



August 27, 2008

**VIA EMAIL**

Fargo Soccer Club  
Attention: Matt Noah, President  
4910 Meadow Creek Drive South  
Fargo, North Dakota 58104

Minnesota Youth Soccer Association  
Attention: Candace Daley, Executive Director  
11577 Encore Circle  
Minnetonka, MN 55343

North Dakota Youth Soccer Association  
Attention: Terry Schneweis, Executive Director & Larry Monaco  
3022 Walnut Street  
Grand Forks, ND 58201

**Re: Fargo Soccer Club ("FSC") v. Minnesota Youth Soccer Association ("MYSA") and North Dakota Youth Soccer Association ("NDYSA")  
USSF Grievance**

Dear Parties:

I am writing this letter because NDYSA filed an appeal with USSF on August 23, 2008. A copy of the appeal is enclosed with this letter. Per Policy 704-1, FSC has ten (10) days from receipt of the decision to file a brief in opposition to the appeal. That means that the any such submission must be filed on **Saturday, September 6, 2008**. Please feel free to contact me if you have any questions.

Sincerely,

Gregory A. Fike  
USSF Staff Attorney

cc: Daniel T. Flynn, USSF CEO/Secretary General  
Timothy M. Pinto, USSF General Counsel

# APPEAL OF NORTH DAKOTA YOUTH SOCCER ASSOCIATION

## I. BACKGROUND AND REASONS FOR FILING THIS APPEAL

1. North Dakota Youth Soccer Association (NDYSA) appeals the decision of the hearing examiner of August 13, 2008 (“Award of the Arbitrator”), in regard to a grievance filed by the Fargo Soccer Club (FSC) against NDYSA and the Minnesota Youth Soccer Association (MYSA). That grievance sought relief against NDYSA to allow FSC to play in a 3-club recreational league (FMWFSL) composed of 2 NDYSA recreational clubs and one MYSA recreational club “beginning in Autumn 2008” and enforcement of an NDYSA rule regarding recognition of soccer programs. The hearing examiner correctly found that NDYSA had not violated United States Soccer Federation (Federation) Bylaw 603 on the basis of its membership in SAY and that he had no jurisdiction over enforcement of an NDYSA rule under section 1(a) of Federation Bylaw 704.

2. The hearing examiner, however, erroneously found that NDYSA had violated Federation Bylaw 601, Policy 601-7, and section 4(b) of Federation Policy 212-1. The hearing examiner’s findings, conclusions, and relief awarded are based on incorrect statements of basic facts that are part of the record and fundamental misunderstandings in regard to FMWFSL and Policy 601-7. The hearing examiner also did not correctly understand the position of NDYSA concerning its jurisdiction regarding its member clubs.

## II. FINDINGS, CONCLUSIONS, AND RELIEF CONCERNING FMWFSL

3. In paragraph (1) of “Relief Awarded” (hearing examiner’s decision, page 12), the hearing examiner states the following: “Such participation [by FSC] shall be allowed even if the organizing clubs do not allow participation by members of any other club, since FSC was precluded from participating in this league **in previous seasons** in which **other clubs** were allowed to participate.” (emphasis added). (See also paragraphs (2) and (3), before “Relief

Awarded”, that states that MYSA and NDYSA “allowed teams from other clubs to participate”, pages 11 and 12 of the hearing examiner’s decision.) This conclusion is an incorrect statement of 2 basic facts. First, FSC never sought, nor was it precluded from, participating in FMWFSL in previous seasons. The grievance only sought to allow FSC to participate in the league beginning with the autumn, 2008, season. ( See paragraph 2(1) of the grievance: “that we may interplay beginning in Autumn 2008”; paragraph 2(6) of FSC’s response of July 8, 2008, to NDYSA’s motion to dismiss.) Second, there was only **one** other club—Jamestown— not “other clubs”, that played this past season (and seasons before) in the league with only one of its teams in the co-ed and girls 7<sup>th</sup>/8<sup>th</sup> grade division. NDYSA was not aware of this situation until this grievance proceeding and has acted on this matter as explained later in this appeal. (statements of Mr. Matt Noah, President of FSC, and Mr. Terry Schneweis, Executive Director of NDYSA, at the grievance hearing on July 31, 2008.)

4. (a) The hearing examiner also has completely misconstrued Federation Bylaw 601 and Policy 601-7 and therefore erroneously applied those provisions to NDYSA, FMWFSL, and the league’s member clubs. Only Federation Bylaw 603 and Policy 212-1 apply to interplay requirements when one Organization Member or a member of that Organization Member seeks to participate in the activities of a second Organization Member or the activities of a member of the second Organization Member. That is why the preamble to Policy 212-1 contains only a reference to Federation Bylaws 212 and 603. It includes no reference to Bylaw 601 or Policy 601-7 because those provisions apply to an entirely different set of circumstances as explained in subsection (b) of this paragraph. Federation Bylaw 603 and Policy 212-1 alone apply to the set of circumstances that are the basis of the allegations contained in the FSC grievance. Those provisions prohibit one Organization Member, or a member of that Organization Member, from discriminating against a second Organization Member or a member of that second Organization Member (and the hearing examiner found no discrimination by NDYSA under Bylaw 603). The

first Organization Member, or any of its members, must allow Participants (a player, coach, trainer, manager, administrator, or official) of the second Organization Member (or one of its members) to participate in the activities of the first Organization Member or its members if registration requirements of the first Organization Member or its members and all other reasonable policies, rules, regulations, and requirements are met. As explained in paragraph 5 of this appeal, NDYSA, FMWFSL, and the league's member clubs acted properly as provided by Policy 212-1.

(b) Bylaw 601 and Policy 601-7 apply to an entirely different set of circumstances. Bylaw 601 contains no reference to "travel", the word using by the hearing examiner in finding a violation of Bylaw 601 and Policy 601-7. Section 2 of the Policy applies to tournaments and is therefore not relevant to this grievance. The only other provision of the Policy concerning travel is section 1(B), and it applies to travel and permission to travel. Policy 601-7 applies only to an Organization Member or a member of an Organization Member considering telling **one of its own** player, coaches, or teams that it cannot participate in the competition of another Organization Member or a member of that other Organization Member if it satisfies eligibility requirements. That provision also states that an Organization Member or a member of an Organization Member cannot **deny one of its own** players, coaches, or teams permission to travel to participate in the competition of another Organization Member or a member of that other Organization Member if it satisfies eligibility requirements. Clearly, there is nothing in the record to show that NDYSA, FMWFSL, and the league's member clubs have done anything that interferes with its players, coaches, trainers, managers, administrators, or officials from traveling to, or seeking permission to travel to, participate in the matches of another Organization Member or member of an Organization Member. In fact, just the opposite is true. There are players and coaches of NDYSA and the 2 NDYSA member clubs that are players and coaches in FSC and SAY as well, and FSC teams have participated in NDYSA tournaments. In addition, NDYSA

and MYSA entered into an agreement in order to eliminate the requirement that teams had to get permission to travel where the agreement applied.

(c) What the hearing examiner has erroneously done in his decision is not only to misconstrue Bylaw 601 and Policy 601-7, but to misinterpret and misapply those provisions so that they become a backdoor method of requiring that a member of one organization be admitted as a member of another organization. It was not meant to do so—and does not do so. Becoming a member in another organization is governed by Policy 212-1. Policy 601-7 was amended on August 15, 2003, to read as it currently reads. Policy 212-1 was first adopted by the Federation Board of Directors on November 12, 2005. Under standard rules of statutory construction and rules of interpretation under *Robert's Rules of Order, Newly Revised*, 10<sup>th</sup> edition (pages 570-573), various policies are to be read to avoid conflicts and the more specific policy—especially when adopted later—shall be given priority. It also is strange, to say the least, that such a policy would be applied to a league that is recreational, with no posted scores, no league standings, with no tournament or other means to identify a league winner, the matches played being held within local areas, and all of the matches being friendly matches that are not “competitions” in the normal sense of that word.

(d) NDYSA has not, and does not, prevent players from joining other Organization Members. As shown in the record, there are many players ( approximately 26 at this time) that are members of SAY through FSC and other NDYSA members. In addition, there are hundreds of recreational players who also register as competitive players. So, in no sense, has NDYSA or its member clubs restricted players in any way.

5. (a) The hearing examiner erroneously found that NDYSA had violated section 4(b) of Federation Policy 212-1 “by not allowing FSC teams to participate in FMWFSL”. First, as the record is very clear, NDYSA had and has no role in running, organizing, forming, or sanctioning the league. Second, the league is an in-house recreational league of the 3 clubs. It is the only

recreational league in the Fargo-West Fargo-Moorhead area. It is simply and just that. It does not want to admit teams that are intentionally stacked—filled with competitive players—in this recreational league. This type of disparity is not conducive to fair play at the recreational level.

(b) Section 4(b) of Policy 212-1 specifically provides in part that the following are “reasonable policies, rules, regulations, and requirements” :

“(iii) A requirement that the group of Participants follow all team formation rules;

“(iv) A requirement that the group of Participants follow all competition rules

(such as numbers of players per team, games rules, and team selection rules);

\* \* \*

“(vi) A requirement that the group of Participants observe rationally supportable geographic rules of the Organization Member;”.

(c) The teams of the member clubs of FMWFSL are established by neighborhood address or where the players attend school. The clubs assign players to their recreational teams on this basis, and the teams have no control over who is placed on a team roster. The teams are re-formed every year based on the same criteria—neighborhood or school. This basis for forming teams is clearly authorized by section 4(b) of Policy 212-1, as well as decisions in other grievances, as perfectly proper team formation, team selection, and rational geographic rules.

(d) The transcript of a meeting on November 15, 2007, between Mr. Noah and the 3 member clubs of FMWFSL clearly shows that FSC was not willing to abide by team formation and geographic rules. When asked about league rules on players playing up, Mr. Noah stated “No, we would not abide by that.” After further discussion, he did say “put us down as we would abide by the league rules, . . .” in reference to having players register for both the spring and fall seasons or each season separately. However, he later went on to state the following: “If the rules say we can’t use [players] from Fargo, West Fargo, Moorhead—then we’re not going to be a part of your league.” Still later, the President of FSC stated: “If I had to respect the geographical

boundaries that you have set up, I wouldn't have a soccer team." There is only one conclusion: FSC believes it has a right to bring in its teams—AS IT HAS FORMED THEM, NOT AS REQUIRED BY LEAGUE RULES— without regard to league team formation, team selection, and geographic boundary rules. On this basis alone, the arbitrator incorrectly ordered FSC's participation in the league.

(e)(1) NDYSA admits that one club with one of its teams in the co-ed and girls 7<sup>th</sup>/8<sup>th</sup> grade division—Jamestown—has played in FMWFSL contrary to the agreement between NDYSA and MYSA waiving permission to travel and play games among the teams playing games in the league with teams from another State Association. It did not know about this situation until Mr. Noah pointed it out during the grievance proceedings. NDYSA has taken appropriate action about this situation and is directing FMWFSL to stop immediately the interplay between Jamestown and the league since this interplay is contrary to the NDYSA-MYSA Agreement. For the spring, 2008, season, Jamestown played one game contrary to the agreement: It played a game against a team that is a team of a member club of MYSA. This Jamestown team has no other teams to play against other than FMWFSL teams. FSC has 19 teams and therefore can play a complete schedule. It is way out of proportion to find that this one friendly match results in such a penalty that the hearing examiner has imposed: admitting all the FSC teams into the league in violation of the league's team formation, selection, and geographic rules.

(2) Moreover, this conclusion by the hearing examiner is inconsistent with his conclusion, stated in footnote 2 of his decision, that a violation of an Organization Member's own rules is outside the scope of Federation Bylaw 704.

### **III. NDYSA'S JURISDICTION OVER ITS MEMBER CLUBS**

6. The hearing examiner misunderstood NDYSA's position in regard to its member clubs. The member clubs of NDYSA do have to comply with all Federation requirements if the clubs

are acting in violation of Federation requirements. If a member club fails to comply, then NDYSA would have authority to suspend or terminate the club's membership. This is exactly what NDYSA did in regard to Jamestown and its playing matches in FMWFSL. The hearing examiner was incorrect in concluding that NDYSA somehow thought its member clubs were above the law.

7. NDYSA's position has been, and is, that the original grievance claim was that NDYSA was preventing FSC from participating in FMWFSL. NDYSA was NOT and is not doing so. We so stated in our answer to the grievance, our motion to dismiss, and our brief filed with the hearing examiner after the grievance hearing. It was not until we were at the grievance hearing on July 31, 2008, that FSC even referred to section 1(a)(3) of Federation Bylaw 213 that specifically applies to member organizations of Organization Members, in this case NDYSA. It was then also referred to in FSC's closing brief. That section was not cited in the original grievance; it was not cited in FSC's response to NDYSA's motion to dismiss. Bottom line is that the grievance and the entire proceeding, until the grievance hearing itself, was based on the incorrect assumption that the league was a league of NDYSA and MYSA, and it was not. The grievance should have been amended or refiled so that the parties to the grievance are properly put on notice of what FSC was claiming and relief it was seeking. This would have allowed appropriate participation from the member clubs affected by the hearing examiner's decision. Neither NDYSA or MYSA had an obligation to state how the grievance should have been worded or how FSC should have proceeded.

#### **IV. CONCLUSION**

8. The hearing examiner's decision is based on basic factual errors and misunderstandings. The Federation Board of Directors must therefore reverse the decision of the hearing examiner and deny the grievance in regard to NDYSA. In the alternative, the Board must reverse and remand the grievance back to the hearing examiner for a further hearing,



-consideration, and decision on the facts underlying the FMWFSL and the 3 member clubs that administer FMWFSL.

NORTH DAKOTA YOUTH SOCCER ASSOCIATION

August 23, 2008

By



Larry Monaco

This appeal was sent by certified mail on August 23, 2008, as follows:

Mr. Matt Noah, President  
Fargo Soccer Club  
4910 Meadow Creek Drive South  
Fargo, ND 58104

Ms. Candace Daley, Executive Director  
Minnesota Youth Soccer Association  
11577 Encore Circle  
Minnetonka, MN 55343

Mr. Dan Flynn, Secretary General  
United States Soccer Federation  
1801 South Prairie Avenue  
Chicago, IL 60616

Mr. Greg Fike, Associate Counsel  
United States Soccer Federation  
1801 South Prairie Avenue  
Chicago, IL 60616

Mr. Tim Pinto, General Counsel  
United States Soccer Federation  
1801 South Prairie Avenue  
Chicago, IL 60616

August 23, 2008



Larry Monaco