

**MAJORITY DECISION OF THE
GOTHAM VOLLEYBALL GREIVANCE COMMITTEE
MARCH 25, 2008 MEETING – GREIVANCE OF *******

BACKGROUND

This grievance was filed by *GRIEVANT*, Captain of Team F in Division 2 of the Gotham Volleyball League for the Spring 2008 season. In this grievance, *GRIEVANT* is challenging the decision of *DIVISION 2 REP*, Division 2 Representative to the Gotham Board of Directors, to record the March 13, 2008 match between Teams C and F as a forfeit against Team F. The forfeit was due to the “no pay, no play” policy adopted by Gotham’s Board of Directors, which provides that a team who plays with a player who has not paid his or her dues must forfeit the match. *DIVISION 2 REP* declared the match a forfeit by Team F under this policy because three of the team’s players at that match were not current on their dues. The Grievance Committee met on March 25, 2008 and heard presentations from *GRIEVANT*, *DIVISION 2 REP*, and other Division 2 players who attended the meeting. The committee then deliberated in closed session. Reid Thompson (Division 5), Ethan Felson (Division 6), Travis Pouliot (Division 7), Mike Modugno (Division 8), Eric Eichenholtz (Division 9) and Wayne Gurreri (Member at Large) all voted to sustain the grievance for the reasons discussed below. Chairman Don Murray (Division 1) and Dominic Borgia (Division 4) voted to dismiss the grievance and uphold the forfeit for the reasons discussed in a separate dissenting opinion. Bradley Schleyer (Division 2), ***** , recused himself and did not participate in the deliberations and voting. Angel Martin (Division 3) was absent from the meeting due to travel and did not vote.

SUMMARY OF THE FACTS

On January 15, 2008, the Gotham Board of Directors determined that it would strictly enforce a “no pay, no play” policy for the Spring 2008 season. During the Grievance Committee meeting, Commissioner Lew Smith explained that the Board leaves the enforcement of this policy to each division representative. Each Division representative acts as the “manager” of his or her division and is responsible for collecting dues from Division members.

The “no pay, no play” policy was detailed in a packet handed out to all captains entitled “Gotham Volleyball League Captains Responsibilities.” The first page of that packet stated, in bold capital letters, that “all players must pay for the season in order to be eligible to play. This rule will be strictly enforced. It is the Captain’s responsibility to make such each team member brings their money on week one of play.” On the second page, it is noted, again in bold letters that “effective Spring 2008, there is no grace period for dues payment. THIS RULE WILL BE STRICTLY ENFORCED. You must give your Division Representative your team’s payment before your match. Any team that plays with a member who has not paid his/her dues will *forfeit the match.*” (emphasis in the original). The fourth page of the packet is a bright red sheet of paper that contains similar messages in large bold font.

However, not all members of Gotham Volleyball pay their dues during the first week of play. Members can request a payment plan due to financial hardship. According to the minutes of the Gotham Board meeting at which the “no pay, no play” policy was reaffirmed, “the treasurer needs to be advised of standard payment plan, but the Division Representative can authorize it him or herself. A standard plan is \$65 in week 1 and \$65 halfway through the season. Any alternation needs to be OK’d by [the Gotham Treasurer] and the Division Rep.” The Captain is not directly involved in this process and may not have knowledge of the specifics of the payment plan. In fact, the Captain’s Responsibilities packet states that “[a]ny player with financial hardships should approach or be directed to the Division Representative or the Treasurer immediately, so a solution can be worked out.” The packet does not state what will happen if a team member on a payment plan fails to make a subsequent dues payment. There is no procedure in place that would require a Captain to be informed of the details of his or her teammate’s partial payment plans.

On March 11, 2008, *DIVISION 2 REP* sent an e-mail to all of the Captains in Division 2 concerning the Division 2 matches scheduled for March 13. In the e-mail, he stated “Note that teams with players who still owes money will be due this week. ‘No Pay No Play’ rule will apply (no exceptions).” *DIVISION 2 REP* did not specify what teams had players who owed money. He did not take any other steps to remind or otherwise warn the Captains to ensure their players were paid up, nor did he tell the Captains which players were on partial payment plans. *DIVISION 2 REP* argued that it is the Captain’s responsibility to follow up and determine whether his or her team is in compliance.

GRIEVANT received this e-mail as Team F Captain but did nothing to follow up on the general warning about dues payment. He stated at the Grievance Committee meeting that he did not follow up with *DIVISION 2 REP* or with his teammates concerning this issue because he did not believe that it was his responsibility. *GRIEVANT* argued that partial payment plans are worked out between the Division Representative and the player and he did not believe the Captain had any direct involvement.

On March 13, 2008, Team F played its match against Team C with three players who had not fully paid their season dues. At least two of those three were apparently on the “standard” partial payment plan, meaning that they were responsible for paying the balance of their dues before the March 13 game. However, other than the general warning in the March 11, 2008 e-mail, no one warned any of these individuals or *GRIEVANT* that these players were ineligible or that Team F risked a forfeit if they played.

DIVISION 2 REP was present at the second and third games of the match, and made no mention of the fact that Team F was playing with ineligible players. *DIVISION 2 REP* explained at the Grievance Committee meeting that he did not mention this because the team was already playing and, under the “black and white” policy of the Board, he had no choice but to record a forfeit by Team F. *DIVISION 2

REP* mentioned that he has been in Gotham Volleyball for more than 15 years and it is his experience that certain players will not pay unless the rules are enforced.

Later that evening, *DIVISION 2 REP* wrote an e-mail to *GRIEVANT* stating that Team F had forfeited all three matches and stated “there are three players in your roster who owes season league fees.” *DIVISION 2 REP* then specified, for the first time, the three players who owed money and the amount owed, and warned *GRIEVANT* that his team would continue to forfeit the games if those players “choose to play without payment.”

DIVISION 2 REP identified ***** as one of the ineligible players in his e-mail to *GRIEVANT*. However, *this player* disputed that he was ever told to pay by Week 7 and *DIVISION 2 REP* agreed at the Grievance Committee meeting that *this player’s* plan was “different” than the standard plan that would require payment during Week 7.

DISCUSSION

As an initial matter, the Committee believes a sanction of a team forfeit for a violation of the “no pay, no play” policy is appropriate under the right circumstances. The Board of Directors is permitted to pass policies to ensure that members pay their dues and fulfill their financial commitments to Gotham Volleyball and did exactly that in this case. If a player has not paid his or her dues, under the policy, he or she should not be playing in the match. A Division Representative may declare a match a forfeit by a team that knowingly plays with a player who is ineligible because that player is in arrears on his or her dues.

Our decision is not about the policy itself, but how the policy was enforced on this occasion. *DIVISION 2 REP* explained at the Grievance Committee meeting that he believed he was enforcing what he believed to be the clear policy concerning “no pay no play.” The problem here was that the policy *DIVISION 2 REP* was enforcing was not as clear on this occasion as he believed it to be.

The general outline of the “no pay, no play” policy, including the potential penalty of forfeiting the match if a team plays with an ineligible player, could not have been more clearly stated in the Captain’s Responsibilities packet. It is mentioned at least three times, once on a bright red page in large bold letters. However, all of those references to the policy discuss forfeiting the game as a penalty if all players have not either (a) paid or (b) worked out a payment plan by the beginning of the team’s first match.

However, the supposed violation here did not occur the first week of play. It occurred during the seventh week of play and involved players who had agreed to partial payment plans and had already made partial dues payments. The policy does not state what would happen if a member who has negotiated a partial payment plan does not timely pay the subsequent payments in the plan.

The Captain's Responsibilities packet also directs the Captains to refer their team members who need to work out a payment plan to the Division Representative and/or the Treasurer of Gotham Volleyball. The Captain does not get directly involved in this process, which appears to constitute an informal negotiation between the player and the responsible members of the Board of Directors. There is no mechanism to ensure that each team Captain is informed when a member of his or her team is on a partial payment plan, nor when each payment must be made, nor whether each payment has been made. This creates even more confusion and caused the very problem with which we are confronted here – both a Captain and a Division Representative claiming the each should have informed the other about a payment that needed to be made.

When *DIVISION 2 REP* appropriately decided to remind the Division 2 Captains before Week 7 that players on partial payment plans were required to pay the remainder of their dues, he did nothing to make sure the Captains in Division 2 knew to whom he was referring. *DIVISION 2 REP* had this information in advance of the match. It had been provided by the Gotham Treasurer. Yet he did not specifically tell the Team Captains which members of their team owed money during Week 7. No one truly knew for sure which players were and were not eligible.

Indeed, even at the Grievance Committee meeting, it was not clear at all whether one of the players on Team F who had agreed on a partial payment plan, ****, violated the “no pay no play” policy the evening of March 13. *This player* was on a partial payment plan in which he paid \$65 the first week of play and \$65 later. *This player* was never told to pay his second payment on Week 7 and *DIVISION 2 REP* even stated at the meeting that he was not requiring *this player* to pay on Week 7. However, in his e-mail to *GRIEVANT*, *DIVISION 2 REP* actually named *this player* as one of the players on Team F whose payments were delinquent and caused the forfeit. Thus it appears that no one was certain whether *this player* was supposed to be paying before Week 7 or at a later time. This must have been confusing for all involved.

When confronted with this ambiguous and confusing situation, both *GRIEVANT* and *DIVISION 2 REP* asserted that the other had failed to exercise proper diligence ensuring dues payment. Each argued the other was responsible for taking the initiative to figure out who owed money and make sure it was collected. While a fuller, and perhaps endless, debate could ensue as to the specific responsibilities of the league, its Treasurer, the Division Representative, the Captain, and each player, two things are certain – information failed to flow in the proper direction and no one in this case took adequate measures to ensure that only players who were paid in full were allowed to play *before* the match took place. In light of all this ambiguity, it is not reasonable to sanction Team F with a forfeiture of the match.

It is important to emphasize that this decision should not be seen as a vindication or reward for *GRIEVANT'S* actions or a suggestion that there should be no consequence for playing after a failure to pay dues. The entire Committee agrees with the dissenting members of the Committee that *GRIEVANT* and those on his team who owed money were not without fault. Captains should follow up with their unpaid players, with or without prodding from the Division Representative. Division Representatives

have a duty to share the information given them by the Treasurer regarding unpaid players with the effected Captains so that the Captain can seek payment. Most importantly, the time to address unpaid players is the earliest possible moment. Prompt sharing of this information preserves the dignity of the player in arrears and prevents more contentious situations as might arise when a match has commenced or concluded.

A more prudent and responsible Captain would have followed up, even with the vague and ambiguous warning provided in this case, to ensure that his or her team was in compliance with the “no pay, no play” policy, just as a more prudent Division Representative would have specified the potentially ineligible players to each Captain. The individual members themselves should also bear responsibility to ensure that they are making their partial payments on time and honoring their agreement with Gotham Volleyball, although their obligations should be presented to them clearly and in writing. It is clear that had *GRIEVANT* or *DIVISION 2 REP* been more proactive, this situation would have been avoided.

But the situation was not avoided, and the majority of the Committee does not find it fair to have awarded a forfeit under these circumstances. We disagree with the dissenting members that the forfeit should be sustained simply because the team Captain was not as diligent as he should have been in determining whether his team was in compliance with the “no pay, no play” policy. A forfeit punishes not only the team Captain and those who failed to pay their dues, but the other players on the team as well. It is a penalty of last resort, appropriate when available information has not been acted upon or a player or team willfully or knowingly violates the rules. The way the system is currently structured, a Captain may not even be informed of the specifics of his or her teammates’ payment plans. Therefore, prior to assessing such a harsh penalty, a team Captain should be should at least be instructed who the specific players are who owe dues so that the Captain can collect those dues. The Captain should also be made fully aware which players are potentially ineligible. Unfortunately, in this case, even the Division Representative and one of the potentially ineligible players did not even appear to have been clear as to when payment was due. A team cannot be punished with a forfeit when the actual willfulness of the violation was so unclear.

REQUESTED POLICY CHANGES

The problems presented by this grievance, in our view, were caused by ambiguities in the process of collecting dues and in the enforcement of the “no pay, no play” policy. These problems can be easily remedied by the Board of Directors to ensure that a similar problem does not arise in the future. We therefore request that the Board of Directors adopt the following clarifications to the partial payment plan procedures and the “no pay no play” policy.

- All partial payment plan agreements should be reduced to writing or e-mail, with a copy of provided to the team Captain and Division Representative. The agreements should specifically warn the Captain and paying member that the team will forfeit if the member fails to pay the dues as outlined in the agreement but still

plays in a match. This way, there will be absolutely no ambiguity when a player is ineligible or a team is at risk of forfeit under the “no pay no play” policy.

- The Captain’s Responsibilities packet should be revised to clearly state that (a) a Captain is responsible for ensuring that only players current in their dues play in any given match and (b) that players know that the “no pay no play” policy will be enforced when a member on a partial payment plan fails to make dues payments under the plan.
- Division Representatives should share with captains the names of any players who are in arrears and who, if they do not pay, place their entire team in jeopardy of forfeit. This communication between the Division Representative and the Captain must be consistent and direct. In particular, Division Representatives should be instructed to notify a Captain with a team member who is about to become ineligible due to a payment deadline with the name of the specific player and the specific amount owed so that the Captain can make efforts to collect the payment prior to the match.

These clarifications should prevent this unfortunate situation from happening again.

CONCLUSION

For the reasons discussed above, the majority of the members of the Gotham Grievance Committee have voted to sustain the grievance of *GRIEVANT*. Therefore, the decision to score the Division 2 Match between Team C and Team F as forfeited by Team F is reversed. The original scoring of the match as recorded on the March 13, 2008 scoresheet is reinstated.

The Committee also requests that the Board revise and clarify the policy concerning partial payment plans and the “no pay, no play” policy in the ways outlined above to prevent the issues raised in this grievance from occurring again.

NOTICE OF APPEAL RIGHTS

Under Article XI, Section 3c of the Bylaws of the Gotham Volleyball League, “Any interested party may appeal the Committee’s decision, within ten (10) business days of the Committee meeting, to the Board of Directors. An appeal is initiated when an interested party delivers a letter stating the nature of the appeal to the Commissioner.” Therefore, all interested parties are advised that in order to be timely, any letter seeking appeal of this decision **must** be delivered to Lew Smith, Commissioner, Gotham Volleyball League on or before April 8, 2008.

DISSENT

Grievance Chair DON MURRAY dissenting joined by DOMINIC BORGIA.

Personal responsibility, where is the proverbial line drawn?

In the grievance brought before this Committee, *GRIEVANT* felt that a policy created by the Gotham Volleyball Board of Directors ("Board") was unfairly applied to his team by *DIVISION 2 REP*, the Division 2 Representative. The policy at the root of this grievance is "No Pay, No Play". A violation of this policy would result in a team forfeit for those individuals and teams in violation. This policy is very simple, straight forward and clear. Every captain was made well aware of this policy at the beginning of the season.

The spirit of this policy was to alleviate the huge burden which is placed on the Gotham Volleyball Treasurer. The Treasurer has the enormous task of collecting, organizing and processing around 750 payments per season. The spirit of this policy was to help shift this burden onto the individual members of the league in terms of collecting dues. After all, why should the treasurer, a volunteer position, be assigned the task of tracking down each member to get them to pay their dues? Why is it not the other way around? The individual member should be the one chasing the treasurer to make their payment. They should be doing everything possible to make sure their dues are paid. Would not that be more in the spirit of Gotham? Does not that behavior suggest a more caring attitude toward the League?

I concur with many of the reasons discussed in the Majority's opinion. Yes, the communication leading up to the forfeit is not proactive or specific or detailed enough. Yes, the procedures for applying the policy are a little vague. And yes, the punishment is seemingly harsh.

Although I concur with many of these reasons, there is still one thing nagging me, personal individual responsibility. Where does it begin and where does it end?

I agree with my friends in the majority when they assert that *DIVISION 2 REP'S* email was not filled with all the information and was not tailored properly to each individual captain by listing all the players on *GRIEVANT'S* team. The email, which was a warning of pending action against teams with players who had outstanding dues, was generated for a group of captains, not the individual. But because it was not individually tailored, does that lessen the responsibility of the captains and individual members? The email does open up a line for communication and stated that there are members in Division 2 that had not fully paid. *GRIEVANT* could have asked *DIVISION 2 REP* for a list of players who still owed, but chose not to ask. *GRIEVANT* could have sent an email to his team asserting that who ever still owed dues should contact *DIVISION 2 REP* or the Treasurer because they would not be allowed to play until the

matter was resolved. If these actions were taken, more than likely there would not have been a forfeit and the grievance we now discuss. So I ask again, does a non-specific email alleviate *GRIEVANT* from responding and checking with *DIVISION 2 REP* about his team's dues? Does this non-specific email diminish an individual member from following through on an agreed payment schedule? As a captain in a different division, I approached my division representative consistently until I knew every member of my team paid their dues. Why in this case does the burden solely fall on *DIVISION 2 REP* and the Treasurer?

By not supporting the actions of *DIVISION 2 REP*, my friends in the majority have rewarded *GRIEVANT* and his team members who are delinquent in paying their dues. They were given a pass for not living up to their end of the deal. The deal is a group of people/members running, supporting and nurturing the livelihood of the League. It should be a collective equal responsibility.

My hopes is that the Board revisits this policy, takes into consideration the recommendations of the majority and clearly writes in the policy that the entire burden of paying dues rests upon the member. It should be written in a way that gives members very little "wiggle" room to not pay dues in a timely fashion. The policy should be tailored so that giving a warning is not required because a member knows when they have not paid their dues and should make every effort to pay their dues. If the majority of the membership is not happy with team forfeit rule, then the Board can impose monetary sanctions against the individual violators instead of the team violation. But regardless, it is my opinion that the burden lie on the shoulders of the member, not the Board.