

Oral Statement of Manfred - Committee on Govt Reform

Written by Steroid Hearing
Wednesday, 16 March 2005 12:00

Oral statement of Robert D. Manfred,

Executive Vice President,

Major League Baseball,

before the House of Representatives Committee on Government Reform

March 17, 2005

Good morning Mr. Chairman, Ranking Member and Committee Members. I would like to note that I have previously submitted a written statement that I would ask to be included in the record. I am not going to read any portion of that statement this morning, but instead would like to take this opportunity to respond to some of the issues raised in the Committee's letter to Commissioner Selig and Mr. Fehr.

First, much has been made out of the fact that our agreement sets forth penalties in the disjunctive. For each offense, there is a suspension of specified length or a fine amount. That formulation of the penalties was included in our 2002 agreement and was carried forward into the new agreement. In retrospect, that language, as a drafting matter, probably should have been altered. There is, however, no dispute or misunderstanding between the bargaining parties as to how the agreement is going to operate. We have informed the Major League Baseball Players Association ("MLBPA") that the Commissioner intends to and will suspend across the board for all violations. The owners ratified the agreement with that understanding. It is also my understanding that Mr. Fehr's constituents are in the process of ratifying based on that same understanding.

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The Committee's letter also takes issue with our process for disclosing positive results. Under the agreement if a player tests positive, it will be reported in the transaction list published in every paper in America that the player tested positive for violating the Joint Drug Agreement. Given that we only test for steroids under the joint drug agreement, everyone will understand that the suspension was based on a steroid test. In terms of the general confidentiality language in our agreement, I would point out that virtually every drug program in America contains such a general confidentiality commitment, including the programs that have been adopted by the federal government to cover its employees.

The assertion that all steroids are not banned under the baseball policy is simply untrue. The plain language of our agreement bans all steroids on Schedule III as well as any other anabolic androgenic agent that cannot be lawfully obtained in this country. The list of substances in the agreement is clearly identified as a "nonexhaustive" list. As to the four substances specifically mentioned in your letter, one is anabolic androgenic agent that cannot lawfully be obtained in the United States and is therefore banned under the plain language of our agreement. A second, danazol, is a prescription drug which many experts believe may not have anabolic characteristics. A third, boldione, is a nutritional supplement, that Congress inappropriately excluded from the Steroid Control Act of 2004. We have been in conversations with the DEA and understand that it is going to be added to Schedule III, at which time it will be banned under our program. The fourth is DHEA, which despite our lobbying efforts, was excluded from the Steroid Control Act of 2004.

The assertion that our policy fails to ban designer steroids is also incorrect. The language banning "anabolic androgenic steroids that are not covered by Schedule III but that may not be lawfully obtained" has been previously used by the bargaining parties to ban THG and DMT. The bargaining parties have relied on this language in the contract to ban designer steroids in the past and will do so in the future. I would also point out that substances that fall within this definitional language are added automatically, without the need for action by the Health Policy Advisory Committee (HPAC).

The Committee's criticisms of our position on human growth hormone is also unfair. Our experts, including the director of the WADA certified lab in Montreal has informed us that there is no verifiable test, blood or urine, for human growth hormone. We are actively involved with efforts to accelerate the development of a urine test.

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The Committee's letter criticizes our program because it is governed by a joint labor-management committee known as the Health Policy Advisory Committee. No other professional sport uses an outside independent agency to supervise its drug testing program. This includes the NFL. In fact, I am unaware of a single collectively bargained private employer drug testing program anywhere in the United States that is supervised by an outside agency such as USADA. While the Olympics may take a decidedly different approach, the Olympics operate in a decidedly different environment, unrestrained by a collective bargaining obligation.

The Committee's letter characterizes as extraordinary the provision that would suspend testing in the face of a government effort to obtain across-the-board testing results. At the outset, I should point out that this provision does not apply if the government investigation is supported by individualized probable cause. It is also important to understand that this provision did not arise in a vacuum. Baseball has faced efforts by law enforcement authorities to obtain across-the-board testing results absent individual probable cause. All the provision does is temporarily suspend the program while we resist an attempt by law enforcement officials to premise a criminal probe on private drug testing results.

Last, the Committee's letter criticizes baseball because certain of its collection procedures are not consistent with those used by WADA. At the outset, it is important to understand that many federal and state laws that make it very difficult for an employer to follow strictly WADA requirements. On the fundamentals, however, Major League Baseball's collection procedures are entirely sound. All urine specimens are provided under direct observation of the collector. While players are occasionally allowed to leave the testing site for approximately an hour if they cannot provide a specimen, the opportunities for a steroid user to avoid detection during this hour are very limited particularly given that baseball tests for diuretics and masking agents and checks the specific gravity of all urine samples. Moreover, while players may leave the immediate testing area, they remain in the clubhouse where they are subject to observation by testing officials.

In closing, I would point out that no one likes to receive a letter like we received from the Committee yesterday. When one really understands the substance of our policy, however, there are precious few legitimate criticisms that can be directed at this policy. This is particularly true when one has some appreciation for the fact that the policy was negotiated in the context of a

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voluntary reopener of a collective bargaining

agreement.