules of Competition of USATF, IAAF rules, or the Sports Act, (iii) has violated any provision of the USATF Code of Ethics and their related Codes of Conduct, (iv) has violated a commitment as a national team member, or (iv) has violated the rules of eligibility.

. . .

C. Redress of grievances: A grievance may be any matter within the cognizance of USATF other than doping offenses.

D. Opportunity to participate: Any athlete, coach, trainer, manager, administrator, or official who alleges that he or she has been denied an opportunity to participate in Athletics competition shall be entitled to fair notice and opportunity for a hearing. Hearings for these matters, other than for doping offenses, shall be conducted under Regulation 21.

E. Hearing Rights of persons or entities charged: USATF and its Associations shall provide any athlete, coach, trainer, manager, administrator, official, other individual, or entity subject to a Grievance or Disciplinary proceeding with fair notice and an opportunity for a hearing prior to deciding the matter or imposing any penalty. All parties may have representatives, who may be attorneys, and shall have the right to present evidence and witness testimony and to cross-examine adverse witnesses. Hearings for all matters other than doping offenses shall be conducted under Regulation 21.

ARTICLE 18
FISCAL AND LEGAL MATTERS

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I. Contracts: Contracts not in USATF's ordinary course of affairs shall be examined and approved for form by the Counsel to the Board or by USATF's Special Legal Counsel prior to execution. The contents of all contracts affecting sport committees shall, during their negotiation phase, be communicated to the appropriate committee(s) and the Athletes Advisory Committee. The CEO, and the Chair (or another officer the Chair designates) shall sign, on behalf of USATF, all contracts of one year or less exceeding $250,000 in cash value, and all multi-year contracts valued at more than $100,000, cash value, for any contract year. If required, the Secretary shall attest to those contracts. Unless the Board otherwise directs, the CEO or another USATF staff member the CEO designates shall sign all other contracts.

ACTION TAKEN

The Hearing Panel was properly convened and hearing conducted pursuant to Regulation 21 of the USATF Operating Procedures.[11] In a split decision, the majority of the Panel finds as follows:

USATF is the National Governing Body for Athletics in the United States. It is responsible for among other things, promoting Athletics and athletes by conducting competitions and other events. USATF's CEO is responsible for managing all commercial aspects of USATF. The National Office determined that USATF would benefit from a commercial arrangement with an on-line registration service and such determination falls within its authority to manage the commercial aspects of USATF. Therefore, the proper party to take advantage of that opportunity is the CEO or his designee.

It is the decision of the Panel that the National Office is responsible for managing all commercial aspects of USATF including the selection of an on-line registration service provider.

The testimony and exhibits reveal that Mr. Leach began negotiating with vendors and deciding upon contract terms, keeping them within the Youth Committee, at least as early as of October, 2015.[12] Leach understood that contracts affecting USATF had to be signed by someone from the National Office as set out in Article 12-A-7 and the commercial aspects of USATF were reserved to the CEO under Article 12-A-8 and his

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[11] Regulation 21-M-2 requires a hearing to be scheduled within 30 days of the pre-hearing conference. The hearing date was postponed as allowed by Regulation 21-M-3 by agreement of the parties in order to allow the disciplinary action mediation, to allow the parties counsel and Panelist Porter to attend to responsibilities associated with the Olympic Trials and the Olympic Games and to allow the parties time to complete discovery.

[12] USATF Exhibit 30.

discussions with Max Siegel, however, he continued in negotiations. In November, 2015, when Leach and Washington were discussing on-line registration systems, Leach could have disclosed his activities to Washington but elected not to do so. When Athletic.net was announced as the event on-line registration provider, Leach took steps to encourage resistance of the use of the Athletic.net service. Leach overstepped his authority by asserting himself in the overall event registration process.

However, Jill Geer began a search for a new on-line registration service provider in the spring/summer of 2015. By the fall of 2015, USATF was in the negotiation phase of an agreement with one or more on-line registration service providers and did not disclose the contents of those negotiations with Leach or the Youth Committee. USATF did not comply with the requirements of Article 18-I.

It is therefore the decision of the panel that USATF and Leach are equally at fault and neither are entitled to pursue discipline under this portion of the grievance as filed.

In December, 2015, Leach, without consultation or approval from the National Office or consultation with the Associations Committee publically announced the selection of Meet Pro as USATF's meet management system. The announcement resulted in the cessation of negotiations with a potential national sponsor to the detriment of USATF. The announcement also resulted in complaints from the Associations Committee and some of the membership.

A one (1) year contract was made with Athletic.net to provide event registration service for the youth championships. Respondents reviewed the Athletic.net on line registration and found some registration entry concerns. In an act of resistance to using Athletic.net Respondents elected to cancel four (4) of the zonal meets citing safety issues and issues with on-line meet registration. Two (2) of the zonal meets were required to be contested. Lauren Primerano testified that she utilized the

Athletic.net on-line registration for her meet and was able to conduct the meet.

The testimony was clear that between the announcement of Athletic.net as the on-line event registration service and May 25, 2016, Leach posted two (2) videos encouraging resistance of the use of Athletic.net on-line registration system, had e-mail and phone messages distributed in an effort to inspire resistance, and participated in efforts to disrupt the orderly operation of USATF to the detriment of USATF in violation of Article 14-A-1 of the USATF Bylaws. It is the decision of the Panel that Leach's actions warranted a suspension. Leach is hereby suspended from any activity with USATF until May 25, 2017. Leach is further enjoined from holding any leadership position within USATF until May 25, 2018.

The remaining Respondents participated, off and on, in calls and/or meetings between January 2016 and the filing of the disciplinary action in June where resistance to the implementation of Athletic.net was discussed and voted[13] on, assisted with drafting the Resolution of May 2, 2016, assisted with drafting and/or distributing the Petition requesting members to object to the selection of Athletic.net, and/or expressed displeasure with USATF National Office making decisions which were not popular with one or more members of the Youth Executive Committee. The Panel finds, however, that USATF did not meet is burden in proving that the actions of the remaining individual Respondents escalated to the point of being a violation and therefore the request for disciplinary action is denied as to the remaining individual Respondents. Even thought the Panel was not ultimately persuaded by USATF that the actions of these remaining individual Respondents' amounted to actionable events, we do not find the claims to be frivolous. Accordingly, we deny Respondents' request for sanctions. Notice of the denial of suspensions under this paragraph should be published in the same fashion as was utilized in publishing the notice of suspension.

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[13] While the motion to boycott the use of Athletic.net was discussed by the Youth Executive Committee there was not a second to the motion and the motion to boycott failed.

The purposes of USATF are: 1) Developing interest and participation in Athletics in the United States at all levels; 2) Promoting Athletics and athletes by conducting competitions and other events, and cooperating with and encouraging other organizations that may do so; 3) Fielding the most competent United States individuals and teams for international competition in Athletics and providing support and conditions that ensure optimal performance to Athletes at all levels; 4) Generating public awareness, appreciation, and support for Athletics and for USATF, creating opportunities for athletes and Athletics events, and generating sponsorships to help fulfill its purposes and duties; and, 5) Promote diversity of representation at all levels of participation in its activities. The actions of Respondents posed a threat, whether actual or perceived, to USATF and USATF's being able to fulfil its stated purposes. In suspending the Respondents on May 25, 2016, and having a Panel seated by June 3, 2016, provided Respondents an opportunity to avail themselves of an immediate hearing. As testified by Mr. Adams of the USOC, the quick opportunity for a hearing would allow for compliance with the notice and right to present evidence requirement under USOC rules and Section 220522(a)(8). The same reasoning applies to the USATF rules in Article 14-D and 14-E. It is the Panel's decision that the counter-claim of Respondents is denied.

This Panel was not charged with nor makes any ruling with respect to any other matter pending between the parties.

Any party adversely affected by this decision may appeal it as allowed under Regulation 21-R of the USATF Operating Regulations.

DONE this 3rd day of March, 2017.

/s/ John Bahakel
John Bahakel, Chair
On behalf of the Panel Majority

A dissenting opinion of Panelist Harvey follows.