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ARBITRATION OF OLYMPIC ELIGIBILITY DISPUTES: FAIR PLAY AND THE RIGHT TO BE HEARD

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A. INTRODUCTION

A competition between two Greco-Roman wrestlers went from the wrestling mat to the federal courts the summer prior to the 2000 Olympic games. Keith Sieracki was declared the winner of the Olympic trials competition conducted by United States of America Wrestling Association (USA Wrestling), the national governing body for Greco-Roman wrestling. Matthew Lindland, the defeated wrestler, protested the result after the match. Lindland ultimately submitted the dispute to arbitration as provided by Article IX of the constitution of the United States Olympic Committee (USOC). As is customary in Article IX arbitrations, Sieracki, as the prevailing athlete in the competition, was not made a party to the arbitration between Lindland and USA Wrestling.[1]

After a hearing of which Sieracki was not notified and in which he did not participate, the arbitrator made an award on August 9, 2000, setting aside the result of the competition and ordering another match between Lindland and Sieracki.[2] Sieracki participated in the re-wrestle under protest and after filing his own request for arbitration.

Lindland won the re-wrestle by a unanimous decision. However, "USA Wrestling did not replace Sieracki with Lindland as its nominee for the Olympic team; instead, [USA Wrestling] . . . put Lindland on an eligibility list, from which he might replace Sieracki in the event of injury."[3] Lindland then filed an action in the U.S. District Court for the Northern District of Illinois to enforce the August 9, 2000 arbitration award by Arbitrator Burns.

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1. Sieracki v. USA Wrestling, AAA No. 30 190 00483 00 (Aug. 24, 2000) (A.B. Campbell, Arb.). *See also* Lindland v. United States of America Wrestling Ass'n, 227 F.3d 1000, 1005 (7th Cir. 2000).

2. Lindland v. USA Wrestling, AAA No. 30 190 00443 00 (Aug. 9, 2000) (D. Burns, Arb.) (hereinafter *Lindland I*).

3. Lindland v. United States of America Wrestling Ass'n, 230 F.3d 1036, 1038 (7th Cir. 2000) (hereinafter *Lindland II*).

In the arbitration proceeding initiated by Sieracki, Sieracki sought a determination that he should be the sole nominee at his weight class to the Greco-Roman Olympic team to the exclusion of Lindland. In a counterclaim to the Sieracki arbitration, Lindland sought a determination that Sieracki's nomination by USA Wrestling to the USOC should be withdrawn and that Lindland should be the sole nominee at the 76-kilogram weight class for the Greco-Roman Olympic team. On August 24, 2000, the arbitrator in the Sieracki arbitration directed USA Wrestling to withdraw the nomination of Lindland and to designate Sieracki as the sole nominee to the team roster at the 76-kilogram weight class.[4]

Lindland petitioned the U.S. District Court for the Northern District of Illinois for enforcement of the Burns Award. The district court dismissed Lindland's action to enforce the August 9, 2000 arbitration award without a written opinion.[5] Lindland then appealed to the U.S. Court of Appeals for the Seventh Circuit. Both USA Wrestling and the USOC responded that the arbitration award was "problematic because Sieracki was not a party to the arbitration."[6]

In an August 24, 2000, opinion authored by Judge Easterbrook, the court held that the Federal Arbitration Act[7] "does not provide that the absence of an interested person privileges a person who *did* participate [in the arbitration proceeding] to disregard an adverse decision."[8] The court also noted that section 220529 of the Ted Stevens Olympic and Amateur Sports Act[9] (Stevens Act) calls for arbitration between the aggrieved athlete and the governing body and does not require arbitration among athletes.[10]

The Seventh Circuit observed that Sieracki had "initiated his own arbitration protesting the result of the rematch (and perhaps protesting USA Wrestling's willingness to implement at least . . . part of the Burns Award)" treating the winner of the re-wrestle as "the winner" for Olympic purposes.[11] While conceding that the *Sieracki* arbitration included "both wrestlers, plus the USOC, and thus is more comprehensive than the proceeding conducted before Arbitrator Burns,"[12] the court

4. *Sieracki*, AAA No. 30 190 00483 00, slip op. at 4.
5. *Lindland*, 230 F.3d at 1038.
6. *Id.* at 1039.
7. 9 U.S.C. §§ 1-16, 201-208, 301-307 (1994).
8. *Lindland*, 230 F.3d at 1039 (citing 9 U.S.C. § 10).
9. 36 U.S.C. § 220501-220529 (1994 & Supp. IV 2000).
10. § 220529.
11. *Lindland*, 230 F.3d at 1039.
12. *Id.*

correctly predicted that this proceeding created "a possibility that USA Wrestling [would] be subject to inconsistent awards."[13]

Pointing out that "[a]rbitrators need not follow judicial notions of issue and claim preclusion, . . .which increases the chance of inconsistent awards,"[14] the court warned that these "are risks that USA Wrestling took when it decided not to bring Sieracki into the original proceeding, and this risk does not justify USA Wrestling's incomplete implementation of the Burns Award."[15] According to the Seventh Circuit, "[a] party to arbitration cannot refuse to implement an existing award just because it dreads the prospect of a later incompatible award; indeed, even when incompatible awards are rendered the party may be required to implement both."[16]

The court was critical of the suggestion of the USOC that Lindland had demonstrated his unfitness for the team by initiating litigation rather than be accepting the results of USA Wrestling's internal processes.[17] The Seventh Circuit concluded that the Burns Award required "USA Wrestling to send Lindland's name to the USOC as its champion and nominee."[18]

At about the same time as the Seventh Circuit was issuing its decision, Arbitrator Campbell issued his decision in the *Sieracki* arbitration "order[ing] USA Wrestling to ignore the result of the rematch and transmit Sieracki's name to the [USOC] as its sole nominee."[19] "USA Wrestling [first] attempted to comply with both decisions. It sent the USOC a notice . . . informing it of [the Seventh Circuit's] decision, but not 'nominating' Lindland."[20] At the same time, "it sent the USOC a notice withdrawing any nomination of Lindland and nominating Sieracki as the [team member]."[21]

In no uncertain terms the Seventh Circuit ordered USA Wrestling "to implement the Burns Award by making Lindland its nominee."[22] An

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13. *Id.*
14. *Id.*
15. *Id.*
16. *Lindland*, 230 F.3d at 1039 (citing W.R. Grace & Co. v. Local Union 759, Int'l Union of the Rubber Workers, 461 U.S. 757 (1983); Consolidation Coal Co. v. United Mine Workers, 213 F.3d 404 (7th Cir. 2000)).
17. *Id.* at 1040.
18. *Id.*
19. Lindland v. United States of America Wrestling Ass'n, 228 F.3d 782, 783 (7th Cir. 2000).
20. *Id.*
21. *Id.*
22. *Id.*

obviously perturbed court pointed out that Arbitrator Campbell's instruction to disregard the Burns Award had not been subjected to judicial review or enforcement whereas "the Judicial Branch of the United States of America has instructed [USA Wrestling] to implement the Burns award by making Lindland its nominee."[23] The court warned that "[c]hoosing which instructions to follow should not be difficult – but if USA Wrestling continues, equivocating the district court should be able to make the wiser course clear."[24]

On August 26, 2000, USA Wrestling sent Lindland's name to the USOC. However, the USOC "refused to accept Lindland as a member of the team, asserting that USA Wrestling's nomination of Lindland was untimely because Sieracki's name already had been sent to the International Olympic Committee (IOC)."[25]

In a third proceeding in federal court, Sieracki sought confirmation of the Campbell Award and Lindland sought to compel the USOC to send his name to the IOC.[26] The U.S. District Court for the Northern District of Illinois "ordered the USOC to request the IOC to substitute Lindland for Sieracki"[27] and "denied Sieracki's petition to confirm the Campbell Award."[28] The USOC did so and the IOC made the substitution.[29]

The district court "also denied Sieracki's petition to confirm the Campbell Award."[30] The district court read *Consolidation Coal Co. v. United Mine Workers*[31] as precluding enforcement of incompatible awards.[32] Because only one of the two athletes can be on the Olympic team, "the district judge thought that federal courts should not order the USOC to send both."[33]

On appeal, the Seventh Circuit held, in a decision dated September 1, 2000, that the Campbell Award in the *Sieracki* arbitration could not be confirmed.[34] The Seventh Circuit expressed concern that not only did the Campbell Award approve the result of the original match won by

23. *Id.*
24. *Lindland*, 228 F.3d at 783.
25. *Lindland*, 227 F.3d at 1002.
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.* at 1002.
30. *Lindland*, 227 F.3d at 1002.
31. 213 F.3d 404 (7th Cir. 2000).
32. *Lindland*, 227 F.3d at 1003.
33. *Id.*
34. *Id.* at 1004.

Sieracki and the adequacy of USA Wrestling's grievance procedures, but that the Campbell Award directed USA Wrestling not to implement the Burns Award.[35]

Observing that "[d]efinitive resolution of the right way to handle conflicting awards, after one has been confirmed, may await another day,"[36] the Seventh Circuit stated that the Campbell Award could not be confirmed for two reasons. First, the court held that the "entire proceeding appears to have been *ultra vires*."[37] Second, the court held that "the award violate[d] the Commercial Rules of the [AAA]."[38]

With respect to the first reason, the Seventh Circuit ruled that "[t]he Stevens Act does not authorize arbitration about the propriety of another arbitrator's decision."[39] Recognizing that Sieracki did not have an arbitrable claim under the Stevens Act because he was not a "party aggrieved by a determination" of USA Wrestling, the Seventh Circuit declared that "[t]he Stevens Act would be self-destructive if it authorized such proceedings, which would lead to enduring turmoil . . . and defeat [the Act's] function of facilitating final resolution of disputes."[40]

Turning to the second reason, the Seventh Circuit noted that Rule 48 of the AAA's Commercial Arbitration Rules provides that an "arbitrator is not empowered to redetermine the merits of any claim already decided."[41] Whatever powers Arbitrator Campbell possessed with respect to Sieracki, the Seventh Circuit declared that "he lacked the power to order USA Wrestling to nominate anyone other than the winner of the rematch."[42]

The Seventh Circuit recognized that Sieracki was not a party to *Lindland I* but noted that the Stevens Act provides only "for [an] arbitration between an aggrieved athlete and the national governing body, not for arbitration among athletes."[43] It suggested that USA Wrestling, "by defending its decision . . . , also defend[ed] the interests of the winning athlete."[44] Although "the constitution or bylaws of the USOC or USA

35. *Id.* at 1003.

36. *Id.*

37. *Lindland*, 227 F.3d at 1003.

38. *Id.* "AAA" is the acronym for the American Arbitration Association and is used throughout the remainder of this article.

39. *Id.* (citing 36 U.S.C. § 220529(a)).

40. *Id.* at 1004.

41. *Id.*

42. *Lindland*, 227 F.3d at 1003.

43. *Id.* at 1005.

44. *Id.*

Wrestling could designate as additional parties those athletes potentially affected by the proceedings," the court stressed that they did not do so.[45]

At the Olympics in Sydney, Australia, Lindland was ultimately defeated by a Russian wrestler and awarded the silver medal. No further litigation ensued.

B. Applicable Laws and Rules

The Stevens Act sets forth a comprehensive scheme for amateur athletic activity in the United States, including participation in the Olympics. Subchapter I[46] of the Stevens Act describes the powers and duties of the USOC. Subchapter II[47] of the Stevens Act recognizes amateur sports organizations as "National Governing Bodies."[48] The Stevens Act requires the USOC 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 an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, world championship competition, or other protected competition as defined in the constitution and bylaws.[49]

The constitution of the USOC provides a complaint procedure culminating in arbitration for disputes involving amateur athletes allegations that a USOC member has denied the athlete the right to participate in the Olympic Games, the Pan American Games, the Paralympic Games, a World Championship competition, or any other such protected competition.[50] The USOC's constitution provides that the athlete may submit a claim against the USOC member to any regional office of the American Arbitration Association (AAA) not later than six months after the date of the denial.[51]

The athlete must include with the initial submission to the AAA a list of all persons the athlete believes may be adversely affected by the arbitration.[52] The USOC member against which the arbitration has been

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45. *Id.*
46. 36 U.S.C. §§ 220501-220512.
47. 36 U.S.C. §§ 220521-220529.
48. § 220521. The USOC may recognize only one national governing body for each sport.
49. § 220509(a).
50. United States Olympic Comm., Constitution art. IX, § 2 (1998) [hereinafter USOC Constitution].
51. *Id.*
52. *Id.* § 3.

filed must then promptly submit to the AAA a list of persons the member believes may be adversely affected by the arbitration.[53] The arbitrator must then promptly determine which additional persons must receive notice of the arbitration.[54] The athlete then provides appropriate notice to these persons.[55] The USOC constitution further provides that "[a]ny person so notified then shall have the option to participate in the arbitration as a party, however all persons so notified shall be bound by the results of the arbitration regardless of their decision to participate."[56]

C. Discussion

Fundamental fairness guarantees that no one may have his or her rights extinguished by an adjudicatory process unless that person has first received a full and fair opportunity for a hearing.[57] In other words, strangers to a prior case cannot be bound by it.[58] Although the Seventh Circuit recognized that Sieracki was not a party to the Lindland arbitration, it ruled that this was not a defense to the obligation of USA Wrestling to comply with the Burns Award in *Lindland I*.[59]

Where there is more than one arbitration proceeding involving the same issues but different parties, there is a risk of final and binding inconsistent decisions. While recognizing this problem,[60] the Seventh Cir-

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53. *Id.*.
54. *Id.*
55. *Id.*
56. *Id.*
57. Jack Ratliff, *Offensive Collateral Estoppel and the Option Effect*, 67 TEX. L. REV. 63, 64 (1988); James R. Pielemeier, *Due Process Limitations on the Application of Collateral Estoppel Against Nonparties to Prior Litigation*, 63 B.U. L. REV. 383 (1983); *see also* Local Lodge 1617, Int'l Ass'n of Machinists v. Associated Trans., Inc., 92 L.R.R.M. (BNA) 2342, 2344 (D.N.C. 1976) (same violation involving different employees does not provide basis for application of res judicata); Hotel Ass'n of Washington, D.C. v. Hotel & Rest. Employees Union, Local 25, 963 F.2d 388 (D.C. Cir. 1992) (arbitrator did not ignore contract language providing that grievance resolutions would be "final and binding" when he declined to follow an earlier arbitration decision concerning the same contract language, but involving a different grievant); RESTATEMENT (SECOND) OF JUDGMENTS § 34(3) (1982). *Cf.* Jay Grenig, *Contract Interpretation and Respect for Prior Proceedings, in* 1 LABOR AND EMPLOYMENT ARBITRATION § 9.06[1][c] (Bornstein et al. eds. 2d ed. 2001).
58. Transportation-Communication Employees Union v. Union Pac. R.R., 385 U.S. 157, 159 (1967) (arbitration award may be unenforceable if an indispensable party is missing from litigation); Office & Prof'l Employees Int'l Union v. Sea-Land Serv., Inc., 210 F.3d 117, 122 (2d Cir. 2000) (absence of third party affected by decision "rendered continued enforcement of the judgment entered on that award . . . inequitable"). *See also* Ratliff, *supra* note 57, at 64 n.8.
59. *Lindland*, 230 F.3d at 1039.
60. *Id.* (The court commented that "[d]efinitive resolution of the right way to handle conflicting awards after one has been confirmed may await another day.").

cuit said this was a "risk . . . that USA Wrestling took when it decided not to bring Sieracki into the original [arbitration] proceeding."[61] Of course, it was Sieracki, not USA Wrestling, who was denied the opportunity to participate in the original arbitration proceeding.

The potential for conflicting arbitration awards is not new to the courts. In a number of cases, the courts have refused to order a three-party, or tripartite, arbitration involving all three parties in the absence of a written agreement among the parties providing for consolidated arbitration.[62]

In labor relations there can be situations where two or more employees may have conflicting interests.[63] While an arbitration between the employer and one of these employees may proceed in the absence of the other employee who may be adversely affected by the outcome, the arbitration award in the first proceeding may not bring about a final resolution of the conflict as the second employee may also compel a separate arbitration.[64]

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61. *Id.*

62. Government of U.K. v. Boeing Co., 998 F.2d 68, 74 (2d Cir. 1993) (ruling that "district court cannot consolidate arbitration proceedings arising from separate agreements to arbitrate, absent the parties' agreement to allow such consolidation"), *cert. denied*, 510 U.S. 870 (1993); Local 1351, Int'l Longshoremens Ass'n v. Sea-Land Serv., Inc., 214 F.3d 566, 572 (5th Cir. 2000) (holding that principles of collateral estoppel and res judicata barred district court from ordering office workers' union to join in tripartite arbitration with employer and longshoremen's union, where another district court had already entered final judgment affirming arbitrator's decision in grievance filed by office workers' union), *cert. denied*, 531 U.S. 1076 (2001); American Centennial Ins. Co. v. National Cas. Co., 951 F.2d 107, 108 (6th Cir. 1991) (stating that a "court is not permitted to interfere with private arbitration [agreements] in order to impose its own view of speed and economy, . . . even where the result would be the . . . inefficient maintenance of separate proceedings"); Protective Life Ins. Corp. v. Lincoln Nat'l Life Ins. Corp., 873 F.2d 281, 282 (11th Cir. 1989) (per curiam) ("Parties may negotiate for and include provisions for consolidation of arbitration proceedings in their arbitration agreements, but if such provisions are absent, federal courts may not read them in.").

63. FRANK ELKOURI & EDNA ELKOURI, HOW ARBITRATION WORKS 349 (Marlin M. Volz & Edward P. Goggin eds., 5th ed. 1997).

64. Carey v. Westinghouse Elec. Corp., 375 U.S. 261, 274 (1964) (Black, J., dissenting) (arguing that in a jurisdictional dispute, arbitration award between first union and employer would not be completely final and binding on second union that did not participate in first arbitration). *See, e.g.*, Graphics Arts Int'l Union, Local 97-B v. Haddon Craftsmen, Inc., 489 F. Supp. 1088, 1098 (M.D. Pa. 1979) (stating that in a seniority dispute resulting in two arbitration awards, court was "not free to vacate one award and uphold the other [when] both [drew] their essence from the collective bargaining agreement"); *In re* Iroquois Beverage Corp., 27 Lab. Arb. Rep. (BNA) 906, 907 (N.Y. Sup. Ct., 1955) (because of interrelationships between employees with respect to seniority rights, court permitted intervention by employees in an arbitration involving seniority rights of other employees in the same seniority unit, noting that "for every person whose seniority is advanced, someone will be adversely affected by such advancement").

The Seventh Circuit acknowledged the problem of inconsistent labor arbitration awards, stating "[s]imilarly, 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 the arbitration."[65]

The Seventh Circuit did not address what would happen where a second person had a right to submit the adverse action against him or her to arbitration. The Seventh Circuit held that, under Rule 48 of the AAA's Commercial Rules,[66] Arbitrator Campbell was without power to order USA Wrestling to nominate anyone other than the winner of the rematch.

Probably one of the more common situations with the potential for conflicting arbitration awards involves jurisdiction or assignment of work disputes where two labor unions are involved.[67] The Supreme Court recognized the place of tripartite arbitration in these disputes, stating:

> In order to interpret [a collective-bargaining] agreement it is necessary to consider the scope of other related collective bargaining agreements, as well as the practice, usage and custom pertaining to such agreements. This is particularly true when the agreement is resorted to for the purpose of settling a jurisdictional dispute over work assignments.[68]

The courts have disagreed on how to deal with tripartite jurisdictional disputes. For example, the Ninth Circuit has upheld the integrity of conflicting work assignment arbitration awards and required an employer to submit double payment for work.[69] In *Retail, Wholesale and*

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65. *Lindland*, 230 F.3d at 1039.

66. Rule R-48 provides that an "arbitrator is not empowered to redetermine the merits of any claim already decided." AMERICAN ARBITRATION ASS'N, COMMERCIAL DISPUTE RESOLUTION PROCEDURES: COMMERCIAL ARBITRATION RULES, R-48, *available at* http://www.adr.org.

67. *See generally W.R. Grace & Co.*, 461 U.S. 757; Sherrard L. Hayes, Jr., Comment, *The Federal Circuits' Response to Conflicting Arbitration Awards in Labor Disputes: Split or Harmony Between the Sixth and Ninth Circuits?*, 59 TENN. L. REV. 353 (1992); Edgar A. Jones, Jr., *A Sequel in the Evolution of the Trilateral Arbitration of Jurisdictional Labor Disputes—The Supreme Court's Gift to Embattled Employers*, 15 UCLA L. REV. 877 (1968).

68. *Transportation-Communication Employees Union*, 385 U.S. at 161.

69. Louisiana-Pacific Corp. v. International Bhd. of Elec. Workers, 600 F.2d 219, 222 (9th Cir. 1979). *See also Local 1351 Int'l Longshoremen's Ass'n*, 214 F.3d at 572. *Cf.* United States Postal Serv. v. American Postal Workers Union, 893 F.2d 1117, 1121 (9th Cir. 1990) (holding that parties must seek three-way arbitration before any bipartite arbitration proceedings become final), *cert. denied*, 498 U.S. 820 (1990).

Department Store Union, Local 390 v. Kroger Co.,[70] the Sixth Circuit declined to enforce a pair of conflicting arbitration awards and ordered a new arbitration involving the employer and the two disputing unions.[71] Among the factors considered in determining whether tripartite arbitration should be ordered are

> (i) the breadth of the relevant arbitration provisions; (ii) the existence (or likelihood) of conflicting arbitration awards; (iii) the compatibility of the arbitration procedures in the two [contracts]; (iv) the retrospective or prospective nature of the awards; and (v) whether [a party] should have known of the potential conflict in its incipiency and should have acted to prevent it.[72]

While tripartite arbitration may be favored in work assignment labor disputes, a court may refuse to order tripartite arbitration where a final judgment has already been entered affirming an arbitrator's decision in a bilateral arbitration.[73] Although a court might later modify an enforcement order of an arbitration award, this does not diminish the order's finality or present effect.[74]

While courts and arbitrators are in disagreement as to whether an arbitrator may invite the second party to participate in an arbitration proceeding in the absence of compelling authority such as a statute or contract language,[75] the USOC's constitution expressly provides that the parties to the arbitration must submit lists of all persons that may be adversely affected by the arbitration and the arbitrator has the power to determine which additional persons must receive notice of the arbitra-

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70. 927 F.2d 275 (6th Cir. 1991). *See also* United States Postal Serv. v. National Rural Letter Carriers' Ass'n, 959 F.2d 283, 286-87 (D.C. Cir. 1992); Columbia Broadcasting Sys., Inc. v. American Recording & Broadcasting Ass'n, 414 F.2d 1326, 1328-29 (2d Cir. 1969); Local #850, Int'l Ass'n of Machinists v. T.I.M.E.-DC, Inc., 705 F.2d 1275, 1277 (10th Cir. 1983). *But see* Emery Air Freight Corp. v. International Bhd. of Teamsters, Local 295, 161 L.R.R.M. (BNA) 3068, 3073-74 (2d Cir. 1999) (stating that the "district court did not abuse its discretion in refusing [employer's] request for an order requiring three-way arbitration" in jurisdictional work dispute with two unions where "two collective bargaining agreements used incompatible arbitration procedures, . . . neither union ha[d] agreed to follow the procedure in the other union's agreement, . . . no 'immediate intervention [was] necessary to keep the peace' because both [agreements had] no-strike provisions," an award in the pending bipartite arbitration might not conflict with obligations resulting from prior arbitration, and the international union had "an internal arbitration process for settling jurisdictional disputes between its locals").

71. 927 F.2d at 280.

72. *Emery Air Freight Corp.*, 161 L.R.R.M. (BNA) at 3073 (citations omitted).

73. *Local 1351 Int'l Longshoremen's Ass'n*, 214 F.3d at 573.

74. United Food & Commercial Workers Union v. Pilgrim's Pride Corp., 193 F.3d 328, 331 (5th Cir. 1999).

75. ELKOURI & ELKOURI, *supra* note 63, at 350.

tion.[76] Despite this provision, for some unexplained reason, under Article IX the "competing athlete who does not initiate the arbitration [customarily] is not a participant and is not considered a necessary party by the USOC."[77]

The Seventh Circuit's view that USA Wrestling vigorously defended its decision does not change the fact that Sieracki, a person who may have been (and was) adversely affected by the arbitration decision, was excluded from those arbitration proceedings.[78] Although it may be normal not to include all potentially adversely affected parties in an arbitration,[79] those awards are not binding with respect to such excluded parties.[80]

D. Conclusion

Sieracki was deprived of the rewards of his victory in the June 24, 2000 wrestling match by the *Lindland I* arbitration proceeding. As Sieracki was neither notified of, nor made a party to that arbitration proceeding, he was not bound by the arbitrator's decision in that case. On the other hand, USA Wrestling participated in the *Lindland I* arbitration proceeding and it was bound by the outcome in that proceeding.[81]

The problem presented by two inconsistent arbitration awards in *Lindland II* might have been avoided had the arbitrator in *Lindland I* notified Sieracki of the arbitration and permitted him to participate as permitted by Article IX of the USOC constitution. Not only would such an action have eliminated the possibility of inconsistent awards, but such action would have given Sieracki the opportunity to participate in a hearing that was going to decide whether he was going to the Olympic games. Basic concepts of fair play and due process demand nothing less.

Should the arbitrator decide, as the arbitrator did in *Lindland I*, not to give the other athlete notice of the arbitration proceeding, when the

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76. USOC Constitution, *supra* note 50, art. IX, § 3. The AAA Commercial Arbitration Rules are silent with respect to the right of a person who may be adversely affected by an arbitration proceeding to intervene in that proceeding.

77. *Lindland*, 227 F.3d at 1005 (quoting Arbitrator Campbell).

78. *Id.*

79. *Id.*

80. Consolidated Coal Co. v. United Mine Workers of America, 213 F.3d 404, 408-09 (7th Cir. 2000) (res judicata effect of judicial decision merely confirming an arbitral award is extremely limited. "All it amounts to is a determination that there is no basis for upending *that* award."); Bhd. of R.R. Trainmen v. Denver & Rio Grande Western R.R., 370 F.2d 833, 833-36 (10th Cir. 1966), *cert. denied*, 386 U.S. 1018 (1967) (prior arbitration award does not have res judicata effect). *Cf.* Grenig, *supra* note 57, at § 9.06[1][c].

81. *Lindland*, 230 F.3d at 1040.

prevailing party seeks confirmation of the award the district could compel joinder of the other athlete under Rule 19.[82] By joining the absent athlete, the court will be able to determine whether the athlete was prejudiced by not having been given notice of the arbitration proceeding. Additionally, the absent athlete will have the opportunity to present argument as to whether the award should or should not be confirmed.

While in many cases, the National Governing Body may argue vigorously on behalf of the athlete who prevailed in the athletic competition, this may not always be the case. There may be situations where the National Governing Body has no strong interest in defending the athlete who prevailed in the competition or may actually favor the athlete challenging the result. By giving the both athletes the opportunity to participate in the arbitration hearing or, at the very least, in the hearing to confirm the arbitration award, fair play and due process will be the winners.

82. FED. R. CIV. P. 19. *See also Local 1351, Int'l Longshoremens Ass'n*, 214 F.3d at 568 (second union that had not participated in arbitration between employer and first union joined by district court as indispensable party during proceedings to confirm award).