

Symposium on Dispute Resolution in Sports

Olympic Team Arbitrations: The Case of Olympic Wrestler Matt Lindland

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OLYMPIC TEAM ARBITRATIONS: THE CASE OF OLYMPIC WRESTLER MATT LINDLAND

Steven J. Thompson*

I. INTRODUCTION

We have been very fortunate in this conference to hear a lot about rules and strategies for sports arbitration, but we feel especially fortunate at Jenkins & Gilchrist, having been part this summer of the saga of Matt Lindland, a Greco-Roman wrestler whose battle for a spot on the United States Olympic Team led him from a wrestling mat to the front page of the sports section, and all the way to the United States Supreme Court. I am pleased to have the opportunity to discuss the complex procedural path of this most interesting case, and I hope that I can add a bit more perspective from the trenches.

Matt Lindland is a Greco-Roman wrestler who was competing for a spot on the United States Olympic Team in Sydney. Matt is a tremendous wrestler, a four-time national champion at the 76 kilogram weight class, and a really wonderful person. At the outset, I would also like to say that Keith Sieracki, who ended up being Matt's opponent in all this litigation is also a really wonderful kid. They are both very dedicated athletes and nice people. I do not think that this case was ever about Matt Lindland and Keith Sieracki; it was about the process and the rules and the way they were applied by the national governing body of wrestling and the United States Olympic Committee ("USOC").

We had no idea what we were getting into when I responded to Matt Lindland's request for help. We had no clue that we would go from a wrestling match all the way to the United States Supreme Court over the course of about six weeks. In that time, we presented Matt's case to a grievance committee, two different American Arbitration Association arbitrators, five different federal district judges, the Seventh Circuit Court of Appeals (three times), Justice Stevens on behalf of the United States Supreme Court, and three Court of Arbitration for Sport ("CAS")

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arbitrators. You can see it was a pretty wild summer and we did not get a whole lot of sleep.

I think our experience this summer serves as a significant case study of what is right and wrong in sports arbitration, and I am happy to have the chance to discuss some of the lessons we learned along the way. I am also happy to report that the story has a happy ending. Despite all the distractions, Matt Lindland brought home a silver medal from the Sydney Olympics. Matt's story is one of true perseverance, and we are very proud that things turned out so well for him.

II. LINDLAND'S LOSS AND PROTEST

This saga, as it has been described, started very simply at the U.S. Olympic Trials in Dallas in June. Matt wrestled Keith Sieracki in the three match final, and in the deciding match, it was determined that Matt lost the match by a score of 2-0. Matt felt that he had won the match because he was fouled by Sieracki, and he was told by the wrestling elite who observed the match (including current and former Olympic coaches, national coaches and other officials of USA Wrestling, which is the national governing body for wrestling) that he ought to appeal. He was also told by some of these officials that it was the most poorly officiated wrestling match they had ever seen.

Matt was encouraged by all these people to protest, and he did so within thirty minutes of the match as is allowed under the Olympic Trials procedures. I will tell you that Matt has been wrestling the Greco-Roman style for fifteen years and this was the first time that he had ever filed any protest of any kind. He felt that this one was important enough and felt that he was in the right.

Unlike many other sports, wrestling has a long tradition of allowing protests of matches, including questions of certain aspects of the officiating, for reasons that I, frankly, find somewhat dubious. I do not feel that field-of-play decisions ought to be made by protest committees, but that is the grand tradition in wrestling and if that is what the sport chooses, they are free to organize themselves in their own way. The International Federation of Associated Wrestling Styles ("FILA"), which is the international governing body of wrestling, in fact, uses videotape review in closed-door protest committees, which often reverses the scoring without even re-wrestling the match. The committee can come out of the protest room and say, "Oh, the scoring was wrong and we changed the results of the match." USA Wrestling's procedure is a bit different from that. They have modified the rules to exclude the use of

videotape (which I do not agree with) and when the protests are upheld, the matches in question are re-wrestled (which I do agree with).

Matt Lindland took his initial protest to the Protest Committee on site at the Olympic Trials, and that protest was denied. Now in these committees, USA Wrestling draws a distinction between what is a "judgment call" (which cannot be reversed) and what is considered a "misapplication of the rules" (which can be reversed). Based on our experience, this is a distinction that is outcome determinative in my opinion. If the committee wants to reverse a disputed call, it is labeled a misapplication of the rules, and if not, it is labeled a judgment call. If you just think about the words, there must come a point where an official's "judgment" is so bad that he must not understand the rules, so he has "misapplied the rules." So, it is really all about judgment and about reviewing what happened on the mat.

At that first protest committee, Matt presented testimony of the coaches and others who saw the match because, again, USA Wrestling rules exclude review of the videotape. Remember that these are relatively unsophisticated proceedings, which take place within thirty minutes of the conclusion of the match and without the benefit of any rules of evidence or procedure. Matt argued that Keith Sieracki had tripped him during the final match to achieve the two points that he earned, giving Sieracki the 2-0 win in the match. In Greco-Roman wrestling, rule violations like tripping are routinely reversed and there was testimony concerning that issue. However, the Protest Committee members were told during the hearing that tripping was a judgment call and could not be reversed. So the outcome was, in some respects, pre-ordained, at least at the Olympic Trials.

When I say that there were strong opinions expressed about this match, the Olympic coach, Dan Chandler, whenever asked about the incident (when he was allowed to testify about it), said it was the worst thing he had seen in thirty years of coaching and felt that it was so bad that there must be some kind of conspiracy. Those are pretty strong words, especially from the Olympic coach who was trying to be something of a politician in this whole situation. But again, because it had been labeled a judgment call, the outcome was negative for Matt.

At that point, Matt needed a lawyer. Matt contacted Jenkins & Gilchrist through an associate in our Austin office, whose brother is a wrestler and a friend of Matt's. I got an e-mail from the Austin office saying, "Does anybody know anything about sports arbitration?" Now,

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I had represented an athlete in one U.S. Cycling Federation appeal some years ago, and I had also been involved earlier in my career in NCAA infractions work, where I investigated and prepared arguments presented to the NCAA Committee on Infractions. There were at least some parallels and I thought, "Well, I probably know as much as anybody. I will talk to this guy." The more we talked to him and studied the rules, the more we felt like he had a valid protest and something to say.

The Ted Stevens Act requires the National Governing Body ("NGB") to allow aggrieved athletes an opportunity for a hearing and to present evidence and a swift and equitable resolution of their disputes. Specifically, under Article IX of the USOC Constitution and the Ted Stevens Olympic and Amateur Sports Act, Matt had a right to further appeal within the national governing body for his sport, in this case USA Wrestling. Section 220509 of the Ted Stevens Act, which created the NGB structure and the rights of aggrieved athletes, requires the NGB to "establish and maintain provisions in its constitution and bylaws for the swift and equitable resolution of disputes involving any of its members and relating to the opportunity of any athlete to participate in the Olympic Games."¹ To this end, in its Bylaws, USA Wrestling provides that "a hearing shall be held on the matter before the appropriate Sport Committee" and that at the hearing, the affected individual "shall be given a reasonable opportunity to present oral or written testimony, to examine pertinent evidence and to exchange views."² As you will see, this language became very important as we went down the line in our case.

We filed the grievance with USA Wrestling as provided by the rule. The grievance was referred to the Greco-Roman Sport Committee, which is the relevant sport committee within USA Wrestling. It is composed of athletes, coaches, and administrators who are elected to terms of varying lengths. The Committee handles all matters relating to Greco-Roman wrestling for USA Wrestling - not only athlete disputes, but also rule changes, arrangements for competitions, and all other aspects of Greco-Roman wrestling. During the grievance hearing, we argued that there were fundamental problems which resulted in Matt being wrongly declared the loser of the match. First, we argued that the match was officiated horribly and that the result could be reversed because the rules had been misapplied. Second, we argued that we should be allowed to

¹ Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. § 220509 (1994).

² USA Wrestling Bylaws, 12.4, 12.6.

show the videotape of the match to the grievance committee, and that to not allow the videotape review was a violation of the process that Matt had been guaranteed. And finally, we argued that Matt was denied the opportunity to even present his case to the full Greco-Roman Sport Committee, as required by the rules.

This last argument was really handed to us on the day before the hearing. On that day, one of the administrators of USA Wrestling informed me that of the nine-member Greco-Roman Sport Committee, four of the members would be excluded from Matt's hearing for conflicts of interest. I assumed that meant that USA Wrestling had conflict of interest rules that would apply to this situation, and I asked for a copy of those rules. USA Wrestling called back a couple hours later (now with lawyers on the line), to say, in effect, "We really don't have any rules that would apply to this, but we just think on general principles that these people ought to be excluded because they might be biased in favor Matt's position." I thought this was astounding. We looked at the rules, and although USA Wrestling does have rules regarding financial conflicts of interest, they did not apply to this situation. In any event, four members of the Committee were excluded, without any basis in the rules.

I think that it is really important to understand the conflicts of interest at issue in this particular context. The Greco-Roman wrestling community, especially at the highest levels, is a very small, close-knit community, and it is difficult to find somebody who does not know the top competitors, or has not coached or wrestled with or against them. As a result, it is very difficult to put together an entirely untarnished committee, and these people are, in fact, elected to be on the committee because they know what is going on in the world of Greco-Roman wrestling and can make important decisions. In Matt's case, I would also point out that two of the excluded members testified in later proceedings that they felt they could be entirely unbiased and were confused as to why they had been excluded.

At the Greco-Roman Sport Committee hearing itself, more problems arose. As we sought to introduce the testimony of the Olympic coaches, the Committee and its counsel indicated that they felt it would be inappropriate for the coaches to give their opinion about the match. Now, remember, we could not show the videotape, and having a lawyer from Chicago come in to try to describe a Greco-Roman wrestling match was not going to work. The best thing would have been for the Olympic coaches and the experts who actually saw the match to describe what

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happened. Certain Committee members and counsel for the Committee, however, made it abundantly clear that they believed that this testimony would be entirely inappropriate. There was quite a bit of discussion – some of it heated – about whether coaches could, in fact, give this testimony. The rules provided that we were entitled to present the witnesses and the evidence that we believed relevant to the case, but after a long colloquy about the propriety of the testimony, the Olympic coaches testified that they were now “too uncomfortable” to say anything. As a result, we believed Matt was prevented from presenting the evidence we had hoped to elicit from these witnesses. Not surprisingly, given the paucity of real evidence allowed at the hearing, the now five-member Greco-Roman Sport Committee denied Matt’s protest after their executive session.

III. THE BURNS ARBITRATION AND AWARD

The next step in the process was the USOC arbitration process that you have heard a lot about today, conducted under the auspices of the American Arbitration Association. The Ted Stevens Act requires the NGBs to “submit to *binding* arbitration in any controversy involving...the opportunity of any amateur athlete...to participate in amateur athletic competition.”³ The aggrieved athlete has the express right to initiate such arbitration. The Act states that a “party aggrieved by a determination of the corporation [NGB] under section 220527 or 220528 of this title may obtain review by any regional office of the American Arbitration Association.”⁴ Section 220529(d) again provides that such arbitral awards are “binding on the parties if the award is not inconsistent with the constitution and bylaws of the corporation.”⁵ All provisions of the Act made it very clear that this would be a binding arbitration.

Article IX, § 2 of the USOC Constitution also provides that the case filed at that juncture is against the NGB, not against any other athlete in stating that any “claim *against such USOC member* will be submitted to arbitration.”⁶ In Matt’s arbitration case, it was clear that the proper adverse party was the USOC member, USA Wrestling, and there was really no mechanism to implead any other party who might be potentially affected. This is unfortunate in individual athletic

³ 36 U.S.C. § 220522(4)(B) (1994) (emphasis added).

⁴ 36 U.S.C. § 220529 (a) (1994).

⁵ 36 U.S.C. § 220529(d) (1994).

⁶ USOC CONSTITUTION, art. IX, §2 (emphasis added).

competitions, where only one athlete can go to the Olympics while another is displaced, but that is the process currently in place.

At the AAA arbitration, the evidence admitted was very different from what the Greco-Roman Sport Committee permitted to be introduced. The Olympic coaches testified that they thought the match was a travesty and that these kinds of rule violations - in their experience on protest committees and grievance committees - are, in fact, reversible under the rules of USA Wrestling. They also testified that when they tried to testify at the Greco-Roman Sport Committee, they were, in their words, "shouted down by the Committee and the lawyers." USA Wrestling also admitted that they did not have any conflict of interest rules that applied to the alleged conflicts, but had excluded these members based on general principles.

The arbitrator, Daniel Burns, also decided to review the videotape of the match. He asked the parties to leave the room, stating that, "I am going to watch this videotape one time. I understand USA Wrestling's rules do not allow for that, but I think that it is important to Mr. Lindland's argument that the videotape was, in fact, essential to a fair and equitable hearing." So he did watch the videotape one time and then directed the parties neither to mention it nor to elicit further testimony about it.

Around midnight on August 9, 2000, Arbitrator Burns issued his opinion. In his ruling, he found that USA Wrestling's procedures up to that point had not been fair, and that Matt had been denied the prompt and equitable process that he was entitled to by the exclusion of the Greco-Roman Sport Committee members and the chilling of the testimony of the Greco-Roman Sport Committee. He also acknowledged that he could not go back and re-create a fair environment for the hearing by simply sending the case back to the Greco-Roman Sport Committee. Arbitrator Burns was also aware of the time pressure created by the fast-approaching Olympic Games. It was not clear that the Greco-Roman Sport Committee could be reconvened, with sufficient time for another grievance if one of the athletes was dissatisfied with the outcome, and then a possible re-match, all before the start of the Olympic Games.

Seeing no other alternative to protect Matt's right to present his protest, Arbitrator Burns ordered that the match between Matt and Keith Sieracki be re-wrestled on Monday, August 14, 2000, in accordance with the Olympic Trials Rules that had been in effect. Arbitrator Burns'

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opinion jumped to the end and stated, in effect, "Look, this was an unfair process. He was entitled to present his arguments and the facts that he wanted to present. He was deprived of that opportunity, and the only way to vindicate his rights now is to re-wrestle the match."

There has been criticism of the Burns decision because it did not make a finding on the rule violations that were alleged to have occurred during the match itself. However, we believe that Arbitrator Burns did not need to reach those issues and to do so would have deprived Matt of the opportunity that he and other athletes are guaranteed to have protests resolved fairly within the sport of wrestling. That is really what Matt wanted all along. All of the subsequent proceedings in the federal courts (which we will discuss in a few minutes) were not what Matt wanted at all. Matt truly believed that he had to continue his fight for the good of his sport, to protect the rights of other athletes to present protests within the sport of wrestling, and to have those protests resolved in a fair and equitable manner. Arbitrator Burns ruled that the only way under the circumstances to protect those rights was to re-wrestle the match, and Matt agreed and began to prepare.

IV. RE-MATCH AND THE CAMPBELL ARBITRATION

It was rather funny the night we received the decision that the match would be re-wrestled. As I said, I got a call at home that the decision was being faxed to my office at about midnight on Wednesday night, so I ran down to the office to read the decision. I was elated, and I called Matt at home. Matt wrestles in the 76 kilogram weight class (which is 167½ pounds), and I said, "Matt, great news - we won and you are going to re-wrestle your match on Monday, which means you are going to have to weigh in on Sunday night at 6:00 p.m. How much do you weigh now?" He said, "About 184." Now, I personally have been trying to lose the same ten pounds for about ten years. This guy had less than three days to lose 17 pounds!

Matt lost the weight and was fine. However, we believed that this created a potentially dangerous situation, one that wrestling has taken steps to avoid in recent years. Under these special circumstances, we asked USA Wrestling for a two kilogram weight allowance as they sometimes allow in international competition, but at that point they were not doing us any favors and told us, "You are going to wrestle at scratch weight at 6 p.m. on Sunday night." I suppose that one way to have resolved the matter would have been if one of the athletes had not made their weight.

In any event, both wrestlers made weight and the match was held on Monday, August 14, 2000. I teased Matt later by saying that it appeared he did not have much confidence in his lawyers since he did not keep his weight down for the possible rematch.

We went to the Olympic Training Center in Colorado Springs for the re-match on Monday, August 14, 2000. It was a very different environment than the Olympic Trials. There were 30,000 screaming wrestling fans at the Olympic Trials in Dallas, but at the re-match there were probably less than 200 people in a gym at the Olympic Training Center, including many Olympic-bound athletes, and many members of the U.S. Army and Air Force wrestling teams on hand to cheer their teammate, Keith Sieracki. Matt had only a handful of supporters, including myself, his father, and his best friend.

Matt won the re-match 8-0. I do not know how he did it after losing 17 pounds in three days, but it was a real tribute to him. At that point we thought everything was over and that Matt was headed for Sydney. I was on my way to the airport in Colorado Springs when my cell phone rang. A reporter from *USA Today* asked, "What do you think about the Keith Sieracki protest?" I thought Sieracki might have protested the 8-0 decision in the re-match, so I told the reporter that there did not seem to be any basis for a protest, as Matt won decisively. However, Sieracki had, prior to the match - and unbeknownst to any of us - filed his own arbitration proceeding. He had alleged that the first proceeding had been flawed, and that because he was denied an opportunity to participate in the Burns arbitration, the first award should be set aside. Sieracki also contended that he was free to attack the first award and present arguments already presented to Arbitrator Burns. Within hours of his tremendous victory, I had to call Matt and tell him that we were right back at it. We were back in arbitration proceedings within 48 hours, with the final outcome very much in doubt. I could already tell that we might be heading into a procedural nightmare that none of the parties was going to like. As you now know, we did end up there.

The new arbitrator was Bruce Campbell from Denver, Colorado. Arbitrator Campbell held a two-stage hearing. The first part of hearing was to determine whether Sieracki had been entitled to participate in that first hearing, and, if so, whether Sieracki knew about the first hearing and had the opportunity to participate. Despite the fact that the arbitration rules make clear that the dispute is between the affected athlete and the NGB, Arbitrator Campbell ruled that Sieracki should have had a chance to participate. The next question tackled was whether

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Sieracki really knew about the first hearing? Sieracki testified in the first stage of the proceedings that although he knew about Matt's case, everyone told him not to worry about it. For Arbitrator Campbell, that was enough to conclude that Sieracki had been denied a meaningful opportunity to participate. Essentially, then, there would be a *de novo* hearing – a do over – of what had been done before.

I should tell you that the Sieracki proceeding was held under the Olympic Games Procedures, which take effect during the 45-day window before the opening ceremonies. Those rules provide that all potentially affected parties must be named. This makes sense because you cannot hold serial proceedings in the short window of time before the Olympic Games; there is just no time for it. This means that USA Wrestling was named as a party, and both Matt and the USOC were named as potentially affected parties.

At the commencement of the *de novo* arbitration, even Arbitrator Campbell professed some confusion about the effect of the Burns award on USA Wrestling, which, as you know, was now also a party to the Sieracki proceeding. We were all scratching our heads as to what effect, if any, there would be on USA Wrestling's ability to ignore the Burns award or to repeat certain arguments during the second arbitration. After the Burns award, USA Wrestling suggested many times that it was not taking sides and was merely defending its process. We believed, on the other hand, that USA Wrestling was bound by the Burns award, which was subsequently confirmed by the federal courts.

I felt that it was unfair of USA Wrestling to continue to argue in the second arbitration that its process was fair, when it had submitted to a binding arbitration process and an arbitrator had already ruled that, in fact, the process was unfair. To continue to argue and present evidence that the process was fair made it appear that USA Wrestling was taking sides, and we argued without success that USA Wrestling was estopped from doing so. Unless this were true, the first proceeding would have absolutely no *res judicata* effect on the second. Nonetheless, Arbitrator Campbell allowed USA Wrestling to make the same arguments and to present the same evidence on those issues. On August 23, 2000, Arbitrator Campbell held the second phase of his hearing in Denver with

Sergeant Sieracki, being represented by the U.S. Army Judge Advocate General Corps.⁷

As the second arbitration began, USA Wrestling was hedging its bets; it had not replaced Sieracki with Matt as its nominee to the U.S. Olympic Committee, but instead placed Matt on an eligibility list from which he could be designated as its nominee pending the outcome of the second arbitration. For this reason, we proceeded in federal court in Chicago (also on August 23) to confirm the Burns award, which appeared in all respects to be confirmable under the Section 9 of the Federal Arbitration Act,⁸ and thus entitled Matt to a spot on the team.

V. LINDLAND'S FEDERAL COURT CHALLENGES

My partners, Marion Adler and Kevin Duff, presented a petition in federal court on an emergency basis before Judge Suzanne Conlon of the Northern District of Illinois, and named as defendants both USA Wrestling and the USOC. Judge Conlon ruled that the case was moot and that there was no federal jurisdiction. The ruling was disappointing but I guess we were arrogant enough to think that because we won the first arbitration we would likely win the second. Despite our confidence, we decided that day to file an emergency appeal of Judge Conlon's ruling with the Seventh Circuit Court of Appeals. Although we did so rather reluctantly, it turned out to be the best decision we made in this case. As the day closed, the second arbitration was concluded, and the parties awaited decisions from both Arbitrator Campbell and the Seventh Circuit Court of Appeals.

The very next day, the Seventh Circuit issued the first of three rulings in the case. The court ruled that the case was not moot, because Matt contended that he was entitled to a spot on the team as a result of the arbitration award and the re-match victory. Since USA Wrestling had suggested that it had only until midnight on August 24 to designate its final nominee, the Seventh Circuit proceeded to answer the following question: "Does the award entitle Lindland to USA Wrestling's nomination for the Olympic spot?" The court answered by stating:

Here is its critical language a second time: "Bout #244 of the June 24, 2000 Olympic Trials will be re-wrestled in

⁷ Sieracki is a military police sergeant in the Army. He is in the Army's World Class Athlete Program, so he was entitled to, and in fact availed himself of, representation by U.S. Army counsel.

⁸ Federal Arbitration Act, 9 U.S.C. § 9 (1994).

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accord with the USA Wrestling rules and officiating in effect at that time." The new bout occurred and Lindland was declared its winner. The award plus the victory entitle Lindland to the Olympic spot. The arbitrator did not order an exhibition match between Sieracki and Lindland; he ordered that "Bout #244...be re-wrestled." Bout #244 is the championship match, and USA Wrestling's rules say that its winner receives its support going to the Olympic Games in Sydney as the U.S. representative....Rule 3.2.1 of USA Wrestling's "2000 Olympic Trials Procedures" does not say that USA Wrestling will nominate the winner of the championship bout if it is in the mood to do so; the rule says that "the winner *will be the USAW designate* for the 2000 Olympic Team."⁹

The Court also rejected the contention that the first arbitration was flawed because Sieracki was a necessary party to it, holding that:

Section 10 of the Arbitration Act does not provide that the absence of an interested person privileges a person who *did* participate to disregard an adverse decision. What is more, § 22059 [of the Ted Stevens Act] calls for arbitration between the aggrieved athlete and the governing body; it does not require arbitration among athletes. Likewise, under the USOC Constitution, Art. IX § 2, the demand for arbitration must name "such USOC member" as the adverse party. Lindland named the right party in his demand to arbitrate. He sought relief from USA Wrestling, which is the USOC member and the governing body of his sport, not from Sieracki. USA Wrestling is the only entity in a position to give him what he wants – nomination to the Olympic team. Similarly, an employee who has been discharged from his position may arbitrate a grievance with his employer, without naming as an additional party his replacement, who might have to be discharged or demoted to reinstate a grievant who prevails in arbitration. The notion, advanced by both USA Wrestling and the USOC, that an arbitration must

⁹ Lindland v. United States Wrestling Ass'n, 230 F.3d 1036, 1038 (7th Cir. 2000) (emphasis added).

include all persons who could be affected by the outcome would work a revolution in arbitral proceedings.¹⁰

Although the court acknowledged the pendency of the second arbitration, it held that USA Wrestling could not ignore the first award because it feared a possible second, inconsistent award. The court issued its mandate directing USA Wrestling to send Matt's name to the USOC as its champion and nominee. Additionally, although it made no order affecting the USOC, the court observed, "We trust the USOC will act responsibly once it receives USA Wrestling's nomination of Lindland."¹¹

On that very same day, Arbitrator Campbell ruled in favor of Sieracki. He rejected all the arguments that Arbitrator Burns had accepted, and found no irregularities in the processing of Matt's grievance. Arbitrator Campbell further directed USA Wrestling to withdraw Matt's nomination and to name Sieracki as its sole nominee to the Olympic team.

USA Wrestling officials were, needless to say, in a tough spot. They had a confirmed arbitration award from the Seventh Circuit directing them to name Matt, and they also had an award from Arbitrator Campbell directing them to name Sieracki. In the face of these two inconsistent awards, on August 24, USA Wrestling tried to do both. It sent two memos to the USOC. In the first, it nominated Matt, noting that it was doing so only to comply with a ruling from the Seventh Circuit, but that it "respectfully disagrees with the disposition."¹² In the very

¹⁰ *Id.* at 1039. There has been much discussion after the Lindland case of the idea that Olympic arbitration proceedings should include all affected athletes. Such a rule change would be simple for some sports, but much more difficult for others. It would be easy for individual sports where head-to-head competition determines a single Olympian, but much more complicated for team sports, or for individual sports where subjective criteria are employed or multiple Olympians named. The subject matter of the dispute may also have an impact. As you have heard today, most of these cases are not team selection cases - many times they are drug suspension cases, where another potentially displaced athlete has very little to add. Although complicated for some sports, in my opinion, there are many reasons for the rules to change in sports such as wrestling.

¹¹ *Lindland*, 230 F.3d at 1040.

¹² The text of the first memorandum read in its entirety:

In a written decision of the United States Circuit Court for the Seventh Circuit issued today, enforcing an arbitration award entered by Arbitrator Daniel T. Burns dated August 9, 2000, USA Wrestling has been required to send Matt Lindland's name to the USOC as its nominee for the U.S. Greco-Roman Olympic Wrestling Team at the 76

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same stack of papers, USA Wrestling sent a second memo, withdrawing Matt's nomination and designating Siercaki as its nominee, pursuant to Arbitrator Campbell's award. The second memo went on to say that Arbitrator Campbell's award "is consistent with the opinion taken by USA Wrestling in the arbitration proceedings and with which USA Wrestling intends to comply by this Memorandum...."¹³

On August 25, we sought to enforce the Seventh Circuit's opinion in the district court. The district court, however, denied the motion, perhaps on the theory that the mandate still rested within the jurisdiction of the Seventh Circuit. We therefore sought a writ of mandamus from the Seventh Circuit to direct USA Wrestling to follow the prior order. On August 25, the Seventh Circuit issued what can only be described as a very terse opinion. The Court observed that USA Wrestling had "half-heartedly (and under protest)"¹⁴ complied with the prior ruling by sending Matt's name to the USOC, while simultaneously withdrawing Matt's name and nominating Sieracki. The Seventh Circuit was not amused, stating:

kilogram weight class. A copy of the Court's ruling and opinion is attached to this Memorandum.

By this Memorandum to you, USA Wrestling is forwarding Matt Lindland's name as so directed.

USA Wrestling is complying with the ruling under the circumstances and timing constraints associated with certification of the United States Olympic Team members by the USOC, but respectfully disagrees with the disposition.

First Memorandum from USA Wrestling, to the USOC (Aug. 24, 2000) (on file with author).

¹³ The text of the second memorandum read in its entirety:

By this Memorandum, USA Wrestling officially notifies the USOC of the issuance today of written findings, Conclusions and Award by Arbitrator A. Bruce Campbell in the matter of the Arbitration between Keith Sieracki, USA Wrestling and Matthew Lindland (the "Award"). The Award directed USA Wrestling to withdraw the nomination of Matt Lindland to the U.S. Greco-Roman Wrestling team at the 76 kilogram weight class and to designate Keith Sieracki as the sole nominee to the roster at that weight class.

A copy of the Arbitrator's Award, which is consistent with the opinion taken by USA Wrestling in the arbitration proceedings and with which USA Wrestling intends to comply by this Memorandum, is attached.

USA Wrestling takes this action under the circumstances of timing constraints associated with certification of the United States Olympic Team members by the USOC.

Second Memorandum from USA Wrestling, to the USOC (Aug. 24, 2000) (on file with author).

¹⁴ *Lindland v. United States Wrestling Ass'n*, 228 F.3d 782, 783 (7th Cir. 2000).

USA Wrestling apparently believes it is caught between Scylla and Charybdis, but it is not. On the one hand, it had received instructions from Arbitrator Campbell, instructions that have never been subject to judicial review. On the other hand, it has received instructions from the judicial branch of the United States of America requiring it to implement Arbitrator Burns' award by making Lindland its nominee. Choosing which to follow should not be difficult – but if USA Wrestling continues equivocating, the district court should be able to make the wiser course clear.¹⁵

It was very clear then that the Seventh Circuit expected its ruling to be followed. Until there was another confirmed arbitration award, the Burns award would be the law. We went back to the district court, which ordered USA Wrestling to comply within three hours. They did, by sending a notice to the USOC unequivocally nominating Matt to the team.

Also on August 25, Sieracki moved to confirm the Campbell award in federal court in Denver. The Denver judge, *sua sponte*, transferred the case to the Northern District of Illinois. Sieracki asked for a hearing on that case on August 29. With Matt's nomination by USA Wrestling, we awaited only resolution of Sieracki's petition to confirm the Campbell arbitration.

On August 27, things changed again. The USOC called to inform me that, despite the Seventh Circuit's orders and USA Wrestling's nomination of Matt, it nonetheless intended to nominate Sieracki when it certified the team to the International Olympic Committee. We were stunned. We always knew that this was a possibility. The question then became whether the Seventh Circuit's orders, directed to USA Wrestling, were broad enough to compel the USOC to honor them and to name Matt to the team.

We returned to district court on August 28, and Judge James B. Zagel issued an injunction, compelling the USOC to name Matt to the team. We advanced the theory that the USOC was acting in active concert and participation with USA Wrestling to circumvent the Seventh Circuit's order and the mandate. In order to effectively carry out the order, it

¹⁵ *Id.*

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must be extended to the USOC.¹⁶ The USOC filed an immediate appeal of Judge Zagel's order with the Seventh Circuit.

On August 29, Sieracki's petition to confirm the arbitration award in Denver was heard, also in front of Judge Zagel, in the Northern District of Illinois. Judge Zagel heard oral argument on the case, and ruled that this case fell within the very narrow scope of *res judicata* effect for arbitration awards. Judge Zagel wrote:

However narrow the *res judicata* effect of a judicial confirmation of an award may be, it surely covers the case in which the confirmed award says that Lindland's name must be nominated and Sieracki's name withdrawn and the unconfirmed award says that Sieracki must be the nominee and Lindland's name pulled back. Mr. Bumble may have said that "the law is a ass, a idiot," but it is not idiot enough to confirm both arbitration awards in this case.¹⁷

Judge Zagel denied confirmation of the Campbell award, and Sieracki filed an emergency appeal. On August 31, the Seventh Circuit consolidated the Sieracki and USOC appeals, and directed all parties to submit briefs simultaneously on August 30 and September 1.

On September 1, the Seventh Circuit issued a one-line order, affirming both of Judge Zagel's orders, and indicating that an opinion would follow. The USOC was running out of legal options. With the

¹⁶ A district court has the power to enforce orders against those who are acting in active concert with a party subject to an injunction. Rule 65(d) of the Federal Rules of Civil procedure. "Parties otherwise without an injunction's coverage may subject themselves to its proscriptions should they aid or abet the named parties in a concerted attempt to subvert those proscriptions." *Rockwell Graphic Sys., Inc. v. DEV Indus., Inc.*, 91 F.3d 914, 919 (7th Cir. 1996) (case citations omitted). This is because the "active concert or participation" language of Rule 65(d) recognize[s] that the objectives of an injunction may be thwarted by the conduct of parties not specifically named in its text. *Id.* at 920; *accord* *United States v. Hall*, 472 F.2d 261, 267 (5th Cir. 1972) (Wisdom, J.) (upholding enforcement of injunction against third-party who was aiding and abetting violence on and off school campus, although not a party and having no legal relationship to any party to school desegregation case, because "a decree of injunction not only binds the parties defendant but also those identified with them in interest"); *Computer Searching Serv. Corp. v. Ryan*, 439 F.2d 6 (2d Cir. 1971) (holding that if corporate subsidiary were in active concert or participation with parent in infringing conduct, any injunction to which plaintiff might be entitled could be enforced against subsidiary, without need to join subsidiary as party).

¹⁷ *Sieracki v. United States Wrestling Ass'n*, No. 00-CV-5348 (N.D. Ill. filed August 29, 2000).

Opening Ceremonies set to commence September 15, the time was growing very short for the USOC to make its certification of the Olympic Team to the IOC. As a result, on September 2, the USOC filed a petition to stay the orders of the Seventh Circuit with the United States Supreme Court. At that point, the petition for stay appeared to be the USOC's only option. I suppose the USOC could have asked for an *en banc* hearing in the Seventh Circuit, but with the opinion of the Court not yet completed, that option appeared to be premature. It was also clear that a petition for certiorari to the Supreme Court could not be processed in time, as there were only three or four days left before the IOC certifications were due. While Judge Easterbrook was presumably at home for the Labor Day weekend writing the court's opinion as to why it had affirmed Judge Zagel's order, we were back in the office writing briefs to the Supreme Court.

On September 5, the Seventh Circuit issued its opinion. Writing for the Court, Judge Easterbrook held that the Court need not resolve the question of how to treat inconsistent arbitration awards, because the Campbell award was flawed and, in any event, could not be confirmed. The court ruled that because Sieracki's grievance sought only to attack the Burns award, it was not a proper grievance under Section 2209527 of the Ted Stevens Act. The Court held that although Lindland filed and prevailed in a proper grievance, Sieracki had not:

Sieracki initiated an arbitration not to contest a final decision of USA Wrestling, but to protest the Burns Award....[Section 220527] does not allow bypass of the need for a *claim* under § 220527 - that is, a contention that a national governing body has failed "to comply with sections 22052, and 22054 of this title." 36 U.S.C. § 220527(a). Sieracki did not have such a claim and therefore was not entitled to arbitration under the Stevens Act....No other provision of which we are aware supports arbitration whose sole subject is the decision of a prior arbitrator. The Stevens Act would be self-destructive if it authorized such proceedings, which would lead to enduring turmoil (as happened here) and defeat the statute's function of facilitating final resolution of disputes, see § 220529(d).¹⁸

¹⁸ Lindland v. United States Wrestling Ass'n, 227 F.3d 1000, 1003-04 (7th Cir. 2000).

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The Seventh Circuit also found that Arbitrator Campbell overstepped Rule 48 of the American Arbitration Association's Commercial Rules, which provides that an "arbitrator is not empowered to re-determine the merits of any claim already decided." The Court stated:

Arbitrator Campbell did not misinterpret Rule 48; he decided to ignore it entirely. The whole point of the Campbell proceeding was to redetermine the issues that had been before Arbitrator Burns, and the Campbell Award directs USA Wrestling to disregard the Burns Award. Campbell observed, correctly, that Sieracki was not a party to the Burns proceedings, but the other participants *were* parties to the Burns proceedings. By the time Campbell acted, the Burns Award had "already decided" that the nomination to the Olympic team would depend on a rematch between Sieracki and Lindland. Whatever powers Campbell possessed *vis-à-vis* Sieracki, he lacked the power to order USA Wrestling to nominate anyone other than the winner of the rematch.¹⁹

For these reasons, the Seventh Circuit concluded that the Campbell award was not entitled to confirmation. The court also dismissed the argument that Sieracki was a necessary party to the Burns proceeding, citing the plain language of the statute that provide that the proper arbitration is between the aggrieved athlete and the national governing body. The court stated that "if the USOC now favors a different approach, it should change its own rules rather than ask a federal court to disregard an award that was reached following normal procedures."²⁰

The Seventh Circuit then examined the injunction entered against the USOC by Judge Zagel, which was necessary because the USOC had chosen to prefer the Campbell award to the confirmed Burns award. Recall that by the time USA Wrestling complied with the court's first direction to nominate Lindland (eleven days after the rematch and two days after the order), the time for nominations had passed, and the USOC had declared that it would send Sieracki to Sydney. The district court's injunction, the IOC's acceptance of Lindland, and the USOC's appeal followed.

¹⁹ *Id.* at 1004.

²⁰ *Id.* at 1005.

The court held that under Rule 65, Judge Zagel had properly extended the injunction to the USOC, because the USOC was acting in active concert and participation with USA Wrestling:

The USOC gave every indication of willingness to lend a hand. For example, it responded to the initiation of the Campbell proceedings by promising to respect their outcome—which entails a promise to ignore the outcome of the Burns proceedings.... [T]he USOC [also] decided [on August 24] to accept the nomination of Sieracki, knowing full well that this nomination violated a decision of this court. The inference that USA Wrestling and the USOC undertook a joint effort to defeat the Burns Award (and our decision) is very strong.²¹

I understood the difficult position the USOC was in. Since the USOC had its own grievance procedures in place for the 45-day window before the Olympic Games, how could the USOC say anything other than that it would respect the outcome of those procedures? Nonetheless, the Seventh Circuit found that this was compelling evidence that the USOC and USA Wrestling were acting in concert to circumvent the Burns award and the orders of the court. The Seventh Circuit also found that because the USOC certifies to the IOC that the nominees were selected in accordance with the selection criteria in effect, the USOC agreed to follow USA Wrestling's rules, which meant that the winner of the re-wrestled match would be the nominee.

The final argument rejected by the Seventh Circuit was that the district court was powerless to enter any injunction against the USOC because of § 220529(a) of the Ted Stevens Act, which provides:

In any lawsuit relating to the right of an amateur athlete to participate in the Olympic Games...a court shall not grant injunctive relief against the corporation within 21 days before the beginning of such games if the corporation, after consultation with the chair of the Athlete's Advisory Council, has provided a sworn statement in writing executed by an officer of the corporation to such court that its constitution and

²¹ *Id.* at 1006.

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bylaws cannot provide for the resolution of such dispute prior to the beginning of such games.²²

The USOC provided the sworn statement required by Section 220529(a), and argued that Judge Zagel could not enter the injunction against it on August 28, because the Olympic Games were set to commence on September 15. The Seventh Circuit, with some of the harshest rhetoric in the case, disagreed:

[Lindland's] claim depends on the Burns Award, which was issued on August 9, well outside the 21-day window, and the decision of this court, also issued before the 21st day. The only question on the table is whether USA Wrestling and the USOC will comply with obligations that had been established before that three-week period....We do not for one second believe that Congress set out to reward intransigence, so that the USOC can protect scofflaws among the national governing bodies, or itself defy judicial orders if, on the 21st day before the Olympic torch enters the stadium, the President of the USOC is not already in prison for contempt. There is no dispute for the USOC to resolve, so its inability under its constitution and bylaws to act on short notice is not important. All the USOC had to do was implement this court's decision of August 24 (enforcing the Burns Award of August 9); all we hold is that delay in compliance with an obligation judicially articulated before the 21st day does not entitle the USOC to escape that obligation.²³

As you see, Judge Easterbrook was very pointed in his criticism of the USOC and USA Wrestling, calling them intransigent and scofflaws, and stating that the USOC seemed to be violating court orders as it pleased. I thought this rhetoric was a bit harsh; everybody in this case was caught in a procedural trick box, and I sincerely believe that everyone had tried to do the right thing all along. It was just hard to know what that was because things were happening so fast. To this day, I do not think that there was any ill motive on anyone's part at USA Wrestling or the USOC to do anything to the detriment of Matt Lindland.

²² 36 U.S.C. §220529(a) (1994).

²³ *Lindland*, 227 F.3d at 1007-08.

VI. ATTEMPTED CAS APPEAL AND RESOLUTION

On September 5, Justice Stephens denied the stay application, which we thought was the final word. Where I went to law school, we were taught that the United States Supreme Court was the ultimate arbiter. So Matt began to prepare for the Games and reported to the Olympic Processing Center in San Diego, and left for Australia with the team. His wife and children and his father packed their bags for Sydney. Matt was, needless to say, very excited, and he marched in the Opening Ceremonies on the 15th and settled into his training routine at the village. At that point, everybody in my office was thinking about taking a vacation because we had been working very hard for about three weeks straight.

I am 'glad that we did not take that vacation. Late in the afternoon on September 19, we received a call indicating that Keith Sieracki was thinking about filing an arbitration with the Court of Arbitration for Sport ("CAS"). My first question was, "What is CAS?" I had no idea, so we contacted CAS, the athlete's arbitration forum at the Olympic Village, and the staff explained the process and faxed the CAS rules to us. We got another call from CAS later that evening saying that the complaint had been filed and that the hearing would be convened at 7 p.m. Sydney time, which is 3 a.m. Chicago time. We had, then, about six hours to prepare for this hearing before an arbitration forum we had never even heard of.

Remember that prior to Matt leaving for Sydney, the USOC had been enjoined by the federal courts to substitute Matt for Sieracki, and that the IOC had accepted the substitution. Sieracki's CAS petition alleged that, in making the substitution, the IOC did not follow its own rules when it failed to convene a meeting of the IOC Executive Board. I do not know if that happened or not, but the rule in question in the CAS arbitration speaks to efforts to change a designation after the deadline, and indicates that if a change is made without IOC Executive Board approval, the national organizing committee making the change could be subject to sanction. Specifically, Article II, Section 49(7) of the Olympic Charter, states:

The withdrawal of a duly entered delegation, team or individual shall, if effected without the consent of the IOC Executive Board, constitute an infringement of the

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Olympic Charter and shall be the subject of disciplinary action.²⁴

In any event, although we did not think much of the claim, we were unfamiliar with the CAS process and did not want to take any chances. As a result, we got very busy in the short time we had, retaining local counsel in Australia and preparing a brief, exhibits, and argument for the CAS hearing.

The process seemed almost surreal at this point, as we were now aligned in interest with the USOC, which had been our vigorous opponent in the district courts and the Seventh Circuit. The lawyers from the USOC were very helpful to us that evening, helping us understand the CAS process and the rules, and helping us formulate arguments that would support Matt's position and support what the USOC had done in changing the designation as required by the orders of the Seventh Circuit.

Also that evening, my partner Kevin Duff believed very strongly that because Sieracki had been a party to the Seventh Circuit proceeding, he might be held in contempt if he proceeded with the CAS arbitration hearing. Sieracki was clearly a party to the federal court proceedings, and we believed that the CAS arbitration was an effort to circumvent the clear intent of the Seventh Circuit. While I was preparing for the CAS hearing, Kevin got busy trying to find a judge from the Northern District of Illinois or the Seventh Circuit to hear his argument. Kevin finally identified the emergency judge for the Northern District, Judge Hibbler, who literally got out of bed at 12:45 a.m., listened to a preliminary description of the case, and determined that it was important enough to schedule a hearing at the courthouse at 1:45 a.m.

Kevin ran over to court and I am sure I fell asleep in my office chair waiting for him to return. After hearing arguments from both sides, at about 2:30 a.m. Judge Hibbler entered an injunction against Sieracki prohibiting him from proceeding with the CAS hearing. Kevin ran back to the office, and we faxed the order to Australia. When the CAS hearing convened by telephone at 3 a.m., Sieracki's counsel withdrew the complaint based on Judge Hibbler's order. This was truly the end, and about ten days later, Matt won his silver medal.

²⁴ OLYMPIC CHARTER, art. II, §49(7).

VII. LESSONS FROM THE LINDLAND SAGA

What lessons did we learn in this process? The first lesson was that, as a practical matter, this process is not really available to all athletes. We have a very sophisticated litigation practice at Jenkins & Gilchrist, and are accustomed to difficult, time-intensive cases, but we put in a Herculean effort this summer to get this case through this process. Had Matt Lindland not found Jenkins & Gilchrist, or if we had not agreed to handle the case on a *pro bono* basis, he likely would not have gone past the initial protest committee. That is unfortunate because Matt did have a meritorious case. With the resources that were marshaled against us, including USA Wrestling, the USOC, and the United States Army, I cannot imagine a single athlete maneuvering through this process on his or her own. It is my opinion that we need to provide competent and knowledgeable representation to athletes, and conferences like this one are a good place to start. I also believe that a *pro bono* group should be organized and educated in advance of the next Olympic Games to represent athletes who find themselves in this position; alternatively, the Ted Stevens Act should be amended to require the NGB or USOC to reimburse athlete representatives.

The second lesson we learned was that certain NGB protest procedures must be clarified, because it is often unclear as to what matters are subject to protest. It was a gray area in this case throughout, and I think it needs to be spelled out (at least in the case of Greco-Roman wrestling) so it is clear what can and cannot be protested.

The third important lesson we learned was that the grievance procedures, in my view, need to be streamlined and harmonized in order to avoid the possibility of inconsistent results and inconsistent arbitration awards. The idea of serial arbitrations is unseemly, and leaves a bad taste in everyone's mouth, including sports officials, litigants, and the public. I think we need to get to the point where we have all the parties in one proceeding where a decision is made that binds everyone. I know that the USOC has convened a committee to examine this question and we applaud that effort.

The last lesson that we learned, from Matt Lindland, was to never give up. There were many times in this tortured litigation that we felt ready to throw in the towel, and to his credit, Matt was the one who kept saying, "You know, I think I am right. Let's go to the next step. Let's keep going . . . let's keep going." He showed that same kind of

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perseverance when he went to the Olympics and brought home a silver medal. All's well that ends well – and in this case, very well.