

UNITED STATES SOCCER FEDERATION, INC.

In the Matter of the Arbitration between:

J-Hawk Soccer Club,

Claimant

AWARD OF THE ARBITRATOR

and

Iowa Soccer Association,

Respondent.

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Bylaws of the United States Soccer Federation, Inc. (the "USSF"), having been duly sworn, and having duly considered the evidence submitted by J-Hawk Soccer Club ("J-Hawk") and the Iowa Soccer Association ("ISA"), and weighing the testimony of the witnesses, and having further reviewed the pre-hearing and post-hearing briefs submitted by the parties, the exhibits admitted into the record, and USSF Bylaws and Policies and prior USSF arbitration decisions cited by the parties, ENTERS THIS AWARD ("Award").

THE GRIEVANCE

This Grievance was initiated by J-Hawk, a youth soccer club based in Urbandale, Iowa, against ISA, a state association member of the USSF. The Grievance arises out of ISA's decision to deny J-Hawk's application for membership with ISA, and the subsequent denial by the Greater Des Moines Junior Soccer League ("GDMJSL") of J-Hawk's application to join that organization and participate in its leagues. J-Hawk alleges that these actions violate USSF

Bylaws and USSF Policies.¹ ISA denies the allegations against it and asserts that it is in complete compliance with all USSF Bylaws, Rules and Policies.

PRELIMINARY ISSUES

GDMJSL

GDMJSL did not participate in this proceeding. ISA has stated that any decision rendered in this Arbitration would not be binding upon GDMJSL, and that even if GDMJSL was not in compliance with USSF Bylaws and Policies, ISA has no authority to direct GDMJSL's actions, and is powerless to enforce any decision against GDMJSL. ISA's statements in this regard raise preliminary issues that must be addressed before even considering the merits of J-Hawk's claim, as the inability of this proceeding to have any effect on the actions of GDMJSL would render this proceeding meaningless.

ISA is not the first state association to raise these issues, or to note that an independent entity such as GDMJSL is not a party to an arbitration conducted under USSF Bylaws. *See e.g. North Dakota SAY, aka Fargo Soccer Club, and North Dakota Youth Soccer Association and Minnesota Youth Soccer Association.* In the instant case, GDMJSL was formed by members of ISA, and the testimony at the hearing was that GDMJSL is managed by its members. Thus, while it may be accurate to state that ISA cannot directly cause GDMJSL to comply with USSF Bylaws and Policies, or the rulings of an arbitration conducted pursuant to USSF Bylaws, ISA

¹ J-Hawk alleges that other practices of ISA and GDMJSL and some of its Participants violate USSF Bylaws and Policies. These issues have either previously been addressed by ISA or GDMJSL, or are being treated by the Arbitrator as separate Grievances that are not appropriately the subject of this Grievance. Thus, without ruling on the substantive allegations, no relief is being granted with respect to any of those claims.

does ultimately have the ability to expel any member who does not comply, and to withhold benefits of membership, and thus has the indirect ability to assure that any decision of a USSF arbitration is enforced. Indeed, the testimony at the hearing indicated that when a GDMJSL Bylaw was previously found to be in conflict with USSF Policies, ISA was able to persuade GDMJSL to comply with USSF's Bylaws and Policies, irrespective of the contrary Bylaw provision.

Effect of This Decision on Membership Opportunities for Others

J-Hawk expressed concern about other clubs and indicated it was looking to set a precedent that would assure others would have the same membership opportunities J-Hawk sought. ISA was concerned that if a decision was rendered in J-Hawk's favor, it would require ISA to affiliate every club from which it received an application, thus requiring Organization Members to permit dozens or even hundreds of clubs to affiliate within any particular geographic market. This decision should not support either proposition. Rather, it is a decision only with respect to the application of USSF Bylaws and Policies to the particular applications of J-Hawk for affiliation with ISA and GDMJSL, based on the evidence presented to the Arbitrator.

UNDISPUTED FACTS

It is not disputed that J-Hawk attempted to join ISA and GDMJSL, and that J-Hawk was denied the opportunity to join these organizations. USSF Bylaws and Policies do not require Organization Members to accept every application for membership. USSF Policy 212-1, Section 4(b) states the requirements, as well as the conditions for participation. It provides in relevant part:

An Organization Member must allow a group of Participants from any Affiliated Organization to participate in its programs if that group of Participants complies with all reasonable policies, rules, regulations and requirements of the Organization Member.

There is no dispute that ISA is an Organization Member of USSF. There is no dispute that J-Hawk is an Affiliated Organization, through its membership in the United States Specialty Sports Association (“USSSA”). Thus, there is no dispute that ISA was required to allow J-Hawk teams to participate in their programs if J-Hawk complied with “all reasonable policies, rules, regulations and requirements” of ISA.

With respect to GDMJSL, it is a separately formed organization under Iowa law and all its members are members of ISA. GDMJSL has a policy requiring any prospective member of that league to confirm that it would become a member of United States Youth Soccer (“USYS”) if it was permitted to join GDMJSL. However, the only way J-Hawk could become a member of USYS would be by first affiliating with ISA. Since it was denied membership in ISA, and thus could not become a member of USYS, J-Hawk was unable to make this commitment. GDMJSL then took the position that J-Hawk would not comply with its policies, and therefore was properly denied membership in GDMJSL.

**ANALYSIS OF FACTS RELATED TO J-HAWK’S APPLICATION
TO BECOME A MEMBER OF ISA**

ISA’s Affiliation Approval Guidelines (Respondent Exhibit 18) sets forth 15 criteria for membership. Matt Carver, President of J-Hawk, testified that J-Hawk met all objective criteria for admission to ISA, including having sufficient financing, participants and access to fields. This testimony was not disputed. Nevertheless, J-Hawk was denied membership in ISA based on subjective criteria for membership.

J-Hawk would have the Arbitrator strike down the procedures adopted by ISA for membership consideration because they are, in fact, subjective. ISA responded, stating, among

others, that USSF does not have objective criteria for admission of members and its subjective procedures are not only permitted, but appropriate. The Arbitrator agrees with ISA's position on this point. Organization Members have the right to impose subjective criteria for membership, provided that the criteria, as applied, is "reasonable," and consistent with USSF Bylaws and Policies.

Various subjective reasons have been advanced, both in exhibits and in the testimony at the hearing, for ISA's denial of J-Hawk's membership application. Ultimately, Mr. Kahler testified at the hearing that while J-Hawk met most of the criteria, it did not meet the second and third criteria, which state:

2. Proposed affiliate near or in the same community as another affiliate. Are there playing opportunities in the same community/area of the proposed affiliate's location.
3. If in close proximity of another affiliate(s), does it offer unique qualities/characteristics not offered in other affiliates. Advice/thoughts of other affiliates in the proposed location.

Specifically, Mr. Kahler testified that J-Hawk did not meet these criteria because J-Hawk was in the same community as another affiliate, the Urbandale Soccer Club ("USC"), and did not offer unique qualities/characteristics not offered by USC.

Although these two points are interrelated, and ultimately, they will be addressed in that manner, a complete analysis requires that we first separate the issues so as not to suggest an improper precedent for the future. At the end of the day, this dispute does center around the fact that there was another soccer club from Urbandale, Iowa, affiliated with ISA, and ISA determined not to admit a second member from that area. The arguments of the parties on this point focused on USSF Policy 212-1, Section 4(b)(vi), which states that reasonable policies and requirements can include a requirement that the applicant "observes rationally supportable

geographic rules of the Organization Member.” There seems to be a dispute over the meaning of this provision that needs to be clarified. If GDMJSL received an application from a club in Cedar Rapids, seeking affiliation, pursuant to Section 4(b)(vi), it would not be unreasonable for GDMJSL to reject that application solely on the basis of geographic rules that restricted membership to those within a more reasonable distance of the center of various members. Such a decision would be consistent with the decision in *Centerville United Soccer Association v. Ohio South Youth Soccer*. On the other hand, the Arbitrator does not believe that this provision was intended, in and of itself, to limit the number of affiliates from a particular geographic area, or to permit an existing affiliate, or group of affiliates, to veto the membership application of another club. Rather, the other factors set forth in the USSF Policy 212-1, Section 4(b) should be considered.

While J-Hawk, at times, suggested that the existence of USC was the only factor that led to ISA’s refusal to admit J-Hawk as a member, testimony from ISA witnesses refuted that allegation. For purposes of this Award, the Arbitrator has accepted the testimony of Mr. Kahler and others to the effect that other factors were considered. That does, however, place the Arbitrator in the position of having to review ISA’s decision, and determine whether the rules, policies and requirements to which the applicant was subjected were reasonable under the circumstances. The USSF appeal procedures put arbitrators in that role, as somewhat of a check and balance to assure the policies, rules, regulations and requirements of the Organization Members are, in fact, reasonable. In its closing argument, ISA suggested that USSF Policy 212-1, Section 4(b) gives ISA wide discretion and that it alone is authorized to make decisions on applications, consistent with the Policy. Taken literally, that would mean that the USSF appeal

procedures are rendered moot in terms of the ability of a rejected applicant to appeal a decision on its membership application. The Arbitrator rejects that position.

Assuming the Arbitrator accepts as true that neither USC nor any other single member, or group of members, was given the right to veto J-Hawk's application,² the Arbitrator must look at the conclusion reached by the Organization Member that J-Hawk simply did not offer Participants qualities/characteristics that were not offered by the other affiliate in Urbandale.

There was uncontroverted testimony at the hearing that J-Hawk did offer programming at a lower cost than USC. J-Hawk maintained that the lower cost, coupled with a scholarship program that did not require applicants to provide financial information, or demonstrate need, attracted Participants who would not otherwise have been able to afford to join USC, or would not have wanted to make the disclosures required in USC's application for financial assistance. This is certainly one characteristic that set J-Hawk apart from USC. Mr. Kahler testified, however, that the lower costs charged by J-Hawk to its players was not a factor used by ISA in considering J-Hawk's application. Thus, in concluding that J-Hawk did not offer unique qualities/characteristics to Participants, ISA never considered this particular characteristic.

Jessi Carver, a former member of USC, also testified from a player's perspective as to differences between USC and J-Hawk. She testified that at the fourth grade level, she wanted a more competitive team than the recreational teams USC offered, and USC did not have a mid-level competitive team on which she could participate. While it is unclear to the Arbitrator

² ISA's October 11, 2010 letter to Matt Carver identified the fact that current clubs in the area would not be in favor of having another club established in Greater Des Moines as a reason for not considering J-Hawk's application with ISA. (Claimant Exhibit B). It is not clear from the letter whether each of the reasons offered were intended to independently support the decision to reject J-Hawk's application, but the Arbitrator is assuming that a combination of these factors led to the decision.

whether USC now has such a team, this was certainly a different program J-Hawk offered to its members than USC offered at the time of J-Hawk's application.

Ms. Carver also testified as to a difference between USC and J-Hawk in the commitment each required of its participants. She testified that J-Hawk provided more scheduling flexibility that would allow her to participate in other sports and other extracurricular activities to a greater extent than if she had played on a USC team. Given the testimony of ISA as to the decreased participation of youth in GDMJSL and throughout the nation at ages above the U-11 level, this is not an insignificant difference between the J-Hawk and USC philosophies. Renee Carver, as a mother of a youth participant, also testified that the fact that J-Hawk made it easier for her children to participate in other sports was an important factor to her in preferring the J-Hawk experience over the USC experience. While the relationship between Jessi Carver, Renee Carver, and J-Hawk's President is certainly relevant, no testimony was offered by ISA refuting these differences between USC and J-Hawk, and these differences were deemed material to the Arbitrator.

There was also significant testimony to the effect that while both the J-Hawk and Urbandale Soccer Clubs rely heavily on volunteers, at the older levels, USC uses paid coaches, while J-Hawk's coaches are strictly volunteers. This is another characteristic that distinguishes the two clubs. However, once again, Mr. Kahler testified that this factor was not considered in rejecting J-Hawk's application.

The foregoing shows that the opportunities offered by J-Hawk were not similar to those offered by USC. It is important to note that while a single one of those factors may not have been sufficient to suggest J-Hawk offered unique qualities/characteristics not offered by the other affiliate, the combination of these factors was given great weight by the Arbitrator.

The Arbitrator's analysis, however, does not stop at this point. While Mr. Kahler did testify that at the end of the day the application of J-Hawk was rejected because J-Hawk did not offer qualities/characteristics different from USC, the testimony of other ISA witnesses suggested other concerns with J-Hawk's application were raised and considered by ISA.

Brian Mamola testified that the existence of two clubs in a community the size of Urbandale would likely weaken both clubs, and one of them would fail. While the testimony of the parties, and prior decisions, indicated this may be a sufficient reason to deny affiliation of a second club in a community of 1,600, and would likely be a reason to deny affiliation of an unlimited number of clubs in a community, it is difficult to accept the reasonableness of a policy denying affiliation of a second club in a growing community that numbered over 41,000 in 2013. We also now have 20-20 hindsight to know that the existence of a second club in Urbandale did not, in fact, significantly weaken both clubs, or cause either of them to fail. To the contrary, both USC and J-Hawk have seen increases in the number of participants over the last several years.

Both Mr. Mamola and Doug Schreck testified that the existence of two clubs in the Urbandale community caused significant tension in the community. While J-Hawk offered rebuttal witnesses on this point, the Arbitrator does believe that the existence of two clubs has divided loyalties in the community, and fostered competition off the field that is not always in the best interest of participants.³ However, one must wonder how much of this tension was caused by competition between the clubs and how much was caused by the refusal of GDMJSL to admit J-Hawk as a member. Moreover, the "splintering," to which the witnesses testified may not be that different than the splintering of loyalties among athletes (and their parents and

³ J-Hawk offered extensive testimony as to the good that comes to businesses and consumers from competition between companies. While sports leagues are, in effect, businesses, the Arbitrator did not find this argument to be persuasive.

supporters) from the University of Iowa and those from Iowa State University. At times, the competition may be less than friendly, but the fact that such competition exists certainly has benefits to the community. Lest anyone suggest that these two institutions are not located in the same community, or that their teams play in different conferences (leagues), the competition between athletes of the University of North Carolina and Duke University can provide an even better analogy. Anyone who has spent any time in that community, or had children that attended either of these universities,⁴ would know that the allegiances of those schools divide families, the Raleigh-Durham community, and the entire State of North Carolina. At the same time, their co-existence has fostered competition, and the Arbitrator takes notice that many athletes of both schools have reported positive experiences arising from this rivalry that they would not have had if the other did not exist. While the instant case deals with high school and younger students, rather than college athletes, J-Hawk provided the rebuttal testimony of Gary Kobal with respect to this issue based on his observations of youth soccer in California, wherein different clubs from the same community work together for the good of the children without significant adversity. In this case, the Arbitrator believes that competition between the two clubs is not a reason to deny J-Hawk membership and, if anything, brings to mind the so-called “get along” test suggested in *North Dakota SAY, aka Fargo Soccer Club, and North Dakota Youth Soccer Association and Minnesota Youth Soccer Association*, cited by both parties.⁵

⁴ The Arbitrator simultaneously had a child in post-Baccalaureate programs at each of these universities.

⁵ The Arbitrator is neither agreeing nor disagreeing with the contention of the parties that there is a “get along” standard enunciated by that proceeding, but rather, is using the term as a shorthand version of the issues raised in the *North Dakota SAY* decision, as referred to by the parties in this case.

ISA also pointed to the issue of the dwindling participation of athletes from the 10- and 11-year-old age group to the 13- and 14-year-old age group as a reason not to have two clubs in Urbandale. Specifically, Cameron Torstenson noted that if there was only one club with 15 participants, that club could field a team, but with two clubs, each having only seven or eight participants, neither club could field a team and thus, all 15 athletes would be without a place to play. Of course, that theory assumes that the two clubs refuse to work together to form a team out of the 15 participants. The Arbitrator does not find that argument to be persuasive in denying 400 athletes the ability to engage in league competition through membership in ISA and GDMJSL.

Based on all of the evidence presented, the Arbitrator has determined that the refusal of ISA to admit J-Hawk as a member of ISA based on the two criteria Mr. Kahler testified were not met, was not appropriate. Even taking into account the other policies that ISA witnesses testified were not met, the Arbitrator finds that the policies that were used to exclude J-Hawk from membership in ISA, and the requirements imposed of J-Hawk as a condition to achieve membership in ISA, were not reasonable within the meaning of USSF Policy 212-1, Section 4(b).

**ANALYSIS OF FACTS RELATED TO J-HAWK'S APPLICATION
TO BECOME A MEMBER OF GDMJSL**

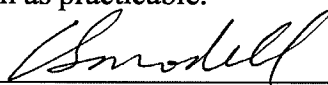
GDMJSL is not an Organization Member of USSF as that term is defined in the USSF Bylaws. However, under USSF Bylaw 213, Section 1 (a) (3), USSF's Bylaws and Policies apply not only to an "Organization Member," but also to the member organizations of an Organization Member. As such USSF Policy 212-1, Section 4 (b) applies equally to GDMJSL. Thus, GDMJSL must allow J-Hawk, as a member of an Affiliated Organization (USSSA) to participate in its programs if J-Hawk complies with all reasonable policies, rules, regulations and

requirements of GDMJSL. One of the requirements imposed by GDMJSL was that J-Hawk commit to becoming a member of USYS if its application to GDMJSL was accepted. J-Hawk was not able to make that commitment, because it had no ability to become a member of USYS without joining ISA, and, as concluded above, ISA improperly denied J-Hawk's application to become an affiliate of ISA. Under those circumstances, GDMJSL's requirement that J-Hawk commit to become a member of USYS was not a reasonable requirement within the meaning of USSF Policy 212-1, Section 4(b).^{6, 7}

RELIEF AWARDED

Based on the foregoing, J-Hawk should promptly be admitted to ISA, and assuming J-Hawk commits to becoming a member of USYS upon joining ISA, GDMJSL should promptly admit J-Hawk as a member. Both ISA and GDMJSL should then use their best efforts to allow J-Hawk teams to participate in GDMJSL leagues as soon as practicable.

Dated: July 2, 2015



Charles S. Modell, Arbitrator

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⁶ There was no testimony at the hearing as to whether it was reasonable for any Organization Member to require a group of Participants from an Affiliated Organization to join a separate Affiliated Organization as a condition to membership in the Organization Member. Rather, the testimony focused on J-Hawk's ability to comply with this requirement. Thus, nothing in this Award should indicate that the requirement itself is or is not reasonable.

⁷ ISA also argued that based on the ruling of the Arbitrator in the *North Dakota SAY* arbitration, so long as GDMJSL conduct a closed league, meaning that only members of the league can participate in league play, and does not discriminate by allowing some non-members to participate, they can operate as a closed league. If J-Hawk were asking to participate in GDMJSL league games without becoming a member of GDMJSL, this argument might have merit. However, the issue before us is not the same as the one in *North Dakota SAY*, wherein a club sought to play in a league to which it was not a member. Rather, the issue at hand is a club seeking to become a member of a league and being denied membership. Policy 212-1, Section 4(b) would be violated by any policy that allowed a league to deny membership to any applicant, for any reason. Thus, the issue of a closed versus open league is simply a red herring that is not applicable to this proceeding.