COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA

NEEDVILLE LITTLE LEAGUE, INC. and TULSA NATIONAL LL, INC., Plaintiffs	:	NO. 21-0801
	:	CIVIL ACTION - LAW
vs.	:	
LITTLE LEAGUE BASEBALL, INC., Defendants	:	*Petition for Special and Preliminary Injunction*

ORDER

AND NOW, following argument held August 16, 2021 on Plaintiffs', Needville Little League, Inc. and Tulsa National LL, Inc., *Petition for Special Injunction (TRO) and Preliminary Injunction Pursuant to Pa.R.C.P. 1531*, the Court hereby issues the following ORDER.

Background

Plaintiffs, Needville Little League, Inc. and Tulsa National LL, Inc. (respectively "Needville" and "Tulsa," collectively "Plaintiffs"), initiated the foregoing action against Little League Baseball, Inc. ("Little League" or "Defendant") on August 12, 2021 by the filing of a Complaint. Simultaneously, Plaintiffs filed a Petition for Special Injunction (TRO) and Preliminary Injunction Pursuant to Pa.R.C.P. 1531 ("Petition"). As the requested preliminary injunction relates to Plaintiffs' participation in the Little League World Series, set to begin on August 19, 2021, the Court scheduled an expedited evidentiary hearing on the Petition for August 16, 2021.

In 2020, the Little League World Series was cancelled in light of the ongoing COVID-19 pandemic. Little League has decided to proceed with the tournament for the 2021 year with strict COVID-19 protocols in place.

Needville and Tulsa are all-star little league organizations with teams in the 10-12 year-old age bracket. Both teams received a charter from Little League to participate in their nationwide tournament in 2021, and have paid all requisite registration fees to participate in the tournament. Both teams qualified for the Southwest Regional Tournament, which was held from August 4, 2021 through August 10, 2021 in Waco, Texas, with the winning team advancing to the Little League International World Series

Tournament. On August 4, 2021, upon arriving at their hotel, both teams received intake COVID-19 PCR saliva tests, the results of which were available on August 6, 2021. In the interim period between when the tests were administered and when the results were available, both teams won in the first round of competition. However, on August 6, 2021, a Little League representative contacted Tulsa's coach, Sam Treat, and notified him that Tulsa had been disqualified from the Southwest Regional Tournament based on Mr. Treat's positive COVID-19 test. On the same date, a Little League representative contacted Coleman Todd, the manager for Needville, and notified him that Needville had been disqualified based on the positive COVID-19 test of Needville's coach, Michael Lee Park.

Mr. Treat and Mr. Park both promptly took COVID-19 rapid tests at a nearby health facility that came back negative. On August 6 and 7, 2021, each team submitted a formal protest of Little League's disqualification determination. In each case, Little League denied the protest based upon isolation and quarantine requirements. This precipitated the action in this Court.

Within their Petition, Plaintiffs argue that Little League's decision to disqualify Needville and Tulsa was arbitrary and capricious as an explicit violation of their own formal COVID-19 protocols. Specifically, Plaintiffs assert that leading up to the tournament, Little League's formal policy was that an individual who tested positive for COVID-19 would be disqualified from further play or participation, but that policy was abruptly changed such that if any member of a team tested positive, the entire team would be disqualified. Plaintiffs further argue that the COVID-19 protocols were themselves arbitrary and capricious, as Little League paid lip service to participant safety by disqualifying an entire team based on a potential false positive test, while failing to strictly enforce other COVID-19 mitigation efforts, such as masking, social distancing, and sanitation. Plaintiffs additionally contend that Little League was inconsistent in the manner in which it implemented its protocols, allowing three teams with positive tests to continue participating in the series.

In response, Defendant maintains that its COVID-19 protocols have remained consistent throughout the series. Defendant adds that these protocols were posted on the Little League website, and were also among the terms of the Agreement signed by

the manager of each team as a prerequisite for eligibility in the World Series tournament. Specifically, an article posted on July 9, 2021, on the Little League website titled "What Teams Can Expect at the 2021 Little League Region and World Series Tournaments" discussed the procedure Little League would take in the event of a positive COVID-19 event:

> In the event of a positive COVID-19 test within a team, Little League International Staff, in consultation with its medical advisors, will work efficiently to communicate with the appropriate family members, team contacts, and state health officials, to initiate all appropriate quarantine, isolation, and contact tracing procedures. The Little League International Tournament Committee will assess the team situation to identify if the team has enough players and coaches to proceed with competing in their respective tournament. If the team cannot field nine players, they will be removed from the tournament.[1]

Similar language was included in the Tournament Team Eligibility Affidavit provided to each team prior to the tournament:

> **COVID-19 COMPLIANCE:** It is agreed and understood that Little League shall have the right to implement and require measures to mitigate the spread of COVID-19, including but not limited to, mandatory COVID-19 testing of all participants listed in this affidavit at various levels of the International Tournament. A team may be removed from the tournament for 1) failure of any individual to comply with the testing requirements; 2) failure of any individual to comply with any COVID-19 mitigation measure implemented by Little League; or 3) the inability to field a team for any scheduled game due to isolation and/or quarantine requirements resulting from positive COVID-19 test results. All decisions of the Little League International Tournament Committee regarding player/team eligibility will be final and binding.[2]

Nearly identical language was included in the Little League Baseball Regional Tournament Agreement signed by the manager of each team.[3] Defendant contends that these various provisions put Plaintiffs on notice that they could be disqualified from competition based on quarantine requirements.

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[1] Plaintiffs' Exhibit A at pg. 3.
[2] Defendant's Ex. 1 ¶ H.
[3] Defendant's Ex. 2 at pg. 2.

Defendant disputes Plaintiffs' allegations that the protocols were themselves arbitrary and capricious by noting that its COVID-19 mitigation plan was drafted with the input of medical experts and is consistent with both CDC and Pennsylvania Department of Health COVID-19 guidelines. Defendant asserts that it has been consistent in implementing these protocols, with five other teams – Alaska, Arizona, Kentucky, Mississippi, and North Carolina – also disqualified on the basis of positive tests. Defendant asserts that the instances where teams were allowed to participate following positive tests involved divergent circumstances. Finally, Defendant contends that relief in the manner of allowing Needville and Tulsa to participate in the World Series would be infeasible to implement at this late hour, especially as such a ruling would likely inspire the other disqualified teams to similarly file for injunctive relief.

Evidentiary Hearing

Plaintiffs called Sam Treat as their first witness. Mr. Treat serves as a volunteer coach with the Tulsa, Oklahoma All-Star Team. Mr. Treat testified that the Tulsa team had qualified for the Southwest Regional Tournament following three to four months of league play. He provided that leading up to the tournament, the Tulsa players and coaching staff had been taking significant measures to remain socially distanced at practices, families and team members had been self-testing two to three times a week, and many players had elected to self-isolate over the summer. He further testified that leading up to the tournament, his understanding of Little League's COVID-19 protocols was that if a player or coach tested positive, that player or coach would be required to quarantine, but the team could still participate if it could field at least nine players who had tested negative. He stated that only on the day before the Southwest Regional Tournament did he learn, via a Zoom call, that a single positive test could result in the disqualification of an entire team.

Mr. Treat testified that on August 4, 2021, approximately one-hour before he took the Little League administered PCR saliva test, he had taken a BinaxNOW COVID-19 antigen self-test, which he had previously been self-administering every three days. This test, and all previous of his self-administered BinaxNOW tests, came back negative. When questioned as to conditions at Little League's in-take site, Mr. Treat

elaborated that he had reservations with how the PCR saliva test was administered. He stated that the testing site itself was located in a meeting room at the tournament hotel, he estimated to be twenty-five by twenty-five feet in dimension. He added that more than one team was tested simultaneously, estimating that there were approximately sixty-five individuals in the testing room at once. The tests were simultaneously self-administered to large groups of adolescents, with no medical professionals at the site during administration. Mr. Treat expressed similar concerns as to the social distancing measures implemented by Little League at the hotel. He indicated that the teams all shared common areas, that multiple teams would eat in the same dining halls, that meals were had in the same meeting room that the testing had taken place, and that there was only one working elevator in the hotel. He testified that masking requirements were inconsistently enforced.

Mr. Treat provided that upon receiving a telephone call on the morning of Friday, August 6, that he had received a positive test result and that Tulsa had been disqualified, he immediately communicated this information to his players. Mr. Treat described his players as inconsolable, and also emphasized the financial, emotional, and time investment of the players' families in preparing for a World Series tournament. Mr. Treat testified that following Little League's notification of COVID disqualification, he had gone to a nearby local health care facility to obtain a medically administered COVID test. This test came back negative, with the administering physician stating that Mr. Treat was cleared to return to work.[4] Mr. Treat had then called the Little League representative who had earlier communicated the disqualification to provide the results of the follow-up test. The representative provided that the follow-up test "didn't matter" as Little League's decision was final.

Mr. Treat testified that he has since tried to get information regarding his Little League testing results, but has been rebuffed pursuant to representations that such results are protected under HIPAA, despite the fact that he is seeking the results of his own test. He also stated that following his team's disqualification, he had learned of three other instances – involving teams from Hawaii, Nevada, and Indiana – where

[4] The rapid test result was entered as Plaintiffs' Exhibit B.

teams received positive COVID-19 tests but were still permitted to play.[5] Mr. Treat added that in these latter two cases, Little League had permitted the teams to undergo two rounds of testing before making a disqualification determination, while Tulsa was disqualified after only one round.

On cross-examination, Mr. Treat confirmed that all of the players on his team, all but one who are now twelve years old, are unvaccinated. He also confirmed the coach of the team is unvaccinated, but clarified that he himself is vaccinated. Upon further questioning, Mr. Treat acknowledged that this was a fact distinguishable from the Hawaii case, where the twelve year-old athletes had all been vaccinated and the two unvaccinated eleven year-old players, one who had received the positive diagnosis, had been required to quarantine. However, Mr. Treat added that Little League never communicated that vaccination status would affect quarantine requirements. Mr. Treat further testified that he believed that disqualification of the entire team was not necessary for safety reasons, even if the PCR saliva test was not a false positive, as he had ensured that he had not had any "close contact" with his players, as that term is defined by the CDC, in the several days leading up to the August 4th testing date. Mr. Treat provided that since he tested positive, he has not experienced any symptoms, nor have any members of his team tested positive or displayed symptoms. Finally, when asked on redirect as to the feasibility of adding new teams to the tournament, Mr. Treat opined that tournaments handle odd numbers of teams in many instances, and added that Little League has plans to expand the number of teams in the 2022 year.

Plaintiffs next called Michael Lee Park to testify. Mr. Park serves as a board member of the Needville Little League team. He testified that this year he is coaching the Needville team, with Coleman Todd serving as manager. Mr. Park testified that his team had won the area, district, sectional, and state championships, before progressing to the Southwest Regional Tournament. Mr. Park echoed the testimony of Mr. Treat by providing that his understanding prior to the Southwest Regional Tournament was that only individuals who tested positive for COVID-19 would be required to quarantine, with

[5] Little League website postings regarding the Nevada, Hawaii, and Indiana teams were entered as Plaintiffs' Ex. C.

Little League's "new" COVID-19 policy only communicated via a Zoom call one day before the Regional Tournament was to begin.

Mr. Park stated that he knew under Little League's policy that unvaccinated individuals would be tested every other day. He testified that Needville had undertaken similar precautions in the lead-up to the regional tournament to avoid transmission: players and coaching staff self-tested regularly, practices were conduced with social distancing measures in place, and players' families practiced distancing. He added that traveling to the Regional Tournament, the Needville team had hired a chartered bus restricted to only the players and coaches, which had been sanitized and was driven by a driver who was wearing a mask. He acknowledged that he had been in "close contact" with members of the team.

Mr. Park testified to concerns with the manner in which Little League testing had been administered, mirroring those issues identified by Mr. Treat. Mr. Park testified that no medical personnel were present, that two teams were placed in a small meeting room at the same time, and that test participants were not uniformly wearing masks. Mr. Park was also concerned that the meal arrangements, as coordinated by Little League, involved multiple teams eating together in a shared dining hall.

Mr. Park indicated that on the date of receiving the positive test he had taken four follow-up tests. The first, an additional PCR test administered by Little League on August 6, 2021, came back negative. Also on August 6, 2021, Mr. Park went to a nearby clinic in Waco where he received a nasal swab rapid test, which also came back negative. Mr. Park then asked the administering nurse whether there was a more sensitive test. Upon receiving confirmation that there was a more sensitive test with a longer processing time, Mr. Park also took this more sensitive test. The eventual results for this test also came back negative. Additionally, Mr. Park self-administered another take-home test on August 7, 2021, which came back negative. Finally, Mr. Park noted that his son, a player on the Needville team, tested negative on both of the Little League PCR saliva tests administered on August 4 and August 6. Mr. Park stated that on the basis of the various negative tests leading up to the Regional Tournament, the four negative tests following the August 4th test, the extensive social distancing measures followed by his team, and the fact that he was experiencing no symptoms of illness, he

strongly believed that he had received a false positive result on the PCR saliva test. He communicated his further testing results to Mr. Todd, who called a Little League representative. Little League provided in response that it would not reconsider its prior disqualification determination.

Mr. Park provided that in addition to an uncontrolled testing environment, he questioned the validity of the PCR saliva test because the results were time stamped with a testing time of approximately 9:00 a.m. on August 4, 2021. However, Mr. Park stated that his team had not arrived at the hotel until late afternoon on August 4, 2021. When questioned as to vaccination status, Mr. Park stated that neither he, nor any of the players on the Needville team, all of whom are twelve years old, have been vaccinated, although he added that Mr. Todd has been vaccinated.[6] Mr. Park testified that since he tested positive for COVID-19, he has not experienced any symptoms of illness. He elaborated that no players or other coaches on the team have tested positive for COVID-19 or displayed symptoms.

Plaintiffs then called Daniel Velte, as on cross, to testify.[7] Mr. Velte is the Senior Operations Executive of Little League Baseball. Mr. Velte first explained that Little League's protocols as outlined in its mitigation plan, are consistent with both CDC and Pennsylvania Department of Health guidance, require all individuals who test positive for COVID-19 to quarantine for ten days, and have identical quarantine requirements for unvaccinated individuals known to be in "close contact" with an exposed individual. However, if exposed individuals who are asymptomatic quarantine, and take a follow-up test on the fifth day that returns a negative result, the quarantine period may be shortened to seven days. Mr. Velte acknowledged that Little League had not performed "contact tracing," but rather had operated with the presumption that players and coaching staff on a team with an infected individual would necessarily have been in "close contact" with the infected individual.

Mr. Velte clarified that the Nevada and Indiana teams had been permitted to participate in their respective regional tournaments because they had been able to follow these quarantine requirements prior to the commencement of their respective

[6] A compendium of Mr. Park's test results, as well as those of his son, Cade Park, were entered as Plaintiffs' Ex. E.

regional tournaments. Mr. Velte pointed out that teams from Arizona, Alaska, Kentucky, Mississippi, and North Carolina had also been disqualified under circumstances in which players or coaching staff had tested positive, and tournament schedules would not permit seven or ten day quarantine periods.

Mr. Velte elaborated on the development of Little League's mitigation plan. He testified that the plan had been developed primarily under the auspices of clinicians at National Jewish Health in Denver, Colorado, with additional input from other medical providers. Mr. Velte averred that this mitigation plan had been developed to be consistent with CDC and Pennsylvania Department of Health guidelines. Mr. Velte maintained that Little League had at various times communicated to coaching staff that such guidelines were in effect for the purpose of the Little League World Series and qualifying tournaments. Mr. Velte acknowledged that the mitigation plan itself had not been shared with coaching staff. However, he testified that due to the large number of tournament participants, the mitigation plan had been developed to allow for the use of a self-administered PCR test. Mr. Velte added that the mitigation plan had further contemplated that two teams, of up to thirty-eight individuals, would be in the same room while being administered the PCR saliva test, and accounted for this by placing teams at tables at least six feet apart. Mr. Velte also testified that the mitigation plan had allowed for teams eating meals in the same room where testing had been conducted while also following social distancing measures. He explained that at the Southwestern Regional Tournament, although teams had been served their meals from a communal buffet, each team took from the buffet separately.

Mr. Velte, when questioned as to the feasibility of adding two additional teams to the World Series, emphasized that reformatting the series to accommodate these new teams would be difficult, if not impossible. Mr. Velte acknowledged that Little League is a large nonprofit, with thirty-million dollars in annual revenue, and approximately one-hundred employees. He also acknowledged that Little League has expanded the number of participants in the World Series a number of times in the past, and in fact, had initially planned to reformat the tournament to add four new teams in 2021.

[7] Mr. Velte's sworn affidavit was also entered into evidence as Defendant's Ex. 3.

However, due to the COVID-19 pandemic, these plans for expansion have been delayed to 2022.[8]

Mr. Velte qualified that planning for such expansions takes a full year, while Plaintiffs seek an overhaul of the World Series' format to be carried out in just a few days. Mr. Velte indicated that this would require reformatting the entire bracket and finding additional support staff to accommodate the added teams. He elaborated that a good number of support staff are assisting in the Little League Softball World Series currently taking place in Greenville, North Carolina, and so will not be available prior to the August 19th start date of the Little League Baseball World Series. Mr. Velte emphasized that it would be challenging to find sufficient umpires to officiate any added games, and a logistical problem to reassign staff to games that would inevitably need to be rescheduled. Mr. Velte also indicated that it would be difficult to organize accommodations and eating arrangements on short notice. He provided that adding teams to the schedule at the last minute would present a health risk, as Little League's mitigation measures have been designed with the presumption that only sixteen teams would be participating. Mr. Velte added that permitting Tulsa and Needville to participate in this year's World Series would likely require redetermination of the five other team disqualifications, as those teams were disqualified on analogous bases. Mr. Velte testified that adding all seven teams to the roster at this late date would be impossible, and may require Little League to forego this year's World Series Tournament entirely.

Upon the conclusion of Mr. Velte's testimony, Plaintiffs rested their case. Defendant called Rutul Dalal, MD as an expert witness.[9] Dr. Dalal testified that he is the Medical Director of Infectious Diseases at UPMC Susquehanna Health in Williamsport, Pennsylvania. Dr. Dalal testified that he also serves as a medical advisor for Little League Baseball, and in this position contributed to the development of the mitigation plan. Dr. Dalal elaborated that he is not an employee or board member of Little League, nor was he paid for his part in developing the mitigation plan.

[8] An article detailing Little League's planned expansion was entered as Plaintiffs' Ex. D.
[9] The Court was satisfied upon a recitation of his educational background and work credentials that Dr. Dalal is a duly qualified medical expert in the area of infectious disease.

Dr. Dalal testified that Little League has been especially stringent in its application of its COVID-19 protocols due to the recent increase in COVID-19 cases as a result of the Delta-variant. He explained that Williamsport has been identified by the CDC as an area experiencing a substantial COVID-19 transmission level. Dr. Dalal provided clarification as to Little League's decisions in implementing COVID-19 protocols. For example, Dr. Dalal explained that Little League utilizes PCR tests, rather than rapid tests, as PCR tests are regarded as the "gold standard" for COVID-19 testing. He also clarified that under CDC and Pennsylvania Department of Health guidelines, as adopted by the mitigation plan, a positive result for a PCR test must be presumed positive and can only be overcome by a subsequent negative PCR test administered no sooner than five days later. This is to account for the possibility that the initial test results were accurate and that a quickly administered second test may in fact be a false negative. Dr. Dalal granted that even with its heightened reliability, PCR saliva tests have a three to five percent false positive rate, with the prevalence of the virus in a particular community negatively correlating with the false positive rate.

Dr. Dalal provided anyone in "close contact" with an individual within forty-eight hours prior to a positive COVID-19 diagnosis would be considered an exposure risk. He defined "close contact" as being within six feet of the other individual for fifteen minutes or more. He explained that even if one or both individuals were wearing masks at the time of contact, this would not obviate a "close contact" determination, as in practice, most masks worn in day-to-day interactions, and particularly cloth masks, are limited in their efficacy of preventing the transfer of air particles. Dr. Dalal elaborated that this "close contact" analysis would only apply to unvaccinated individuals, and that vaccinated individuals would not need to quarantine if they tested negative for COVID-19 and were not symptomatic. While Dr. Dalal averred that this was in compliance with CDC and Pennsylvania Department of Health guidance, he was unclear as to whether this distinction between vaccinated and unvaccinated individuals had been specified in Little League's mitigation plan.

While confirming certain aspects of Mr. Velte's testimony, such as that Little League had always intended to utilize self-administering tests, and that Little League had intended to administer these tests with two teams to a room with social distancing

in place, Dr. Dalal did at certain junctures call into question whether Little League had followed appropriate protocol. Dr. Dalal, for instance, provided in his professional opinion that a medical professional should oversee the administration of the PCR saliva tests, and he did not find it appropriate that medical tests were administered in the same room as where food was served. Dr. Dalal also testified that generally when an individual is diagnosed with COVID-19, a public health worker will attempt to perform "contact tracing" by following up with the diagnosed individual to identify what other individuals may have been exposed.

Defendant's final witness was Brian McClintock,[10] the Regional Director of Communications for Little League. Mr. McClintock testified that he was involved in organizing the Southwestern Regional Tournament. He specifically provided that he, along with several other Little League staff members, were involved in administering the PCR saliva tests. He acknowledged that none of these staff members were medical professionals, and that he had learned how to administer the test by watching a video provided by the manufacturer. Mr. McClintock testified that only two teams at a time, or up to thirty-eight individuals, were in the intake testing room at a time, and elaborated that these teams were placed at tables separated six feet apart. He could not estimate the exact size of this testing room, however. He also testified that all test participants were required to wear masks. He stated that he had given verbal instructions to the teams on how to self-administer the tests, and stated that players were to raise their hand when they were ready for their sample to be collected. Mr. McClintock averred that he did not recall any irregularities in testing.

When questioned on cross examination as to whether Little League had made any efforts to monitor the movements of the various teams within the hotel to ensure social distancing and safe COVID practices, Mr. McClintock testified that once arrival and testing was complete, managers and coaches were responsible for tracking the movements of their team and ensuring compliance with COVID protocols. When questioned about the capacity of Little League to handle an expanded 18 team format, Mr. McClintock acknowledged that Little League had recently completed a new

[10] Mr. McClintock's sworn affidavit was entered into evidence as Defendant's Ex. 4.

dormitory unit to house twenty teams in anticipation of the ultimately delayed twenty-team expansion.

Following the close of testimony, counsel had the opportunity to make closing argument. Plaintiffs' counsel emphasized that the Court must make a two-step determination, first as to whether Little League acted arbitrarily in disqualifying Needville and Tulsa, and if so, whether an injunction is merited. Plaintiffs' counsel noted that the mitigation plan and cited CDC and Pennsylvania Department of Health guidelines were never presented to the Court for review and had not been made part of the record. Plaintiffs' counsel further emphasized that even if the Court accepted Little League's mitigation plan as represented, the mitigation plan was not administered according to its own requisites. Plaintiffs' counsel further asserted that adding two teams to the Series would not be an untenable burden on Little League.

Defendant's counsel argued in response that Little League had acted in accordance with its own mitigation plan, by which a positive test would be presumed positive and the quarantining of all unvaccinated parties with "close contact" would be mandatory. Defendant further noted Little League's policy to forego any contact tracing investigation, and instead assume that all team members had been in "close contact" with each other, was reasonable. Defendants' counsel stressed that all teams had been notified in advance that Little League would be complying with CDC and Pennsylvania Department of Health guidelines, that any team wishing to understand these guidelines was free to research them, and so the consequence of a positive COVID-19 test result should not have come as an undue surprise to any of the participating teams.

Standard of Review

The threshold issue for the Court determination is whether judicial interference into the decision of a private association is merited by the facts of the case. Pursuant to the standard articulated by the Pennsylvania Supreme Court in *Harrisburg School District v. Pennsylvania Interscholastic Athletic Ass'n*, the power of the judiciary to interfere with the decisions of a private athletic association, specifically the Pennsylvania Interscholastic Athletic Association ("PIAA"), via the grant of a permanent injunction, is strictly limited:

> [Judicial] interference is appropriate only under limited circumstances, as where the private association has deprived a member or prospective member of substantial economic or professional advantages or fundamental constitutional rights. We believe that the general rule. . .is one of judicial non-interference unless the action complained of is fraudulent, an invasion of property or pecuniary rights, or capricious or arbitrary discrimination.[11]

However, the Commonwealth Court in *Pennsylvania Interscholastic Athletic Ass'n v. Geisinger* and in *Boyle by Boyle v. Pennsylvania Interscholastic Athletic Ass'n, Inc.* applied the rule in *Harrisburg School District* less stringently in reviewing petitions for preliminary injunction. For example, in *Pennsylvania Interscholastic Athletic Ass'n v. Geisinger*, PIAA internal by-laws prohibited any student who had been in attendance for more than eight semesters in high school from competing in student athletics. Two affected students submitted a formal request for an exception. Following a hearing, the PIAA denied the exception, precipitating the students to seek preliminary and permanent injunctive relief with the Luzerne County Court of Common Pleas. The trial court granted a preliminary injunction, enjoining the PIAA from prohibiting the students from participation in interscholastic athletics, pending adjudication of the petition for permanent injunction.

The Commonwealth Court affirmed the trial court on appeal, noting that the *Harrisburg* decision was distinguishable as following an evidentiary hearing on the request for permanent injunctive relief, and functioned as a decision on the merits. The Commonwealth Court averred in contrast, a preliminary injunction could be granted absent a hearing "to restore the status quo until a full examination of the merits[.]"[12] The Commonwealth Court further held that the trial court had an adequate basis to determine that the harm to the PIAA in implementing a preliminary injunction would not outweigh the harm to the students in depriving them the opportunity to fully participate in the school's athletic program.[13]

The Commonwealth Court's subsequent decision in *Boyle by Boyle v. Pennsylvania Interscholastic Athletic Ass'n, Inc.* also involved an appeal from the trial

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[11] *Sch. Dist. of City of Harrisburg v. Pennsylvania Interscholastic Athletic Ass'n*, 309 A.2d 353, 357 (Pa. 1973) (citations omitted).
[12] *Pennsylvania Interscholastic Athletic Ass'n v. Geisinger*, 474 A.2d 62, 65 (Pa. Commw. 1984).

court's grant of a preliminary injunction, enjoining the PIAA from prohibiting an athlete from participating in interscholastic sports, pending adjudication of the permanent injunction. On appeal, the Commonwealth Court considered the PIAA's argument that *Geisinger* should be overturned, "as. . .contrary to the principle of non-interference set forth by the Supreme Court in *Harrisburg School District*. . .[and] improperly limit[ing] the application of *Harrisburg School District* to cases involving permanent injunctions."[14] The *Boyle* Court opined to the contrary that *Geisinger* and *Harrisburg School District* were compatible, elaborating that "our decision in *Geisinger* merely recognized that in the context of a preliminary injunction proceeding, a party never has the same burden of proof as in a permanent injunction proceeding."[15] The *Boyle* Court elaborated that requiring a party to carry the same burden at a hearing for preliminary injunction as for a permanent injunction would collapse the evidentiary standard and eliminate any distinction between the two remedies.[16]

This Court interprets *Geisinger* and *Boyle* to stand for the proposition that a party must make only a *prima facie* showing of a fraudulent action, an invasion of property or pecuniary rights, or capricious or arbitrary discrimination on the part of an athletic association in order to merit judicial intervention at the preliminary injunction stage. However, even if the Court determines as a threshold matter that judicial intervention is warranted, it must separately consider whether the six essential prerequisites for a preliminary injunction have been satisfied.

> The six essential prerequisites that a moving party must demonstrate to obtain a preliminary injunction are as follows: (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is

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[13] *Id.*
[14] *Boyle by Boyle v. Pennsylvania Interscholastic Athletic Ass'n, Inc.*, 676 A.2d 695, 700–01 (Pa. Commw. 1996), abrogated on other grounds by *Buffalo Twp. v. Jones*, 813 A.2d 659 (Pa. 2002).
[15] *Id.* at 701.

reasonably suited to abate the offending activity; and, (6) the preliminary injunction will not adversely affect the public interest.[17]

This Court has reasonable grounds to deny a request for a preliminary injunction if it finds that any one of the essential prerequisites has not been met.[18] Compounding upon this stringent standard, the Court must apply even more scrutiny prior to entering a mandatory preliminary injunction. "Because a mandatory injunction compels the defendant to perform an act, rather than merely refraining from acting, courts will only grant a mandatory injunction upon a very strong showing that the plaintiff has a 'clear right' to relief."[19] "Where. . .a mandatory preliminary injunction is granted, greater scrutiny is applied to the grant than for a prohibitory injunction because it is an extraordinary remedy that should be utilized only in the rarest of cases."[20]

Analysis

In addressing whether Little League's decision to disqualify Needville and Tulsa was capricious or arbitrary discrimination, the Court first holds that, to the extent Little League comported with CDC and Pennsylvania Department of Health guidance, its decision had a rational basis.[21] This is the case even when Little League's strict adherence to such guidance led to a harsh result. For example, Little League's decision to treat positive PCR saliva tests as presumptively positive even when contradicted by prior and later tests was justified by the reasonable concern that the latter tests might be false negatives. Further, the Court cannot find that Little League was discriminatory in how it applied its protocols. Little League uniformly held that where unvaccinated

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[16] *See id.*
[17] *SEIU Healthcare Pennsylvania v. Com.*, 104 A.3d 495, 501–02 (Pa. 2014) (citing *Warehime v. Warehime*, 860 A.2d 41, 46–47 (Pa. 2004)).
[18] *Eckman v. Erie Ins. Exch.*, 21 A.3d 1203, 1207 (Pa. Super. 2011) (quoting *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, , 828 A.2d 995, 1000–1001 (Pa. 2003)).
[19] *Sovereign Bank v. Harper*, 674 A.2d 1085, 1092 (Pa. Super. 1996) (citations omitted).
[20] *Purcell v. Milton Hershey Sch. Alumni Ass'n*, 884 A.2d 372, 377 (Pa. Commw. 2005) (citing *Summit Towne Centre*, 828 A.2d at 995).
[21] *See Dunmore Sch. Dist. v. Pennsylvania Interscholastic Athletic Ass'n*, 505 F. Supp. 3d 447, 467 (M.D. Pa. 2020) (quoting *Cary v. Bureau of Pro. & Occupational Affs.*, 153 A.3d 1205, 1210 (Pa. Commw. 2017) ("The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made. In reviewing that explanation, we must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment[.]")).

individuals had been in "close contact" with an individual testing positive for COVID-19, the unvaccinated individuals would need to quarantine. Little League uniformly disqualified those teams whose quarantine period overlapped with previously scheduled gameplay. While vaccinated individuals in "close contact" with a diagnosed individual were permitted to play as long as they were asymptomatic and continued to test negative, the Court cannot find that such disparate treatment was unmerited given that the CDC has taken the position that vaccinated individuals who are asymptomatic need not quarantine.

Notwithstanding this determination, the Court takes issue with the manner in which Little League implemented its mitigation plan. The Court finds troubling that several dozen twelve-year-olds were permitted to self-administer a saliva test in close quarters to one another, without medical supervision. The Court similarly takes issue with such testing having been conducted in the same room that later served as a dining facility. Social distancing was not enforced in common areas of the hotel, and coaches and managers were left to self-police the enforcement of COVID-19 protocols within their own teams. Further, despite the fact that Little League indicated that they would be conducting "contact tracing," Little League decided ultimately to forego "contact tracing" and instead simply assumed that all members of a team had been in "close contact" with one another without making any inquiry of coaches or players. This is particularly discomforting in light of Mr. Treat's representations that he had not been in recent "close contact" with any of his players, therefore obviating the need for his players to quarantine.

The Court also finds that Little League did not clearly communicate its COVID-19 protocols to tournament participants. Little League relied upon a mitigation plan that was never shared with coaching staff, players, or parents, and which has not been made a part of our record. Further, Little League publically represented that those team members testing positive for COVID-19 would need to quarantine and the team could continue through the tournament as long as it could field nine players. In practice, however, what the policy meant was that a team would only be permitted to field nine players either if they could sit-out a ten-day quarantine before the next scheduled game, or if at least nine of its players were fully vaccinated. Little League never communicated

this fact to either of the Tulsa or Needville teams. In light of the severe consequence of a team's disqualification for a positive COVID-19 test, Little League had a responsibility to make clear from the outset that teams that were fully vaccinated would be treated differently from teams that were not. Little League cannot abrogate this responsibility by now putting the onus on team managers and coaches to investigate the details of CDC quarantine guidelines.

Based on this analysis, the Court is satisfied that Plaintiffs have made out a *prima facie* case that Little League's disqualification determination was arbitrary and capricious. However, the Court nevertheless finds that Plaintiffs have failed to meet all of the prerequisites for implementation of a preliminary injunction. Specifically, Plaintiffs have failed to show that their suggested remedy, which is to add Needville and Tulsa as additional teams to the 2021 Little League Baseball World Series Tournament roster, would restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. The wrongful conduct occurred at the Southwest Regional Tournament in Waco, Texas. As a practical matter, the regional tournament has already been played, teams have won games and lost games, and the winner has advanced to the World Series in Williamsport. It is simply not possible two weeks later to replay the Southwest Regional Tournament. Plaintiffs' counsel conceded as much at argument, but asserted that now awarding the teams a spot at the World Series would be a fair alternative. The Court disagrees. The sixteen teams that are playing in the Little League Baseball World Series beginning Thursday are those teams that have earned that right by their play on the field. While this Court is not unsympathetic to the manner in which they were disqualified, neither Tulsa nor Needville have earned their place in Williamsport.

Additionally, the Court credits the representations of Defendant's witnesses that adding two new teams at this late date would be unduly burdensome. The Court also considers the high probability that a preliminary injunction awarded in favor of Plaintiffs would invite the other five teams that were disqualified on similar grounds to also seek through preliminary injunction their place at the Little League World Series.

Finally, although Plaintiffs' Petition is drafted in the manner of a prohibitory injunction, asking that the Court enjoin Little League from enforcing its disqualification, it

is in many respects a request for a mandatory injunction. In granting the injunction, Little League would be required to make many affirmative accommodations through scheduling changes, staffing reallocation, housing alternatives, and adjustments to its COVID-19 protocols to accommodate two additional teams. Plaintiffs have failed to demonstrate that they are entitled to such a clear right to relief.

Conclusion

Pursuant to the foregoing, Plaintiffs' Petition for Special Injunction (TRO) and Preliminary Injunction Pursuant to Pa.R.C.P. 1531 is hereby DENIED.

IT IS SO ORDERED this 17th day of August 2021.

BY THE COURT,

_____
Eric R. Linhardt, Judge

ERL/crp
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