



Judgment of the USC Appeals Board in the matter of:

Western Clay Club v Clubs Governance Board, 2023:6 Clubs

Hearing Date: June 22, 2023

Judgment Released: June 28, 2023

Panel: William Fawcett (Chair), Ann Sony, Stephen Warner

Reasons: Sony (Fawcett, Warner)

PART I: INTRODUCTION

1. This is an appeal by the Western Clay Club (“WCC”) in response to the decision of the USC Clubs Governance Board (“CGB”) to deny the WCC club ratification. The CGB initially rejected the WCC’s application on the basis of an incomplete application due to insufficient details of events/activities that were outlined in the *Clubs Ratification Procedure* section 2.01(7). The club submitted a request for reconsideration. Upon review, the CGB ultimately denied club ratification once again due to feasibility issues in addition to the original reason of an incomplete application.

2. For the reasons below, this Board finds that the appeal should be dismissed.

PART II: FACTS

3. WCC applied for USC club ratification during the annual club ratification process of the 2022-2023 academic year. Its application was reviewed by the CGB, which found the application

to be incomplete on the basis that the WCC's list of expected events for the club did not include sufficient details of the description of the events, potential venues, a brief explanation of how the event tied back to the club's mandate. It also neglected to mention altogether the marketing strategies for the event. The inclusion of these details was outlined in the *Club Ratification Procedure* section 2.01(7).

4. On April 14, 2023, the CGB denied the WCC's application for ratification for the aforementioned concern. In its decision, the CGB informed the WCC that it could submit a "request for reconsideration" of the CGC's decision. In that same letter, it is said that changes to the original application cannot be made.

5. WCC submitted a request for reconsideration of the CGB's decision under section 5.00 of the *Club Ratification Procedure*. In its request for reconsideration, the WCC revised and submitted an updated events list to include a more detailed description of five events, potential venues, a brief explanation of how each event tied back to the club's mandate, and marketing strategies for each event.

6. This request, however, was also denied by the CGB. The CGB took the position that no additional documents could be submitted in a reconsideration request and reviewed the original events list in its reconsideration. With the limited amount of information provided surrounding safety and access to equipment, the CGB also had concerns regarding the potential USC liability stemming from WCC activities that would be conducted in UCC classrooms, particularly the potential damage that may arise from the use of clay. Therefore, the CGB once again denied the WCC's application for ratification on grounds of feasibility issues in addition to the original reasons of an incomplete application.

PART III: ISSUE

7. The issue is whether the CGB's decision not to ratify the Western Clay Club was reasonable.

PART IV: SUBMISSIONS

8. In its submissions, the WCC raised concerns over their application package being considered incomplete. Specifically, the WCC submitted that the online application portal's requirements for the description of events did not identify all of the elements identified in section 2.01(7) of the *Club Ratification Procedure*.

9. It also raised a concern that the CGB denied the WCC ratification for different reasons during the original application versus the request for reconsideration. During the initial ratification application, the CGB denied on the basis of an incomplete application. During its reconsideration, the CGB denied on the basis of feasibility issues in addition to the original reason for an incomplete application.

10. In the CGB's written submissions, they indicated they did not take into consideration any information added to the WCC request for reconsideration. During the oral hearing, the CGB maintained they had the authority to restrict what is submitted on requests of reconsideration and gave notice to the club of this after reaching their original decision. The CGB also indicated that the Student Organizations Advisor responsible for booking rooms for clubs expressed concerns that rooms may not be able to be booked because of the potential risk of damage arising from the use of clay, e.g., damage to chairs.

PART V: ANALYSIS

i. The CGB has Broad Discretion with Respect to Ratification Decisions, with which the Appeals Board will not Intervene Lightly

11. The CGB has significant discretion with respect to the ratification of proposed student clubs (*AIM to Educate Western v Clubs Governance Board*, 2022:1, para 20).

12. The reason for this discretion is explained in Appendix 1 of the *Club Ratification Procedure*.

Each year, the CGB receives approximately 85+ new club applications. The CGB recognizes a potential shortage of resources and space on campus if a sizeable number of clubs is added to the already 200+ clubs that are currently ratified with the USC. The CGB looks forward in decision-making processes to ensure that the future of the clubs department is stable and must enact particular guidelines in reviewing club applications that limits the number of clubs that are accepted each year.

13. During questioning, the CGB indicated to this Board that this year there were approximately sixty clubs that applied for ratification, of which only nine or ten were ratified. Far more potential clubs apply in a single year than the USC can realistically ratify (*AIM to Educate Western v Clubs Governance Board*, 2022:1, para 22).

14. In an appeal of a decision by the CGB not to ratify a club, the role of the Appeals Board is to ensure both the presence of fairness in the decision making process and the adherence to the relevant policies and by-laws. The discretionary power to determine whether a proposed club should or should not become a part of the USC community is ultimately within the purview of the CGB. The Appeals Board does not determine whether any proposed club deserves ratification, as this lies beyond the scope of an appeal to the Appeals Board (*Filmmakers and Performance Club*;

Hip Hop Heads; Net Impact; United Way Student Association of Western University v USC Clubs Governance Committee, 2015:3, para 1; Advocates for Allergy Awareness; ALPHA; Boys and Girls Club of Western; Foundation for International Relief of Children; Learn Better, Think Better; MISS v. USC Clubs Governance Committee, 2016:6 , para 2; and Western International Students Club v Clubs Governance Committee, 2017:9, para 8).

ii. *It was not Reasonable to Decide that the Western Clay Club's Application was Incomplete*

15. Section 2.01(7) of the *Club Ratification Procedure* provides as follows, with emphasis added.

2.01 To be considered for ratification, an organization **must** submit an application package consisting of the following:

[...]

(7) Description and Schedule of Events/Activities: A detailed itinerary of at least three (3) proposed club events/activities planned for the academic year.

The itinerary **should** include:

- i. a description of the proposed events,
- ii. potential venues,
- iii. marketing strategies for these events and,
- iv. A brief explanation of how the event/activity will contribute to the mandate of the proposed student organization.

16. The wording of this section makes it clear to a potential club that its application package must contain a description and schedule of events/activities. The problem is that the section goes on to state only that the description and schedule of events/activities should include, among other things, marketing strategies for these events.

17. The word “should” is ambiguous. Among the meanings identified by Merriam Webster for the word “should” are the following:

- a. obligation, propriety or expediency, e.g., ‘tis commanded I should do so; and
- b. what is probable or expected, e.g., they should be here by noon.

18. On one understanding of the word, “should” implies that an action is obligated, i.e., the action must be done. On another understanding of the word, “should” implies that an action is possible, i.e., the action may be done.

19. It is therefore ambiguous as to whether a potential club is required to include a description of marketing strategies for events as part of its application package or whether it is in the discretion of the club to include, or not to include, a description of marketing strategies for events.

20. It is a well-established principle of legal interpretation that ambiguities should be resolved against the party who drafted the document. This is known as the *contra proferentum* rule. The WCC did not draft the *Club Ratification Procedure*, and it would be unfair to resolve the ambiguity regarding the word “should” against the club, especially as the online application portal’s website appears only to have stated that “at least three events should be planned, and you should explain how each of the events tie back to your mandate.”

21. If the *Club Ratification Procedure* is intended to convey that a description of marketing strategies for events must form part of the description and schedule of events/activities, this requirement must be made clear to applicants. Accordingly, this Board finds that the first reason given by the CGB denying ratification – the allegation that the WCC’s application was incomplete – is not reasonable.

iii. *It is not Reasonable to Inform a Club that its Request for Reconsideration Cannot Include Changes to its Original Application only After Providing the Initial Decision*

22. Section 5.00 of the *Club Ratification Procedure* provides that a prospective club may apply to the CGB for reconsideration of the CGB’s decision not to ratify the prospective club. Historically, prospective clubs have been permitted to revise aspects of their applications to address the CGB’s concerns.

23. For example, in *Smiling over Sickness v Clubs Governance Committee*, 2019:5, the prospective club reworked their constitution and planned events before submitting a request for reconsideration. In *Backpacks N’ Care Packs v Clubs Governance Committee*, 2018:3, the prospective club revised its club constitution before submitting a request for reconsideration, as was the case in *Trek for Teens v Clubs Governance Committee*, 2018:4. In *Western Ski and Snowboard v CGC*, 2017:3, the prospective club revised its mandate before requesting reconsideration.

24. It is important to note that Section 5.05 of the *Club Ratification Procedure* authorizes the CGB in restricting what is submitted on requests of reconsideration. This permits the CGB to disallow any changes to the original application in the request for reconsideration.

25. However, because of the precedent permitting clubs to revise applications, a prospective club may reasonably believe, at the time it submits its application, that it will be permitted to revise its application as part of the reconsideration process. Therefore, in order to ensure fairness, the CGB must provide notice to clubs in advance of their submitting an application that they cannot revise the application as part of any reconsideration.

26. In this case, notice was not provided until the April 14, 2023 letter in which the CGB denied the WCC ratification. Consequently, as the CGB did not inform prospective clubs applying for ratification that its request for reconsideration cannot include changes to its original application, and did so only after the initial decision was made, the CGB's did not act reasonably in not considering the WCC's revisions to its application.

27. For greater clarity, this Board finds that the restriction preventing prospective clubs from revising or amending their applications as part of the reconsideration process is an additional procedure on requests for reconsideration that the CGB is permitted to impose under section 5.05 of the *Club Ratification Procedure*. However, to ensure fairness, this must be communicated to prospective clubs prior to the submission of their initial application.

iv. The Decision that the Western Clay Club did not Demonstrate that its Model of Operations was Feasible was Reasonable

28. On a request for reconsideration, the CGB is not constrained to reconsidering only the original ground(s) on a club was not ratified but may consider additional grounds disclosed in the application or request for reconsideration materials. This arises from the fact that the reconsideration is a reconsideration of the prospective club's application for ratification, it is not an appeal of the decision not to ratify.

29. Section 2.04(4)(viii) of the *Club Ratification Procedure* provides the CGB with broad discretion, requiring a prospective club “to demonstrate, at the discretion of the CGB, that it has a feasible model of operations.”

30. In the case of the WCC’s request for reconsideration, the Student Organisation Advisor expressed concerns regarding the feasibility of using clay in UCC classrooms, given the potential for damage. On the evidence before the Appeals Board, it does not appear that this concern was addressed in the WCC’s application package. As mentioned, the CGB is not restricted by only its original grounds for denying ratification, and it can consider additional grounds such as feasibility issues. In light of the information available to the CGB at the time of its decision, and in light of the concerns raised by the Student Organization Advisor, the CGB’s decision not to ratify due to feasibility concerns is reasonable.

31. We note here that, although the CGB’s letter indicating that the reconsideration request was refused identified only that there were concerns regarding feasibility, without specifying the specifics of these concerns, the CGB did invite the WCC to raise any questions it had. Through email exchanges between the CGB and the WCC on April 29, 2023, the CGB communicated the details of their concerns regarding the feasibility of using clay in UCC space to the WCC.

32. It should also be noted that the WCC has the opportunity to re-apply for ratification in future years and to address any feasibility concerns regarding the use of clay in its future application package. If the WCC does decide to apply for ratification again, how it seeks to demonstrate the feasibility of the use of clay in classrooms will be up to those preparing the application package. However, during the hearing before this Board, the WCC indicated that it was exploring the possibility of partnering with other clubs currently ratified by the USC with

respect to holding events on campus. If those events are approved and run smoothly, this may be one means by which to provide evidence of feasibility. In saying this, this Board is not prejudging any future application for ratification the WCC may submit, which, if submitted, will be evaluated on its own merits by the CGB with the CGB's full discretion. These comments are intended only to highlight that there is a means by which the WCC may attempt to address the CGB's concerns regarding feasibility. It may well be that there are other means by which the WCC may seek to address these concerns, and it will be up to the WCC to pursue those means it believes to be appropriate if it wishes to reapply for ratification.

33. Finding that the CGB acted reasonably in denying ratification based on feasibility concerns, this appeal is dismissed.

A. Sony

W. Fawcett

S. Warner