

## DECISION OF THE GOTHAM VOLLEYBALL GRIEVANCE COMMITTEE

### DECEMBER 11, 2023 & JANUARY 16, 2024 MEETINGS GRIEVANCE OF [REDACTED]

#### SUMMARY

The Grievance Committee received a grievance from [REDACTED], a participant in Gotham Volleyball's Open Play program<sup>1</sup> challenging the assessment of the Tournaments & Open Play Leadership Group that she was not level appropriate following the Division 1 and 2 Open Play held on October 17, 2023. [REDACTED] has also requested a review, pursuant to the Gotham Volleyball Whistleblower Policy regarding whether this action constituted an unlawful act by a member of the Gotham Volleyball leadership, specifically referencing the state law that prohibits discriminatory actions based on gender identity.

After reviewing the relevant facts and circumstances, the Committee has determined that the grievance is largely moot, given the intervention of Gotham's leadership to allow [REDACTED] skill level to be re-assessed and that re-assessment allowing her to play at the highest levels of Open Play moving forward. With respect to the motivation of the original assessor, there is no basis for the Committee to conclude the assessment was motivated by [REDACTED] gender or gender identity. However, the Grievance Committee believes that [REDACTED] concerns about her experience have merit and that Gotham's leadership groups should act, as detailed below, to improve communication about, and guidelines for, discretionary decision making. The decision was agreed to by all members of the Grievance Committee, which includes Michael Castro (Division Play), Eric Eichenholtz (Division Play/Acting Grievance Officer),<sup>2</sup> Sonia Parada (Power), Hunter Schneider (Division Play) and Patrick So (Power).

For substantially the same reasons as the Committee's decision on the grievance, while there is room for improvement in some of the practices here, all officers and volunteers of Gotham were acting lawfully under federal, state and local law. Accordingly, the acting Grievance Officer will report to the Board that there was

<sup>1</sup> Article IX, Section 4 of the Bylaws limit those who can bring grievances to members of Gotham Volleyball. The Bylaws provide exceptions for members, but those exceptions are limited to the tryout process. At the time that particular provision of the Bylaws was drafted, membership in Gotham was based on participation in seasonal activities and the focus of participation was there as well. In the years since, the concept of membership has expanded and there are many ways for non-members to actively participate in Gotham activities. It was not the intent of the Board to lose the grievance process as recourse to be heard to address mistreatment or to challenge decisions that potentially violate the rules of the organization, and the Board may wish to revisit the wording of that Bylaws section. This point is, for the most part, academic for this grievance given the invocation of the Whistleblower policy, which authorizes the Grievance Officer to utilize the Grievance Committee to investigate a Whistleblower's claim of unlawful conduct (here unlawful discrimination) by a Gotham volunteer.

<sup>2</sup> The position of Grievance Officer is currently vacant. The Board of Directors has designated Division Play Grievance Committee Member Eric Eichenholtz to serve as acting Grievance Officer until the vacancy is filled.

no unlawful conduct by any officer or volunteer of Gotham that requires further action pursuant to the Whistleblower policy.

### FACTUAL BACKGROUND

On October 17, 2023, [REDACTED], who is female and transgender, registered and attended a Division 1 and 2 Open Play. [REDACTED] has extensive volleyball experience playing at an advanced level. The Division 1 and 2 Open Play is the highest level of open play offered by Gotham Volleyball. This Open Play was attended by a high number of people who are not members of Gotham, including [REDACTED]. By all accounts, due to a high number of new players, the level of play for this particular event was beneath what was ordinarily expected of the Open Play. [REDACTED] was familiar with many of the people at the event, having played with some in an advanced level of an outdoor volleyball organization.

Each open play is run by a Gotham Leader on Duty ("GLOD"), typically a member of Gotham's leadership team or an elected team Captain who is responsible for ensuring the event goes smoothly and reporting any issues. At the end of the event, GLODs report back to the Open Play Director about the event by completing a document called a GLOD report.

In recent years, Open Plays have been heavily oversubscribed. Many of the events sell out within minutes, if not seconds. While active participants in Gotham activities (most Open Play participants) are limited to particular skill levels based on their enrollment into certain Gotham programs, non-members and those new to Gotham can sign up for any level they choose. As a result, the leadership responsible for Open Play have been more vigilant about evaluating new participants to determine what levels are most appropriate for them to avoid those participants registering for a broad swath of skill levels based on available slots to play. This has been done by asking the GLOD to assess whether any new player attending the event is level appropriate for the skill level, or whether the player should be at a higher or lower level, and to provide that assessment in their GLOD report.

That evening, [REDACTED] a member of Gotham who is not currently a Captain or on a leadership team, was asked to serve as the Gotham Leader on Duty ("GLOD"). [REDACTED] was not provided with any criteria and standards on how to evaluate the players. Given the extremely high number of new players, the task was far more extensive than it would be for a typical GLOD.

[REDACTED] ultimately recommended that five players were not level appropriate for a Division 1 & 2 Open Play, one of which was [REDACTED] and the other four are cisgender men. [REDACTED] noted issues with [REDACTED] knowledge of rotation and positioning in the GLOD report. When subsequently asked to expound on that in connection with this grievance, [REDACTED] who played with [REDACTED] outdoors through another organization and was familiar with her play entering the Open Play, identified her passing being substandard as a result.

[REDACTED] only learned of this assessment after attempting to sign up for a Division 1 & 2 Open Play and receiving an e-mail from Open Play Director Michael Driemiller stating that Gotham had determined that her level of play was not appropriate for a Division 1 & 2 Open Play. While Gotham has had even collegiate players play at both advanced and intermediate levels, [REDACTED] was unaware of this. From [REDACTED]

perspective, as an accomplished collegiate player, suggesting a lower level than advanced was a shock, completely unjustified and hurtful. [REDACTED] had also heard from other female and trans participants in Gotham that there were occasions where like they had been excluded and the e-mail made her feel that she, too, was being subjected to this conduct.

In the days following, [REDACTED] spoke extensively with Michael as well as Andrew Dowdye, Vice President for Tournaments and Open Play. Neither could provide a detailed explanation for the decision, but they agreed to allow [REDACTED] to sign up for a future event at Division 1 and 2 level. [REDACTED], in turn, played for one week in an intermediate Open Play.

[REDACTED] also reached out to [REDACTED] about his decision once she learned of it by messaging him. The Committee was left with the distinct impression that there is a personality conflict between [REDACTED], and that it may have pre-existed the issues underlying this grievance. [REDACTED] claimed he failed to get the notification, while [REDACTED] inferred he was ignoring her. By the time [REDACTED] again attempted contact [REDACTED], expressing regret about what had happened, she informed him that she did not want to talk with him. [REDACTED] again approached [REDACTED] in person, and she again informed him she did not want to talk. [REDACTED] attended an open play as a spectator that [REDACTED] attended, although he explained he was there with and to be supportive of his friends.

When [REDACTED] next played in a Division 1, 2 and 5 Open Play, she was evaluated by [REDACTED], the Division [REDACTED] Representative serving as GLOD. [REDACTED] used his camera to film the open play for personal reasons, but Jessica observed this and assumed [REDACTED] was attempting to film her play to provide support for his assessment. Ultimately, [REDACTED] found [REDACTED] a level appropriate player and she has continued to play at the highest level of Open Play offerings in Gotham.

[REDACTED] advised the Committee that she still feels uncomfortable at Gotham events as a result of the assessment of her skill.

## DISCUSSION

The core question presented by this grievance, whether or not [REDACTED] assessment of [REDACTED] skill level should be disregarded and/or reversed is, for the most part, already moot, having been resolved with an outcome favorable to the grievant. After learning of Jessica's concerns, the Director of Open Play and Vice President for Tournaments & Open Play allowed [REDACTED] to attend another high-level open play and be re-assessed by the GLOD in that Open Play. That GLOD, Division [REDACTED] Representative [REDACTED] assessed [REDACTED] as level appropriate and that assessment is being applied moving forward to allow [REDACTED] to participate in the highest level Open Plays Gotham offers. The Committee commends and notes its appreciation to the leadership for working proactively to resolve the underlying issue here.

After speaking with [REDACTED] and [REDACTED] we also do not find a basis to conclude that [REDACTED] assessed [REDACTED] as inappropriate for the highest skill level Open Plays because of her female gender or because she is transgender. The primary reason [REDACTED] provided the Committee in urging a contrary conclusion was that she was aware of other incidents where female and trans players have been made to feel unwelcome by Gotham members and volunteers and, in turn, noted how

unwelcoming her experience was. We agree with ██████ that, for many reasons, her experience with Gotham fell well below the standards set for our welcoming and inclusive community and will address that concern further below. However, on the other hand, the Committee does not believe that ██████ assessment was at all because ██████ is female or trans. Nor was ██████ poor experience in any way an intentional effort to exclude her from Gotham because of her gender or because she was trans.

Our conclusion is based on several factors, including ██████ decision to report four other players as level inappropriate the evening of October 17, 2023. All four of those players are cisgender males. Moreover, we note that the Open Play Director and Vice President for Tournaments and Open Play were extremely responsive to ██████ and, if not apologetic, at least eager to reach a positive resolution for all involved that would allow ██████ to actively participate in Gotham events at whatever level was deemed appropriate. Finally, we note that after speaking with ██████, there appears to be an interpersonal conflict between the two individuals that extends beyond the Gotham space. Indeed, during our meeting ██████ speculated about many motivations, unrelated to her gender, for ██████ conduct. All of this information supports the conclusion that even assuming ██████ assessments that evening were unduly harsh, they were not motivated by a desire to exclude individuals from Gotham because of gender or gender identity.

On the other hand, the Committee also concludes that the process and inclusion issues raised by ██████ as a female, trans player seeking to join the Gotham community are valid and should not be lost by the conclusion that the particular action being challenged was not discriminatory. There were gaps in communication and gaps in structure for objective decision making that are not unique to this situation. These gaps created a sequence of events that left ██████ understandably hurt and upset and that ought to be addressed by Gotham. Because of this, the Committee recommends internal review and potential remedial action by all four of Gotham's Leadership Groups to ensure they are promoting objectivity in discretionary decision making and reviewing how Gotham engages in communications about those decisions through a diversity lens. We also ask all groups to be accountable for taking the time to consider and pursue such a review.

Gotham Volleyball, like many LGBTQ+ sports organizations, is mostly populated by cisgender gay men and despite efforts to attract and include female and trans players, they remain underrepresented in Gotham. To its great credit, Gotham has done much to change this, including vastly increasing its training offerings on a women's height net and hosting an annual Trans and Allies tournament where trans members are honored and their Gotham experiences shared with other members. Our current President, Kyle Williams, has been a strong voice for inclusion, emphasizing the need to eliminate unconscious bias from decision making. There is some training in place, such as the Captain's Orientation in Division Play, including discussing issues of unconscious bias. Much effort has been made over the course of many years to make tryouts, by far the most intimidating part of the Gotham experience, more friendly and welcoming to newcomers, especially those who do not resemble or have pre-existing connections to the existing community.

These commendable efforts have undoubtedly improved the experience for numerous members of the Gotham community. However, until Gotham achieves more proportionate representation of female and trans players (as well as other underrepresented groups), Gotham must be very conscious about this lack of diversity

in planning how discretionary decisions are made and how the League communicates, especially with underrepresented members and potential members.

In this case, [REDACTED] was new to Gotham and was entering our community through an Open Play in which was apparently entirely male. When joining the event [REDACTED] was never told about how she would need to be evaluated for level appropriateness and it was a complete and unwelcome surprise to her that she was not allowed to participate in Open Play the following week. Similarly, [REDACTED] was asked to serve as GLOD and required to make multiple difficult and highly subjective decisions without any guidelines or training. While he explained to the Committee that he relied on his experience as a volleyball coach to do so, without guidance about what is expected at each level, this may well have caused him to be too exacting and be overly critical in some situations.

Compounding these problems, when [REDACTED] was ultimately informed of the decision to rate her as more appropriate for intermediate Open Play offerings, the Open Play Director had almost no information about the reasons for [REDACTED] decision and therefore was unable to satisfactorily explain the decision to [REDACTED]. It was not until preparing for the Grievance Committee meeting that [REDACTED] was asked to provide some detail about what he saw that caused him to evaluate [REDACTED] as he did. [REDACTED] who played collegiate volleyball and tried out for the national team, did not understand why she was being told she could not play at the highest levels of Gotham. [REDACTED] did not know, as many in Gotham's leadership do, that there are some collegiate players who have played at both high and intermediate levels of Gotham, and certainly did not know what deficiencies prompted the rating. [REDACTED] did not even know she wasn't being singled out until being informed when speaking with the Committee that other, cisgender men, were also rated as inappropriate by [REDACTED].

In this climate and with the lack of welcoming, detailed and empathetic communication at the outset, it was quite reasonable for [REDACTED] to conclude she was being excluded from our community for being different, even if the underlying facts ultimately have suggested otherwise. By the time the Vice President for Tournaments & Open Play interceded, an understandable skepticism of Gotham's motivation and credibility had arisen for [REDACTED] that, as of the Committee's meeting, has not been dispelled.

In determining this recommendation on how to improve this situation moving forward, we do not view [REDACTED] experience in isolation. Recent decisions of the Grievance Committee have highlighted the importance of communication and objectivity (both in evaluating and complaining) to ensure that the Gotham community can be as diverse as it seeks to be. This Committee's December 14, 2022 meeting decision contained nearly identical language indicating the Committee's concern about the League being mindful of gender diversity. This grievance, as well as that decision and the decision from the Committee's December 21, 2023 meetings all involve members who were not cis gay men feeling othered or marginalized and have common themes of how better communication or regulation of discretionary decisions would likely lead to better outcomes for those members.

We believe that all of the Gotham Leadership, including this Committee, can help enhance communication with greater sensitivity to those underrepresented in the Gotham community, as well as improve the guidelines and guidance for discretionary decisions. To help do so, we recommend each leadership group create a list of all discretionary decisions they routinely make. With each category of decision, they

determine whether existing process guidelines and/or criteria exist for the decision and, if not, whether they should be created and by whom. Doing so will ensure that all Gotham leaders and volunteers do their work with the necessary support and training to make difficult discretionary decisions in a fair and equitable manner. It will also ensure that those leaders and volunteers are able to articulate the basis for those decisions in a more transparent and empathetic manner that will foster understanding, rather than mistrust, of the decisions that are made.

We also recommend that, moving forward, operational groups have the ability to have external review of new processes with an objective lens and a DEI lens by Board committees, such as the Grievance Committee or Diversity & Inclusion Working Group.

We recommend each group also look that the volunteers they have under their jurisdiction, and how those volunteers are selected and how "quality control" is done to ensure that the volunteers reflect the values of Gotham and that their work is carried out in a fair and equitable manner.

Turning specifically to this grievance, with respect to the Tournaments and Open Play Leadership Group, Andrew and Michael were strongly committed putting together objective guidelines to help GLODs determine level appropriateness, ideally for the Spring 2024 season. We would also recommend that the Leadership Group prepare on-demand training that new GLODs be required to take before they run their first event.

Finally, we recommend that Gotham consider organizing an unconscious bias or DEI training that could be recorded and available to new leaders and volunteers on an on-demand basis.

We understand that the Gotham leadership is entirely volunteer, with heavy operational burdens, but we believe the steps outlined above will be tremendously beneficial to avoiding grievances such as this one. The Committee is committed to assist and be supportive of this work. The Committee also wants to ensure that this decision and its recommendations are properly reviewed and considered. Therefore, the Committee is requesting to schedule a follow-up meeting within 30-45 days of this decision with at least one representative from the Board and each Leadership Group to raise awareness of the Committee's work generally, discuss each group's work on these issues, how the Committee can be of assistance.

## CONCLUSION

For the reasons discussed above, the Committee has determined as follows:

- 1) The grievance review of the decision that [REDACTED] was not level appropriate for Division 1 & 2 Open Plays is dismissed as moot and, in any event, because there is no basis to conclude the decision was made because of [REDACTED] gender or gender identity.
- 2) All officers, leaders and volunteers of Gotham Volleyball acted in a lawful manner and within the scope of Gotham's rules and bylaws.
- 3) In reviewing the grievance, the Committee has determined that that the concerns raised about how this incident made [REDACTED] feel unwelcome are valid and, because of this and other recent grievances, the Committee requests Gotham's leadership groups

take action, detailed above, to improve communication about, and guidelines for, discretionary decision making.

- 4) The Committee also recommends the Tournament and Open Play Leadership Group develop objective criteria, perhaps based on NAGVA guidelines, to help GLODs understand and consistently evaluate level appropriateness. The Committee asks that, if at all possible, those criteria be put in place as soon as possible during the Spring 2024 season.
- 5) The Committee will meet, within the next 45 days, with representatives of the Board of Directors and leadership groups to discuss plans to address the issues raised in this decision.
- 6) The Committee remains available to assist with review and recommendation with regard to any aspect of this decision.

### **NOTICE OF APPEAL RIGHTS**

Under Article IX, Section 4(d) of the Bylaws of the Gotham Volleyball League and Section VI(h) of the Gotham Volleyball Sportsmanship and Anti-Violence Policy, any interested party may appeal this decision to the Gotham Volleyball Board of Directors within 10 business days of the Committee's decision. In order to be timely, any statement of reasons for appeal of this decision **must** be delivered by e-mail to Eric Eichenholtz, Acting Grievance Officer at [grievance@gothamvolleyball.org](mailto:grievance@gothamvolleyball.org) on or before February 20, 2024.