AMERICAN ARBITRATION ASSOCIATION

FRANCIS REININGER, Claimant, and U.S. ROWING ASSOCIATION, Respondent.	CASE NO. 72 199 0908 88 ARBITRATION AWARD

THE PARTIES

The parties to this arbitration are Claimant Francis Reininger (hereafter "Reininger"), a trialist for the United States Olympic Rowing Team for the 1988 Summer Olympics scheduled to commence in September of 1988 in Seoul, Korea, and the U.S. Rowing Association (hereafter "U.S.R.A."), the national governing body for amateur rowing in the United States and a group A member of the United States Olympic Committee (hereafter "U.S.O.C.").

(rrh\reini100)

NATURE OF DISPUTE

Claimant contends he has been effectively denied the opportunity to attempt to qualify for selection to participate as a competitor in the Olympic Games as a member of the Men's Olympic Rowing Team in the Quadruple Sculls event (hereafter sometimes referred to as "Quad" or "4x") as a result of what Reininger believes is a failure on the part of U.S.R.A. to select the five individuals making up the Quad team and spare on an objective and fair basis under equal conditions for all trialists for that event.

U.S.R.A. contends that the final 5 individuals selected to fill out the Olympic Quad team were selected properly through a series of athlete evaluation camps which the U.S.R.A. contends were rationally related to the goal of selecting the best possible representative for the United States for the Olympic Quad event.

THE ARBITRATION HEARING

The arbitration hearing occurred on August 24, 1988, at the offices of the American Arbitration Association located at 443 Shatto Place, Los Angeles, California, commencing at 3:00 p.m. and concluding at 9:00 p.m. before the undersigned arbitrator. Claimant Reininger represented himself. The U.S.R.A. was represented by Paula A. Oyer, Executive Director of the U.S.R.A. Claimant Reininger testified in his own behalf and called Dr. Joe Bouscaren as a witness. Paula Oyer testified on behalf of the U.S.R.A. and called Norton Schlacter as a witness. Messrs.

Bouscaren and Schlacter presented their testimony to the arbitrator by means of telephonic conference call.

Neither party requested a stenographic reporter and none was present.

The hearing proceeded in accordance with the Commercial Rules of the American Arbitration Association on an expedited basis as provided by the arbitration provisions of the applicable law, Constitutions and By-laws of the U.S.O.C. and U.S.R.A. All testimonial evidence offered by each party at the time of hearing was received by the arbitrator without objection. All documentary evidence offered by each party at the time of the hearing and as additionally telecopied to the arbitrator by the close of business on August 27, 1988, was received by the arbitrator without objection.

BURDEN OF PROOF

The arbitrator finds that the Claimant has the burden of proof to a preponderance of the evidence on all issues material to the outcome of the arbitration.

RELIEF SOUGHT BY CLAIMANT

Claimant Reininger seeks to have this arbitrator make an award reaching one of the following two results:

1. A single scull trials race be conducted immediately by U.S.R.A. with the top four finishers being awarded the boat positions on the 1988 Olympic Quad team and the fifth finisher being awarded the spare position on the 1988 Olympic Quad team. The field would include the five individuals already selected for

the Olympic team (Messrs. Strotback, Altekruse, Frackelton, Montesi and Springer), Claimant and presumably other scullers who have participated in the camp process or as otherwise selected by U.S.R.A.; or

2. No Olympic Quad team be sent to the 1988 Olympics and the U.S.R.A. be required to send a letter of apology to all Quad trialists and publish the letter of apology in American Rowing and Olympics Magazines and release the letter to the press.

At the conclusion of the hearing, in response to an inquiry from the arbitrator concerning the range of remedies he was seeking, Claimant stated that a challenge race against the Quad team selected by the U.S.O.C. prior to September 9, 1988 with a quad team to include Claimant and other scullers of his choice would not be a viable remedy in light of the severe time and equipment constraints and the problems associated with assembling a challenge team for such a purpose.

PROCEDURAL HISTORY

The U.S.R.A., through its Men's Olympic Rowing Committee ("M.O.R.C."), determined that the Olympic Quad team would be chosen during two sculling camps to be held in June and July, 1988.

On or about June 19, 1988, Claimant Reininger and three other scullers walked out of the first Quad camp protesting what they believed to be coaching and procedural errors that had plagued the camp process.

On or about June 24, 1988, Claimant, along with two other

scullers, opted to file a grievance with the U.S.R.A. pursuant to a grievance procedure provided as a dispute resolution mechanism in Article XI of the U.S.R.A. By-Laws.

On or about July 1, 1988, a grievance hearing was held before a hearing panel consisting of three members of the U.S.R.A. Grievance Committee.

On or about July 11, 1988, the hearing panel issued its decision, a copy of which is set forth in Appendix I for informational purposes. The conclusions of said decision were as follows:

> "1. Grievants should be invited to participate in the final selection camp for the Olympic Quad, and the hearing panel strongly encourages their participation.
>
> 2. All participants in the camp must have the benefit of equal equipment. If for any reason equal equipment is not available, all athletes participating in the camp should share equally in the use of the available equipment.
>
> 3. The final camp should be conducted only in still (i.e. nonriver and nontidal) water.
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> 4. As much as possible, objective criteria should be used to evaluate the candidates, and that criteria should be set forth in writing and provided to each participant in the camp. That explanation should include not only the criteria to be used, but also the weight to be given to that criteria.
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> 5. Two selectors should be appointed by the Executive Committee of U.S.R.A. to attend the camp. Neither selector shall be a member of M.O.R.C. and at least one should be an athlete member of U.S.R.A. The role of the selectors shall be to review the responsibility for the final selection -- Dietz and each selector having one vote with the majority vote prevailing."

On or about July 16, 1988, the Olympic Quad selection camp resumed with 12 scullers including Claimant Reininger present.

On the morning of July 18, 1988, Claimant Reininger walked out of the Olympic Quad selection camp in protest essentially over what Claimant contended was a failure on the part of the U.S.R.A. to comply with the decision of the Grievance Hearing Panel.

On or about July 20, 1988, Claimant appealed the Decision of the Hearing Panel to the U.S.R.A. Executive Committee. Set forth in Appendix II is a copy of Claimant's appeal with supporting documents for informational purposes.

On or about August 9, 1988, the U.S.R.A. Executive Committee denied Claimant's appeal making further additional findings all as reflected in its written decision, a copy of which is set forth in Appendix III for informational purposes.

On or about August 12, 1988, Claimant Reininger appealed the decision of the U.S.R.A. Executive Committee to the Executive Director of U.S.O.C., Baaron B. Pittenger. Set forth in Appendix IV for informational purposes is a true copy of Claimant's appeal to Mr. Pittenger. On or about August 18, 1988, Mr. Pittenger declined to resolve the controversy or support the complaints of Claimant. A copy of Mr. Pittenger's August 18, 1988 letter is set forth in Appendix V for informational purposes.

On or about August 19, 1988, Claimant Reininger filed his demand with the American Arbitration Association pursuant to Section 2, Article IX, of the U.S.O.C. Constitution.

THE RELEVANT LAW

The laws and rules which are applicable to this dispute are

found at 36 U.S.C. Section 371, et seq., the United States Olympic Committee Constitution (hereafter "U.S.O.C. Constitution"), the United States Olympic Committee By-Laws (hereafter "U.S.O.C. By-Laws"), the U.S. Rowing Association Constitution (hereafter "U.S.R.A. Constitution") and the U.S. Rowing Association By-Laws (hereafter "U.S.R.A. By-Laws").

Among the relevant objects and purposes of the U.S.O.C. are the following taken from Article II of the U.S.O.C. Constitution:

> "(4) Obtain for the United States, either directly or by delegation to the appropriate national governing body, the most competent amateur representation possible in each competition and event of the Olympic Games and the Pan American Games;
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> . . .
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> (5) Provide for the swift resolution of conflicts and disputes involving amateur athletes, national governing bodies, and amateur sports organizations, and protect the opportunity of any amateur athlete, coach, trainer, manager, administrator or official to participate in amateur athletic competition;

(emphasis added)

The U.S.R.A. has been designated a group A member of the U.S.O.C. as the national governing body for amateur rowing in the United States. As part of its obligations as a member of U.S.O.C., the U.S.R.A. has agreed to submit to binding arbitration, conducted in accordance with the commercial rules of the American Arbitration Association, any controversy involving the opportunity of any amateur athlete to participate in amateur athletic competition including the Olympics.

The U.S.R.A. is further obligated as a member of U.S.O.C. to provide an equal opportunity to amateur athletes to participate in amateur athletic competition including the Olympics without discrimination and with fair notice and opportunity for a hearing to any amateur athlete before declaring such individual ineligible to participate (see U.S.O.C. Constitution, Article IV, Section 4(b)(6)).

As the national governing body for rowing and a member of the U.S.O.C., the U.S.R.A. is under a duty imposed by the U.S.O.C. Constitution in Article VII to:

> "Section 1
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> . . .
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> (c) keep amateur athletes informed of policy matters and reasonably reflect the views of such athletes in its policy decisions
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> . . .
>
> Section 3
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> . . .
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> (e) Conduct amateur athletic competition, including national championships, and international amateur athletic competition in the United States, and establish procedures for the determination of eligibility standards for participation in such competitions...
>
> (f) Recommend to the U.S.O.C. individuals and teams to represent the United States in the Olympic Games and the Pan American Games;"

Article IX of the U.S.O.C. Constitution provides in pertinent part:

> "Section 1. No member of the U.S.O.C. may deny or threaten to deny any amateur athlete the

opportunity to compete in the Olympic Games, the Pan American Games, a World Championship competition or other such protected competition as defined in Article I, Section 2(g); nor may any member, subsequent to such competition, censure or otherwise penalize, (a) any such athlete who participates in such competition or (b) any organization which the athlete represents. The U.S.O.C. shall, by all lawful means at its disposal, protect the right of an amateur athlete to participate if selected (or to attempt to qualify for selection to participate) as an athlete representing the United States in any of the aforesaid competitions.

Section 2. Any amateur athlete who alleges that he or she has been denied by a U.S.O.C. member a right established by Article IX, Section 1, shall immediately inform the Executive Director of the U.S.O.C., who shall cause an investigation to be made and steps to be taken to settle the controversy without delay. Without prejudice to any action that may be taken by the U.S.O.C., if the controversy is not settled to the athlete's satisfaction, the athlete may submit to any regional office of the American Arbitration Association for binding arbitration, a claim against such U.S.O.C. member documenting the alleged denial not later than six months after the date of the denial. The Association, however (upon request by the athlete in question), is authorized, upon forty-eight hours' notice to the parties concerned, and to the U.S.O.C., to hear and decide the matter under such procedures as the Association deems appropriate, if the Association determines that it is necessary to expedite such arbitration in order to resolve a matter relating to a competition which is so scheduled that compliance with regular procedures would not be likely to produce a sufficiently early decision by the Association to do justice to the affected parties. By maintaining membership in the U.S.O.C., each U.S.O.C. member agrees that any such aforesaid controversy may be submitted to binding arbitration as provided in this Section and furthermore agrees to be bound by the arbitrators' award as a result thereof."

In accordance with Section 2 of Article IX, the American Arbitration Association, at the request of Claimant Reininger, determined to proceed with an arbitration hearing on Wednesday, August 24, 1988, at 3:00 p.m. with 48 hours notice before one

arbitrator administratively appointed by the Association.

Pursuant to Chapter XXI of its By-Laws, the U.S.O.C. is required to establish a Games Preparation Committee to advise and assist the Executive Board of the U.S.O.C. in all matters concerning the selection and participation of the United States athletes and team officials in the Olympic Games. Among the responsibilities of the Games Preparation Committee of the U.S.O.C. set forth in Chapter XXI of the U.S.O.C. By-Laws are the following:

"Section 3

. . .

"(b) To analyze and evaluate the programs and procedures proposed by the National Governing bodies for the selection of athletes and team officials to be recommended for final appointment to the Olympic or Pan American teams and to make an appropriate report to the board before such programs and procedures are adopted.

(c) To keep in constant touch with the National Governing bodies to monitor the operation of the athlete selection system for at least six months prior to the opening of the Pan American Games in the case of sports on the Pan American program; for at least 12 months prior to the opening of the Winter Games in the case of Winter Sports; and for at least 12 months prior to the opening of the Olympic Games for sports which are not on the Pan American program.

. . .

Section 10. Except as otherwise provided by the By-Laws, each National Governing Body shall determine, subject to coordination by the Games Preparation Committee and to the approval of the Executive Board, the schedule or try-outs or other competitions for the selection of athletes to represent the United States in a particular sport or even on the Olympic or Pan American Games program; the method of such selection; and the persons to be nominated for final appointment to the official delegation of the United States as

competitors, managers, coaches, and auxiliary personnel."

(emphasis added)

The National Governing Bodies including the U.S.R.A. have the following authority and responsibility as extracted from XXIX of the U.S.O.C. By-Laws:

"Section 2. Establish a written procedure to select athletes for the Olympic and/or Pan American team that shall be disseminated widely.

Section 3. Select sites and dates to qualify for the Olympic and/or Pan American teams.

Section 18(a). Each National Governing Body subject to the policy directives and procedures prescribed by the Executive Board and to coordination by the Games Preparation Committee, shall have the authority and duty to devise and determine the method of selecting athletes and team officials (coaches, managers, etc.) who will be recommended to the Executive Board for appointment to the team that will represent the United States in the particular sport or event of the Pan American or Olympic Games.

(b) Each national governing body, within 15 months after the quadrennial meeting of the House of Delegates, shall submit to the Games Preparation Committee, for review and report to the Executive Board, a written proposal concerning the participation of the United States in the particular sport or event of the forthcoming Pan American or Olympic Games. This proposal shall include the number of athletes and team officials to be nominated for appointment to the United States delegation for such Games; the procedures to be followed for preparing and conditioning candidates for the team; the program of try-outs and the method of selecting the athletes to be recommended for appointment to the team;...

(c) Each National Governing Body shall put into effect the plan approved by the Executive Board for participation of the United States in its particular sport or event in the forthcoming Pan American or Olympic Games. The National Governing Body shall, as early as practicable in accordance with the plan, announce the method of selecting the athletes to be

recommended for appointment to the team, shall establish the times and places of try-outs therefor, and shall perform whatever other duties may be indicated under the plan as approved by the Executive Board.

(emphasis added)

Chapter XXXII of the U.S.O.C. By-Laws provides in pertinent part:

> "Section 1. No athlete shall be recommended for appointment to the United States Olympic or Pan American team unless the athlete has won the right thereto according to the approved method of selection for the particular sport or event, and has passed the required medical examination.
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> . . .
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> Section 11. All try-outs and team selections shall be completed at least thirty (30) days in advance of the team's departure for the scene of the games unless special permission is obtained from the Games Preparation Committee.
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> . . .
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> Section 13. Once the personnel of the United States team has been selected on the basis of try-outs, no substitution shall be made except in accordance with selection procedures previously approved by the United States Olympic Committee Executive Board."

The U.S.R.A. Constitution in Article II provides in pertinent part as follows:

> "Section 3. The U.S.R.A. shall provide equal opportunity without regard to race, creed, color, religion, age or sex for participation in its sport to all individuals who are eligible under applicable international or reasonable national amateur athletic rules and regulations and apply such rules and regulations concerning athletic competition without discrimination to all such individuals; and shall not deny eligibility to any athlete, except after according such athlete fair notice and hearing as to the issue of his or her eligibility."

(emphasis added)

JURISDICTION

The arbitrator identifies what may be perceived as a technical conflict between the terms of the grievance procedure contained in the By-Laws of the U.S.R.A. and the arbitration clause contained in the Constitution of the U.S.O.C. Section 9 of Article XI of the U.S.R.A. By-Laws provides that a decision of the Executive Committee with respect to an appeal from the decision of a hearing panel shall be final and binding on all parties. Further, Section 11 of Article XI of the U.S.R.A. By-Laws provides that participation in a grievance procedure shall be deemed to constitute agreement to be bound by the provisions of the grievance procedure and decisions rendered in accordance therewith.

Article IX of the U.S.O.C. Constitution clearly provides an amateur athlete in the position of Claimant Reininger, who alleges he has been denied the right to participate in the Olympics or to attempt to qualify for selection to participate in the Olympics, the right to arbitration before a neutral arbitrator under the auspices of the American Arbitration Association. It is the determination of this arbitrator that participation by Claimant Reininger in the U.S.R.A. grievance procedure does not constitute an election of remedies or a waiver of his right to arbitrate under the U.S.O.C. Constitution. To the extent there is a technical conflict between the procedures set up in the U.S.O.C. Constitution and the U.S.R.A. By-Laws, the

U.S.O.C. Constitution takes precedence over the U.S.R.A. By-Laws. Claimant has a right of arbitration independent of his right to avail himself of the grievance procedure set forth in the U.S.R.A. By-Laws. The arbitrator is not bound by any of the decisions of the U.S.R.A. Grievance Committee Hearing Panel, the U.S.R.A. Executive Committee or the Executive Director of the U.S.O.C. Claimant is entitled to and has received a hearing de novo in connection with the contentions made and issues raised and the award of the undersigned arbitrator reflects a hearing de novo.

ISSUES SUBMITTED

Claimant contends that the three issues presented by the arbitration are as follows:

1. Was the Claimant denied fair notice when, without any prior notice, he was given less than one hour to decide whether to enter the single scull trials for the 1988 U.S. Olympic Team or the Quadruple Scull Selection Camps for the 1988 U.S. Olympic Team? Claimant contends, in effect, that he encountered a black list rule which would have prevented him from pursuing a spot on the Olympic Quad Team if he attempted to try out for a spot on the Olympic Single Scull Team.

2. Did the U.S.R.A. mislead or lie to the U.S.O.C. when it submitted a questionnaire concerning the team selection method for the Summer Olympics and stated that no discretionary methods would be used to select athletes to go to the Olympics?

3. Did the United States Olympic Sculling Coach, Jim Dietz,

and M.O.R.C. fail to comply with the Decision of the Grievance Hearing Panel by starting the second phase of selection camp without three selectors in place, conducting the camp on a river instead of on still water and failing to set forth in writing the weighing of various criteria to be used in the selection process?

The Respondent U.S.R.A. contends that the issue presented by the arbitration is as follows: "May the U.S.R.A. use a series of athlete evaluation camps to select its team for the four-man sculling event at the 1988 Olympics?"

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

The matter submitted to the arbitrator for decision is a difficult one. At stake is the destiny of the United States Men's Olympic Quadruple Sculling team for the 1988 Summer Olympics. The team which has been recommended by the U.S.R.A. and selected by the U.S.O.C. is scheduled to depart for Seoul on September 9, 1988. The team has been working out together since late July of 1988.

Claimant, Francis Reininger, is not a disgruntled athlete unable to make the team who is attempting to interfere with the Olympic selection process as a matter of sour grapes; rather, Claimant is a world class sculler who had a realistic chance of making the Olympic team in the Quad event but who chose, for the sake of his ideals and for what he believes to be the good of the sport, to risk his own chance of making the Olympic team by refusing to participate in the selection process designed and implemented by the U.S.R.A. which Claimant felt was not

reasonably calculated to lead to the selection of the most competent Quad team. Claimant was fully aware of the risk when he walked out of the selection camp on July 18, 1988, but was willing to sacrifice himself if necessary to attempt to accomplish his goal.

The magnitude of the honor of representing the United States on an Olympic team is such that the Congress has required that every effort be made at selecting athletes to represent the United States in a fair and equitable manner. Presentation of an unequal opportunity to an amateur athlete to make the Olympic team constitutes denial of opportunity within the meaning or Article IX, Section 1 of the U.S.O.C. Constitution.

These requirements, however, do not rise to the level of imposing upon the National Governing Body of each sport for each event a duty to utilize a purely objective basis for selection nor do they require perfection or computer-like execution of the design and implementation of selection methods. The arbitrator agrees with the Respondent that the test is a case where an amateur athlete challenges the selection process for the Olympic team is whether the selecting entity reasonably and in good faith, adopts and carries out a selection method which is rationally related to the goal of selecting the most competent representative possible in the Olympics.

The U.S.O.C. Constitution and By-Laws make it clear that it is the National Governing Body, here U.S.R.A., who has the right and duty to determine what selection process will be used for

selecting the athletes for the Olympic team. The U.S.R.A. has determined that selection for the Olympic Quad team will be made on a combination of objective and subjective factors. The arbitrator is convinced that there is a legitimate difference of opinion in the rowing community over whether a "trials" or "camp" system is the most desirable way to select the fastest Quad team. This difference of opinion has apparently existed for several years and will in all likelihood exist for some years in the future. Unfortunately for Claimant, the decision concerning which selection method is appropriate is that of the U.S.R.A. Based upon the evidence presented, this arbitrator is unable to make a determination that one method is more likely that the other to result in the selection of the most competent Quad team. While, as Claimant points out, a pure trials method has the advantage of eliminating all chance for favoritism and has been used by successful international teams, this arbitrator cannot say that use of the camp system, which has subjective features inherent in it, constitutes a per se denial of a fair and equal opportunity for the trialist. While Claimant may be correct that a pure trials method is the best selection method (a decision, this arbitrator need not make), the subjective criteria used by U.S.R.A. including technique, attitude, leadership, tenacity, etc., in addition to objective criteria like seat racing and physiological testing, is at least rationally related to the goal of selecting the most competent representative, especially in a team event like the Quadruple Scull.

The arbitrator is likewise unable to ascribe a sinister motive to the use of the camp selection process by the U.S.R.A. The arbitrator is convinced that the overriding motivation for the conduct of the U.S.R.A. and its Olympic Coach is to send the fastest possible Olympic Quad team to the Olympics. While Claimant has presented some evidence from which it may be inferred that there are "politics" at work in the U.S.R.A. which may affect the selection process, Claimant has failed to carry his burden of proving that such politics, if they indeed exist, have affected his right to participate in the selection process for the Olympic team.

The central issue of this case is whether Claimant has been actually or in effect denied a fair and equal opportunity to make the Olympic Quad team. This arbitrator finds that he has not.

This arbitrator finds that the U.S.R.A., in light of the overall facts and circumstances surrounding this case, while far from perfect as outlined in the discussion below, has substantially complied with the requirements of the law respecting selection of rowers for the United States Olympic Quad team for 1988 by reasonably and in good faith adopting and carrying out a selection method which is rationally related to the goal of selecting to most competitive representative possible for the Olympic Quad team.

While the decision of this arbitrator will not result in the Quad team which has been selected being changed or in an opportunity for Claimant to participate on the Olympic team, the

U.S.R.A. is urged to give serious consideration to a means by which the many problems raised by Claimant can be avoided in the future.

The undersigned arbitrator makes the following additional findings of fact and conclusions of law:

1. The U.S.R.A., subject to coordination by the Games Preparation Committee of the U.S.O.C. and approval of the Executive Board of the U.S.O.C. had the exclusive authority and responsibility to determine the method of selection of the Olympic Quad Sculling Team.

2. The U.S.R.A., through its Men's Olympic Rowing Committee, in coordination with the U.S.O.C. Games Preparation Committee and with the approval of the Executive Board of the U.S.O.C. determined that the selection method for the Olympic Quad Team would be the "camp" procedure as opposed to the "trial" procedure.

3. While the general selection method ("camp" as opposed to "trial") was communicated to the athletes consistently for a substantial period of time prior to the actual selection camps, the details of the selection methods to be utilized at the camps for the specific athletes to make the team were evolving and changing between Fall of 1987 and at least June 19, 1988.

4. Much of the criteria for selection to the Olympic Quad Team was widely disseminated to the athletes, including Claimant, between October of 1987 and June 19, 1988, including consideration of such factors as participation in athlete testing

sessions, Norwegian Ergo and related tests, physiological testing, performance at Double Sculls trials on May 28th, performance at national championships, participation at development weekends, performance at the scheduled initial Quad Selection Camp between June 1 and June 24, 1988, and seat racing.

5. The April 29, 1987 newsletter to the athletes contained a major change in the ultimate selection process for the Olympics by stating that the fastest camp quad rather than the fastest quad at the nationals would go to Lucerne, Switzerland, on June 26, 1988.

6. The decision of the U.S.R.A. to force the scullers to decide between singles competition and quad competition was not communicated to Claimant in a manner calculated to apprise him of the change prior to May 29, 1988, when it was orally communicated to him.

7. The potential conflict between the Quad formation camp (June 1 through 21) to form quads competing for the nationals and the single trials (June 8 through 11) which might be deduced from the April 29, 1987 newsletter is not fair notice to the athletes of a change of this magnitude. The change should have been clearly articulated. The evidence is that the U.S.R.A. was aware of its decision to require candidates wishing to try out for the Olympic Quad team to do so to the exclusion of other sculling events prior to April 29, 1988.

8. The oral notice given on May 29th violated Article IV, Section 4(b)(6) of the U.S.O.C. Constitution and Chapter XXIX,

Section 18 of the U.S.O.C. By-Laws.

9. Claimant contends that if the arbitrator finds a violation of the law in the failure of the U.S.R.A. to give adequate notice of the requirement that an athlete opt for either the singles or quad event, everything that followed was void. The arbitrator does not agree that such a result follows. The evidence is that Claimant planned to try out for both single sculling and quadruple sculling. Had the U.S.R.A. stuck with its original plan to permit athletes to try out for both single and quadruple sculling, Claimant would have tried out for both single and quadruple sculling. Instead, Claimant, faced with having to make a choice within one hour, albeit one that he should not have had to make at the time, opted for the quad event. The gravamen of Reininger's claim is that the selection process for the Olympic Quad team is not fair, objective or calculated to select the most competent Quad team. The entire object of this arbitration as framed by the Claimant is to affect the selection of the Olympic Quad Team. Had the Claimant come before this arbitrator in a timely fashion complaining of his inability to try out for the single scull event in addition to the quad team and sought relief to affect the single scull selection, the undersigned arbitrator may have been persuaded that the violation of the notice requirement would require some intervention depending upon a number of variables not before this arbitrator. However, that issue is not presented to this arbitrator and therefore it is something I need not reach in this award. The

fact that Claimant opted for the quad selection process and participated in that selection process makes the violation of the notice requirements moot with respect to the particular dispute before this arbitrator.

10. The U.S.R.A. stated in a Team Selection Method questionnaire presented in the fall of 1987 to the U.S.O.C. that no discretionary methods would be used to select athletes to the Olympic teams. There is no evidence that such a statement was false at the time it was made or that the U.S.R.A. intended to lie to or mislead the U.S.O.C. The arbitrator finds that as the selection method evolved between fall of 1987 and summer of 1988, the U.S.R.A. kept the U.S.O.C. and its Games Preparation Committee informed of the selection method, including the use of some subjective criteria. Under these circumstances, the content of the questionnaire does not invalidate the actual selection method adopted and implemented by the U.S.R.A., including some subjective criteria, which followed.

11. By July 16, 1988, the date upon which the camp selection process resumed following the July 11, 1988 decision of the Grievance Hearing Panel, the U.S.R.A. had failed to comply with the requirements of the decision that (1) two selectors in addition to Coach Dietz be present, (2) that the camp resume on still water and that (3) all criteria for selection be set forth in writing, setting forth the weight to be assigned to each factor. However, the arbitrator disagrees with Claimant that such failure on the part of U.S.R.A. must inevitably result in

voiding all selection which followed.

12. The U.S.R.A. made a reasonable effort between July 11, 1988 and July 16, 1988 to secure two qualified selectors to serve in addition to Coach Dietz, without success. However, by July 18, 1988, seven days following the Hearing Panel's decision, the U.S.R.A. had the selectors in place. The evidence is that the selection of the final five individuals was made on July 30, 1988 by Jim Dietz, Harry Parker and Peter Gardner with the benefit of input from Fred Borshelt. While Claimant argues that but for his walkout on July 18, 1988 the selectors would not have been picked, the arbitrator find that the U.S.R.A. at all times after July 11, 1988 intended to use the three selector system to pick the Olympic Quad team and that had Claimant stayed in camp he would have been evaluated by the multi-selector method.

13. The arbitrator finds that the selection of Hanover, New Hampshire at Darmouth by the U.S.R.A. in light of the time constraints involved and the U.S.R.A.'s inability to secure Princeton or Mercer, constituted a reasonable effort to comply with the requirements of the decision of the hearing panel. While there was a factual dispute over whether the site was tantamount to still water because of current control, to the extent it was not, all trialists were at the same competitive advantage or disadvantage.

14. The arbitrator finds that the written criteria prepared by Coach Dietz along with verbal supplementation, failed to comply with the requirements of the decision of the hearing panel

primarily because of the absence of written information concerning the weight given to each factor. However, the arbitrator finds that this failure is not of such a magnitude as to invalidate the selection process which followed.

15. The arbitrator finds that the selection method actually used by the U.S.R.A. to pick the individuals to be recommended to the U.S.O.C. for the Olympic Quad team, even with the failure to strictly comply with the decision of the grievance hearing panel, was rationally related to the goal of selecting the most competent Quad team and was carried out in good faith and in a reasonable manner which applied equally to those trialists who chose to remain in camp.

16. Based upon a review of all evidence submitted and a consideration of all facts and circumstances surrounding the selection process, and keeping in mind the test which applies in this case of "rational relationship" to the goal of selecting the most competent representative to the Olympics, the arbitrator sees no reason, justification or basis to invalidate the selection of the 1988 Olympic Quad team and declines to do so.

It is indeed sad that the spirit of unity which is such an integral part of the Olympic ideal has had the damper of this dispute placed upon it. It can only be hoped that both sides will reflect upon what went wrong and use their utmost ability to

avoid another dispute of this nature and to maximize the chances of a medal for the United States.

The arbitrator has spent in excess of twenty hours on this matter which is the equivalent of four arbitration days. This arbitrator's standard daily rate for arbitration is $500. This arbitrator waives all fees in excess of $600 and assesses a total of $600 for arbitrator's fees in this matter.

The administrative fees of the American Arbitration Association, telephonic costs incurred and arbitrator's fees assessed in connection with this arbitration are to be borne equally by the parties and paid as directed by the American Arbitration Association.

Dated: Aug. 30, 1988

Ross R. Hart, Esq.
Arbitrator