

UNITED STATES SOCCER FEDERATION, INC.

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In the Matter of the Arbitration:

The Centerville United Soccer  
Association,

**AWARD OF THE ARBITRATOR**

Claimant,

v.

Ohio South Youth Soccer  
Association,

Respondent.

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I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Bylaws of United States Soccer Federation, Inc. (the "Federation"), having been duly sworn, and having duly considered (i) the evidence submitted by the Centerville United Soccer Association ("CUSA") and the Ohio Youth Soccer Association ("OSYSA"), at the hearing conducted on March 8, 2006, (ii) the briefs submitted prior to the hearing by CUSA, OSYSA, the Federation, and the United States Youth Soccer Association, Inc., and (iii) the Affidavits and briefs submitted subsequent to the hearing, ENTER THIS AWARD ("Award"):

AWARD

CUSA's Grievance concerns the adoption by OSYSA's Board of Directors on June 22, 2004, of Rule 2.4.5 (the "New Rule"), which provides that member leagues or associates can only accept for play U10 and below teams that have the majority of their players who live in the same OSYSA district as the district in which they register to play. CUSA claims that the New Rule violates statutes, case law and provisions of the Federation Constitution, Bylaws and/or Policy Manual.

CUSA Claims 1, 2, 5, 6, 7, 8 and 9 – Each of these claims can be summarily resolved.

In its first claim for relief, CUSA alleges that the New Rule violates the Ted Stevens Olympic and Amateur Sports Act, U.S. Code § 36, Ch. 2205 (the “Act”). The Act makes unlawful certain rules that restrict competition and eligibility of individuals to participate in such competition. The Act applies to named categories of individuals. It does not apply to teams. The New Rule does not prohibit a player living in one district from joining a team having a majority of its residents in a different district, and thus competing in a different district. As a result, individuals are not restricted by the New Rule, and the Act has not been violated.

CUSA next argues that the New Rule violates Federation Bylaw 603 (“Bylaw 603”). Bylaw 603 deals with registration matters between organization members and discrimination by an organization member against a player or team that is a member of another organization on the basis of that player or team’s affiliation with the other organization. No evidence has been presented in this case suggesting there has been such discrimination. Any member of CUSA is permitted to play in any district of his or her choosing, provided the majority of the players on the team reside in the district in which the player wishes to participate. To the extent the New Rule discriminates, it does so on the basis of geography, and not on the basis prohibited by Bylaw 603. Bylaw 603 therefore has not been violated.

The fifth claim for relief is that the New Rule violates principles of fair play and unimpeded play for amateur sports as more fully promulgated by previous decisions of the Federation. However, as the parties discussed these cases, it became clear that the cases deal with the interpretations of the various provisions of the Federation Constitution, Bylaws and/or Policy Manual (collectively, the “Federation Rules”) and do not present an independent claim for relief. The same is true of CUSA’s sixth claim of relief, that the New Rule does not further the interests of soccer and does not serve the interests or needs of OSYSA members, teams, players

and player families. Presumably, the Federation Rules are designed to further the interests of soccer and to serve the interests or needs of organization members, teams, players and perhaps even player families. For a cause of action to lie, there still must be a violation of one of the Federation Rules (or a statute).

CUSA's seventh claim for relief is that the New Rule imposes a hardship on CUSA and could cause irreparable harm to that organization. Even assuming that is true, no statute or Federation Rule has been cited that prohibits the enactment of rules or policies that have the effect of placing a hardship on organizations if that rule or policy does not violate a specific Federation Rule. The seventh claim for relief therefore must also fail.

CUSA's eighth claim for relief is that OSYSA has not enforced the New Rule against Miami Valley Youth Soccer Association ("MVYSA"). The evidence did not support this allegation. Moreover, there has been no statute cited, or any Federation Rule, that renders any rule adopted by a state soccer association to be invalid if it has not been enforced against others. Therefore, the eighth claim for relief must also fail.

In its ninth claim for relief, CUSA argues that OSYSA waived its right to enforce the New Rule against CUSA when it failed to compel CUSA to play in "District 1" the first season following adoption of the New Rule. (The claim for relief references "District 1," but it appears to have been intended to refer to "District 2," in which MVYSA is located.) The motion adopting the New Rule specifically provided that the New Rule would not apply to CUSA until the 2005-2006 season. If the New Rule was not in effect with respect to CUSA for the 2004-2005 season, there could be no waiver of the New Rule, as adopted, by the failure to require CUSA to comply with the New Rule for that season. The ninth claim for relief therefore also fails.

### CUSA Claims 3 and 4

In its third claim for relief, CUSA argues that the New Rule violates Federation Bylaw 213 (“Bylaw 213”). While CUSA’s supplemental filing of February 24 references the first three clauses of Section 1(a) of Bylaw 213, only the third clause appears to be relevant. Clause 3 provides that the Federation’s articles of incorporation, bylaws, policies and requirements take precedence over and supersede the governing documents and decisions of the state association and its members, and requires the state association and its members to abide by those articles, bylaws, policies and requirements. Essentially, CUSA is stating that the New Rule contravenes Federation Policy 601-7, thus rendering the New Rule in violation of Bylaw 213. I agree that if Federation Policy 601-7 has been violated, then Bylaw 213 has also been violated.

That brings us to the heart of the case, CUSA’s fourth claim for relief, that the New Rule violates Provision 601-7 of the Federal Policy Manual (“Policy 601-7”). Policy 601-7 provides in relevant part:

No Organization Member . . . shall interfere with the opportunity of a player, coach or team to travel to compete in a competition, including a game, scrimmage, tournament or league . . . unless that player, coach or team has been prohibited from doing so for disciplinary reasons . . . .

In its February 14 submission, CUSA argues that the New Rule specifically contravenes Policy 601-7 because it places geographic/travel prohibitions on CUSA teams and the ability of players to register for a league playing in District 1 of OSYSA if CUSA and its teams and players so choose. The New Rule clearly does place geographic restrictions on CUSA U10 teams. However, that is not the end of the inquiry. The Federation suggests in its Amicus Brief that at least some geographic rules are appropriate, and that geographic rules exist at many levels of the soccer world. The Federation’s position is confirmed by the recent passage of Federation Policy 212-1, Section 4 (“Policy 212-1”). Policy 212-1 states that an Organization Member must

allow participants from any affiliated organization to participate in its programs “if” those participants register “and comply with all of the reasonable policies, rules, regulations and requirements of the Organization Member.” It continues by noting that “reasonable policies, rules, regulations and requirements” may include a requirement that the participants “observe rationally supportable geographic rules of the Organization Member.” Thus, Policy 601-7 cannot be read in a vacuum, and must be considered in light of the provisions of Policy 212-1, which recognize that Organization Members, such as OSYSA, can pass “rationally supportable geographic rules.” Policy 212-1 does not resolve this grievance, but as indicated by the Federation in its Amicus Brief, Policy 212-1 confirms that not all geographic restrictions violate Federation Rules and crystallizes the fact question that must be determined, whether the geographic limitations of the New Rule are “rationally supportable,” or as the Federation suggests “reasonable.”

CUSA argues that the geographic restrictions of the New Rule are not reasonable. It presented significant evidence to support this position. That evidence clearly showed that the New Rule will create hardships for a number of families that have multiple children who are members of CUSA, when an older child chooses to play in District 1 for competitive reasons and another is required under the New Rule to play in District 2. It also showed that driving distances and times for some CUSA U10 participants, particularly those living just north of the dividing line between Districts 1 and 2 and OSYSA, will be increased under the New Rule.

OSYSA defends the New Rule by arguing that the geographic restrictions imposed therein are reasonable. It suggests that a statewide rule limiting the travel of very young teams comprised of 7, 8 and 9 year olds is, on its face, reasonable.<sup>1</sup> Further, OSYSA presented

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<sup>1</sup> When referring to a “statewide” rule, OSYSA is referring to the “state” of southern Ohio, which is essentially treated by the Federation as an entire state.

evidence showing that the New Rule, as applied to CUSA, is not unreasonable. It presented evidence showing that traffic is not as bad to many of the fields in District 2 as it would be for families driving through Cincinnati to many District 1 fields. It presented additional evidence showing that some of the hardships suggested by CUSA's witnesses would not, in fact, occur given increased scheduling flexibility afforded by MVYSA (the OSYSA member league in which most CUSA U10 teams would likely be playing under the New Rule).

OSYSA also presented two experts who opined that the New Rule was reasonable. However, one expert, Sam Snow, while clearly credentialed, could not testify credibly as to the reasonableness of the New Rule as applied to CUSA because he had not reviewed the specific facts with respect to driving times and locations of fields. In fact, if he had, much of his testimony suggests that he might have reached a contrary conclusion. Likewise, the opinion rendered by the second soccer expert testifying on behalf of OSYSA, Ron Quinn, was not helpful in that it focused on the need to reduce travel, and have children play in their own neighborhoods, neither of which had application to CUSA U10 teams prior to enactment of the New Rule, and neither of which would occur under the New Rule. Thus, the conclusions offered by the outside soccer experts were not persuasive.

There was also testimony that the New Rule was directed specifically at CUSA. Much of the discussion at the June 22, 2004 OSYSA Board meeting focused on CUSA, as did the one year exemption from application of the New Rule. However, this would be expected, given that the restrictions imposed under the New Rule had already been in effect for most U14 players for more than 10 years, and CUSA was one of only two groups that were exempted from those restrictions. Clearly, CUSA, which had taken advantage of this exemption, would be the party most affected by a change in the OSYSA policy, and one would expect discussion of any change should focus on the effect such a change would have on CUSA.

There was also significant testimony as to the rationale for passage of the New Rule. Two witnesses for OSYSA testified that the adoption of the New Rule was merely part of an overall review of all OSYSA Bylaws and was an effort to bring the Bylaws into compliance with Federation Rules and to eliminate the discrimination that had existed in favor of CUSA prior to adoption of the New Rule. CUSA witnesses did not dispute these points, but suggested the New Rule was adopted at the urging of MVYSA, which would increase in size by the addition of CUSA teams to its U10 leagues. However, there was no testimony from anyone who attended OSYSA's June 22, 2004 Board meeting evidencing that MVYSA was responsible for passage of the New Rule. In any event, the relevant question is not whether someone proposing the New Rule had a motive for doing so, but whether the geographic restriction contained in the New Rule is rationally supportable.

There was also significant, credible testimony that no prior notice of the New Rule was provided to CUSA, and that communication of the adoption of the New Rule to CUSA was lacking. These points cannot be disputed. While OSYSA may have followed its standard procedures in only notifying its Board members of proposed rule changes, common courtesy would suggest that a proposed change in the rules that would have a significant effect on a number of members of a club that was an active participant in OSYSA should have been communicated in advance to a representative of that club. In addition, once the New Rule was adopted, CUSA should have been notified by means other than the posting of the New Rule on the OSYSA website (and in a manner that might not have made clear to CUSA the significant effect adoption of the New Rule would have on CUSA).

Had OSYSA notified CUSA of the proposed change in its rules, CUSA might have had an opportunity to convince OSYSA Board members not to adopt the New Rule. Had OSYSA notified CUSA immediately about the adoption of the New Rule, CUSA and its members would

have had more time to plan for the date the New Rule would be effective.<sup>2</sup> CUSA could have adjusted its teams so as to minimize the inconvenience the New Rule would have on CUSA families, and families could have made arrangements to play soccer elsewhere if they felt the burden imposed by the New Rule was more detrimental than the benefits offered to them by CUSA. It is most unfortunate that neither notice was given. However, CUSA has not pointed to any statute or Federation Rule requiring prior notice to it of the proposed enactment of the New Rule, or requiring immediate notice of the adoption of the New Rule. Moreover, the evidence suggested the OSYSA Board did meet its own normal procedures in proposing and adopting motions of the Board. (CUSA also shares some responsibility for the fact that its members were not aware of the New Rule until it was too late to plan for its effective date. CUSA's President was made aware of the adoption of the New Rule no later than January 2005, well in advance of the Spring 2005 soccer season. Had CUSA's President communicated this information to John Mers, CUSA presumably would have notified the families of its U10 members, and all interested people would have had at least one season to plan for the effective date of the New Rule.)

Thus, regardless the motivation for adoption of the New Rule, and in spite of the lack of communication regarding the pendency or adoption of the New Rule or, as counsel for CUSA confirmed in his opening statement, whether Division 1 or Division 2 offers better competition for CUSA members, we are left with the question of whether the geographic restrictions under the New Rule are rationally supportable and reasonable.

The New Rule takes an existing policy which, subject to two exemptions, required all U14 players to play in the district in which a majority of their members resided, and brings the

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<sup>2</sup> The OSYSA Board certainly understood the significant impact that adoption of the New Rule would have on CUSA and its member families, and the wisdom of giving them an opportunity to plan for compliance with the New Rule, when it gave them a 15 month grace period before the New Rule would affect them.



age restriction down to U10 players. The choice of U10, as opposed to U14, was not arbitrary. U10 players play small sided games, rather than 11 to a side that is played at higher levels of organized soccer. Contrary to their older brothers and sisters, U10 players also do not compete for the State Cup. Overall, the New Rule makes it more likely that the youngest players will play closer to their homes, while those players 10 years of age and older can start to travel greater distances than they could have traveled under the existing rule. In addition, it makes the rule uniform for all U10 participants throughout the state. While this does take away some choices for some families, these are reasonable considerations. Thus, generally speaking, the New Rule is rationally supportable.

That is not, however, the extent of the analysis. A rationally supportable policy still might not be a reasonable policy if its application would be discriminatory or result in unreasonable hardships. Clearly, the enactment of the New Rule will cause a hardship for CUSA. However, in adopting the New Rule, OSYSA has had one of its member leagues, MVYSA, go out of its way to limit that hardship. The testimony at the hearing was that MVYSA has committed to working with CUSA to reschedule as many games as reasonably possible to accommodate CUSA's needs. Thus, to the extent driving times to MVYSA games would be longer on evenings, or coaches and parents could not attend evening games, MVYSA indicated it would move those games to weekends. In fact, during the fall 2005 season, CUSA's requests for rescheduling were all met, with only one possible exception. The testimony also indicated that CUSA does have alternatives, from rearranging its teams, to having its teams play in soccer tournaments and soccer festivals. The New Rule simply takes away one option that

was available in the past only for CUSA and one other club in the state. Taking away this one option is not sufficient grounds to render the New Rule unreasonable.<sup>3</sup>

Any time geographic boundaries are drawn, there will be someone on the boundary who will be adversely affected by a change in that boundary. However, the existence of Policy 212-1 suggests that this fact alone would not cause the enactment of a geographic restriction to violate Federation Rules; if it did, no geographic boundary could ever withstand scrutiny. It is not the New Rule that imposes hardships on CUSA families as much as the fact that they chose to live in an area that happens to be at or near the boundary between two OSYSA districts. Even then, the New Rule provides CUSA members one benefit that is not practically available to members of clubs located 20 miles to the southwest or 20 miles to the northwest; if there are enough U10 players to form more than one team at a given skill level, CUSA could organize its teams by geography so that anyone living north of the dividing line between Districts 1 and 2 wishing to play in District 1 could be placed on a team having a majority of its members residing in District 1, while persons preferring to play in District 2 could be placed on teams having a majority of its members residing in District 2. Thus, while the New Rule is certainly not favored by CUSA families, it places those families in the same standing as families of all other OSYSA club members, subject to the advantage and disadvantage CUSA families have of living on the border between two districts.

In taking into account the effect the New Rule will have on CUSA families, CUSA witnesses testified that CUSA families do have other options for their children to play soccer

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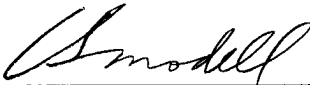
<sup>3</sup> There was testimony at the hearing that enactment of the New Rule will impose a particular hardship on existing teams that try to stay together from one year to the next. However, because the New Rule would not apply once players reach the next age level, the hardship imposed by the New Rule affects these teams for not more than three years. The OSYSA Board attempted to give these teams 15 months to adjust, thus further limiting this hardship to a handful of players who would still be playing on the same U10 team in the fall of 2005 that they played on in the spring of 2004. Since then, another year has gone by, and there should be few, if any, players left on those U10 teams. Any teams formed after January 2005 should have known of the existence of the New Rule.

through organizations other than CUSA. At the same time, Mr. Mers testified as to significant benefits CUSA offers to its members, including CUSA's stress on player development more than winning, minimum playing requirements for the development of young athletes, a variety of fun events offered to children, the requirement that children have an opportunity to play different positions, and others. Adoption of the New Rule may give CUSA families pause to think about whether those benefits outweigh what they may perceive to be a negative factor of likely having their younger children play in District 2. Consistent with the testimony offered by CUSA witnesses, parents should have choices, and they do have choices under the New Rule. They simply have one more factor they need to consider in deciding the club or team for which their younger children should play. Some parents may no doubt decide that the location of games outweighs all the other benefits offered to them by CUSA. While that is unfortunate, the fact that a change in the rules designed to create uniformity among all U14 (including U10) teams in the state results in the elimination of an exemption adopted for one or two clubs is not a reason to determine that the New Rule is not rationally supportable, based on all the evidence offered.

Taking all the foregoing into account, the New Rule is found to be reasonable and rationally supportable. This is true whether the New Rule is looked at in a vacuum, without regard to its effect on CUSA, but also taking into account the hardships it will impose upon CUSA and its members. It should therefore be upheld, and CUSA's remaining claims (claims 3 and 4) should be dismissed.

Respectfully Submitted,

Dated: March 22, 2006

  
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Charles S. Modell  
Larkin Hoffman Daly & Lindgren Ltd.