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LET'S HAVE A CLEAN FIGHT: TROUT V. ORGANIZACÍON MUNDIAL DE BOXEO, INC.

By
Michael J. Wehrman*

I. INTRODUCTION

To fans and aficionados, boxing is known as much for its disputes, controversy, and chicanery outside the ring as the bouts inside it. Fighters, promoters, managers, and sanctioning organizations have long fought over the size of the purse in prize fights, over how money should be divided, and over which boxers should get lucrative title shots. The World Boxing Organization (WBO, or *Organizacíon Mundial de Boxeo*), a major boxing sanctioning body, mandates arbitration when disputes arise.[1] The WBO's arbitral procedures, however, particularly its rules governing the appointment of arbitrators, came under fire in the First Circuit's ruling in *Trout v. Organizacíon Mundial de Boxeo, Inc.*[2] The First Circuit held unanimously that the WBO's method of selecting arbitrators was unconscionable, since only the WBO was allowed to select the arbitrator, without agreement or input from the opposing party, and that the arbitrators selected could not guarantee impartiality.[3] This case could have a major impact on how arbitration clauses, particularly arbitrator-selection provisions, are written in the future, and not just within the boxing community.

This comment will first discuss, for the benefit of boxing novices and devotees alike, the role of the WBO and other boxing sanctioning organizations. It will also address the Muhammad Ali Boxing Reform Act,[4] enacted by Congress in 2000 to protect boxers from corruption and anticompetitive practices.[5] It will then detail the background of *Trout* and arguments put forth by prizefighter Austin Trout, who brought suit against the WBO. Finally, this comment will outline the First Circuit's reasoning and lay out the decision's potential impact on both the worlds of boxing and arbitration more broadly.

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1. *See WBO By-Laws*, Ch. II, p.4 (May 21, 2018), wboboxing.com/by-laws.

2. *See generally* Trout v. Organizacíon Mundial de Boxeo, Inc., 965 F.3d 71 (1st Cir. 2020).

3. *See Trout* 965 F.3d at 78-82.

4. 15 U.S.C. §§ 6301-6313 (2000).

5. *See, e.g.*, 15 U.S.C. § 6307b.

II. Background

A. *The WBO and the Administration of Boxing*

Unlike many professional sports, boxing has no single unified governing organization to oversee it: there is no equivalent to the Professional Golf Association (PGA) or to *la Fédération Internationale de Football Association* (FIFA). There is also no unified top sports league in boxing, as with the National Football League (NFL), Major League Baseball (MLB), the National Basketball Association (NBA), or the Ultimate Fighting Championship (UFC). Instead, there are webs of intertwining governing bodies and sanctioning organizations, each with its own arcane, byzantine, and often clandestine rules, policies, and procedures. Boxing, more than most sports, has thus been seen, fairly or unfairly, as being run by insiders, crooks, casinos, gamblers, and politicians on the take.[6] Given its shady history, in the minds of fans and non-fans alike, it is a sport of smoky backroom deals, greased palms, and even fixed results.[7]

International professional boxing is overseen primarily by four sanctioning bodies. To put on fights in cities and towns around the world, these bodies also cooperate with myriad local boxing and athletic commissions and local government organizations.[8] The oldest major sanctioning body is the World Boxing Association (WBA), which dates to 1921 as the National Boxing Association.[9] To counteract the power of the WBA and other national, multinational, regional, and local boxing authorities, the other three sanctioning organizations emerged beginning in the 1960s. The second of the "Big Four" was the World Boxing Council (WBC) in 1963,[10] followed by the International Boxing Federation (IBF) in 1983,[11] and then the World Boxing Organization (WBO) in 1988.[12]

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6. *See generally* Jeffrey Sussman, BOXING AND THE MOB: THE NOTORIOUS HISTORY OF THE SWEET SCIENCE (2019).

7. *See, e.g., Boxing Bouts Fixed at 2016 Olympics, Investigation Finds*, ASS'D PRESS (Sept. 30, 2021), https://apnews.com/article/sports-boxing-2020-tokyo-olympics-e657a0b20aaf897dd96d5708d6ddbb2e.

8. *See, e.g., Commission Contacts*, ASS'N OF BOXING COMM'NS AND COMBATIVE SPORTS, https://www.abcboxing.com/contacts/ (last visited May 21, 2022) (listing 76 local commissions, representing various states, provinces, and tribal groups, as members of a major umbrella organization.).

9. *See World Boxing Association History*, WORLD BOXING ASS'N (Feb. 5, 2009), https://www.wbaboxing.com/ wba-history/world-boxing-association-history#.Ydo442jMKUk.

10. *See WBC History*, WORLD BOXING COUNCIL, https://wbcboxing.com/en/wbc/history/ (last visited Jan. 8, 2022).

11. *See IBF History*, INT'L BOXING FED'N, https://www.ibf-usba-boxing.com/index.php/about/history-of-ibf (last visited Jan. 8, 2022).

12. *See* David L. Hudson, Jr., COMBAT SPORTS: AN ENCYCLOPEDIA OF WRESTLING, FIGHTING, AND MIXED MARTIAL ARTS 342 (2009).

Each of these four sanctioning bodies has its own systems, rules, and weight classes (each body has at least seventeen different weight classes),[13] and they each award championship belts to the top male and female boxers in those classes.[14] Champions may hold one or more of the titles of these four sanctioning bodies; those regarded as champion in all four sanctioning bodies are often referred to as "unified" or, more commonly, "undisputed" champions.[15] Because it is difficult and sometimes impossible to honor contracts with each of the sanctioning bodies at once, fighters often must choose one sanctioning group over another, forcing titles to be abandoned, or "vacated."[16] For example, the IBF might stipulate Boxer A has to fight Pugilist X for the title in his next bout, but the WBC might require him or her to face Fighter Y.[17] Conflicts among this alphabet soup of governing bodies have led to confusion, controversy, a lack of regard for the organizations' champions by even esteemed sports media publications,[18] and boxing's waning popularity worldwide, while the status of the more "extreme" combat sport of

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13. *See* Kelsey McCarson, *Breaking Down Each Boxing Weight Class*, BLEACHER REP. (Nov. 30, 2017), https://bleacherreport.com/articles/2746354-breaking-down-each-boxing-weight-class.

14. *See Boxing Champions List*, ESPN, https://www.espn.com/boxing/story/_/id/12370125/boxing-champions-list (last visited Apr. 24, 2022) (list of the current men's champions across the four major sanctioning bodies in all weight classes); *Women's Boxing Champions List*, ESPN, https://www.espn.com/boxing/story/_/id/31302669/women-boxing-champions-list (last visited Apr. 24, 2022) (a similarly-formatted list of the current women's champions).

15. As George Carlin once said, "If it's undisputed, what's all the fighting about?" (GEORGE CARLIN, *Familiar Expressions*, on BACK IN TOWN (Atl. Records 1996)). Currently, only two male fighters among the seventeen common weight classes hold championships across all four sanctioning bodies (Josh Taylor as light welterweight and Canelo Álvarez as super middleweight). To illustrate the confusion, three of the four major sanctioning bodies (the WBA, IBF, and WBO, along with the IBO—the International Boxing Organization—probably the largest sanctioning body outside the Big Four) regard Oleksandr Usyk as heavyweight champion; however, the WBC, *The Ring*, and many outside groups see Tyson Fury as the "true" champion. There has been no undisputed heavyweight champion since Lennox Lewis defeated Evander Holyfield in 1999. *See, e.g.*, *Hard-Hitting Federal Judge Strips Lewis of WBA Title*, L.A. TIMES (Apr. 13, 2000, 12:00 AM), https://www.latimes.com/archives/la-xpm-2000-apr-13-sp-19075-story.html.

16. *See, e.g., Lamont Peterson Relinquishes WBA Welterweight Title*, FIGHT SPORTS (Oct. 3, 2017), https://www.fightsports.tv/lamont-peterson-relinquishes-wba-welterweight-title/; Michael Martinez, *Bowe Trashes His W.B.C. Title Belt*, N.Y. TIMES, Dec. 15, 1992, at B19.

17. *See, e.g.,* Dani Mohr, *WBC Orders Tyson Fury to Defend Heavyweight Title Against Dillian Whyte,* SPORTING NEWS (Dec. 7, 2021), https://www.sportingnews.com/us/boxing/news/tyson-fury-dillian-whyte-heavyweight-title/o6d5rb2h2nl412q7ay1tnb3un.

18. *See, e.g.,* Matt Christie, *No More Sanctioning Body Titles: The New Boxing News Stance Here*, BOXING NEWS (July 6, 2021), https://www.boxingnewsonline.net/no-more-sanctioning-body-titles-the-new-boxing-news-stance-here/. (This article details the decision of the world's oldest continuous boxing publication, the British *Boxing News*, to no longer regard the sanctioning body's title belt holders as "champions."); *About The Ring*, RING, https://www.ringtv.com/113499-about-2/ (last visited Apr. 24, 2022) (Similarly, *The Ring*, the oldest boxing publication in the United States, awards its own championship belts to "recognize the true and only world champion," as well as a "pound-for-pound" champion across weight classes.).

mixed martial arts has risen.[19] The sanctioning bodies' sour influence on the "sweet science" is much of why boxing has been in a long decline: boxing matches, even title bouts, lack the cachet they had even into the 1990s, let alone the 1960s and '70s.[20]

B. The Muhammad Ali Boxing Reform Act and Other Boxing Legislation

To reduce corruption in the sport, protect its athletes, and perhaps even save boxing from itself, Congress began looking in earnest to regulate boxing in the 1990s.[21] The first step was 1996's Professional Boxing Safety Act,[22] an act aiming to "improve and expand the system of safety precautions that protects the welfare of professional boxers,"[23] while also "provid[ing] proper oversight for the professional boxing industry in the United States."[24] This was followed by 2000's Muhammad Ali Boxing Reform Act (MABRA or the "Ali Act"), which modified and renamed the Safety Act and attempted to protect fighters outside the ring, in the realms of contract negotiation and dispute resolution.[25] Its congressional creators were particularly worried that "open competition in the professional boxing industry has been significantly interfered with by restrictive and anticompetitive business practices of certain promoters and sanctioning bodies, to the detriment of the athletes and the ticket-buying public."[26] Thus, several provisions

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19. *See, e.g.,* Ollie Lewis, *How the UFC Overtook Boxing in the Popularity Stakes: Making the Best Fight the Best, Dana White's Rapid Response to the Covid-19 Pandemic and the Move to Fight Island Has Seen the UFC Take the Edge over Boxing*, DAILY MAIL ONLINE (Dec. 25, 2020), https://www.dailymail.co.uk/sport/mma/article-9059919/How-UFC-overtook-boxing-popularity-stakes-2020.html.

20. *See, e.g.*, Kevin Iole, *Sanctioning Bodies Have Spoiled Boxing. Here's How to Fix It*, YAHOO! SPORTS (Aug.12, 2021), https://sports.yahoo.com/sanctioning-bodies-have-spoiled-boxing-heres-how-to-fix-it-202051680.html.

21. *See, e.g.,* Michael J. Jurek, Note, *Janitor or Savior: The Role of Congress in Professional Boxing Reform* 67 OHIO ST. L.J. 1187, 1189 (2006) (providing a good, though now a bit dated, overview of federal boxing-related legislation); CONGRESS AND BOXING: A LEGISLATIVE HISTORY, 1960-2003 (Edmund P. Edmonds and William H. Manz eds, 2005) (an exhaustive document collection plus analysis of federal policies on boxing since the mid-twentieth century).

22. Pub. L. No. 104-272, §§ 6301-6313, 110 Stat. 3309 (1996) (prior to 2000 amendment).

23. 15 U.S.C. § 6302(1) (1996).

24. *Id*. § 6302(2).

25. *Id.* §§ 6301-6313. *See also* Devin J. Burstein, Note, *The Muhammad Ali Boxing Reform Act: Its Problems and Remedies, Including the Possibility of a United States Boxing Administration*, 21 CARDOZO ARTS & ENT. L.J. 433 (2003).

26. Muhammad Ali Boxing Reform Act, Pub. L. No. 106-210, § 2(5), 114 Stat. 321 (2000).

regarding contract rules and language for boxing commissions, sanctioning bodies, broadcasters, judges, and referees were included in the Ali Act.[27]

III. THE CASE: *TROUT V. ORGANIZACÍON MUNDIAL DE BOXEO, INC.*

A. Prior Case History: From New Mexico to Puerto Rico to Boston

In 2015, Austin Trout, described in Judge Barron's opinion as "a professional boxer of some renown,"[28] alleged that the WBO removed him from its rankings in the light middleweight class, costing him a chance at the WBO title.[29] Because Trout is a native of and resided in Las Cruces, New Mexico, he filed suit in a New Mexico state court against the WBO.[30] The WBO, which is based in Puerto Rico, first successfully removed the case to federal court in the District of New Mexico.[31] Then, pursuant to a clause in the WBO's Championship Regulations,[32] the WBO transferred the case to the District of Puerto Rico, part of the First Circuit, on July 5, 2017.[33] Trout's complaint to the District of Puerto Rico included a claim under the Ali Act as well as claims under Puerto Rico law against the WBO for breach of contract, fraud, and negligence.[34] The district court, looking closely at both the WBO's Championship Regulations and Appeal Regulations, decided to compel arbitration.[35]

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27. *See* 15 U.S.C. § 6307(a)-(h).

28. Trout v. Organizacíon Mundial de Boxeo, Inc., 965 F.3d 71, 73 (1st Cir. 2020); *but cf. Austin Trout*, BOXREC (last visited Jan. 8, 2022), https://boxrec.com/en/proboxer/328611 (Judge Barron's remark may be an understatement, especially to boxing fans. Trout, still active as a fighter, is a former holder of the WBA light middleweight title and also fought for both the IBF and WBC championships. As of this writing, his record is 34-5-1, with 18 wins coming by knockout. Among his defeats are losses to some of the current greats of the sport, including once to former WBC and IBF light middleweight champion Jermall Charlo, once to Jermall's identical twin brother Jermell Charlo (who currently holds the WBC, IBF, WBA, and *Ring* magazine light middleweight titles), and once to Saúl "Canelo" Álvarez, the current undisputed super middleweight champion, regarded as the world's best boxer pound-for-pound.).

29. *Trout*, 965 F.3d at 73.

30. *See id.*; *see also All About: No Doubt Trout*, AUSTIN TROUT, https://www.austintrout.com/about/ (last visited Jan. 8, 2022).

31. *See Trout*, 965 F.3d at 73.

32. *Id.*; *see also* WBO, WBO: REGULATIONS OF WORLD CHAMPIONSHIP CONTESTS 30 (2021), http://www.wboboxing.com/regulations.

33. *Trout*, 965 F.3d at 73.

34. *See id*. at 74-75.

35. *Id.*

B. Trout's Contentions and the First Circuit Court's Ruling

On appeal, Trout raised four arguments in seeking to overturn the District of Puerto Rico's ruling compelling arbitration with the WBO.[36] Only one of these arguments was found to be at all persuasive.[37] That was enough, however, for the First Circuit to vacate the lower court's decision and remand the case.[38] This section will address Trout's third unsuccessful claim, regarding the Ali Act specifically, before moving on to his successful claim, which convinced the court that the WBO's methods of conducting arbitration were unconscionable.[39] The first two failed claims largely concern procedural matters particular to the case and will not be covered here.[40]

The third claim invoked the Ali Act, which Trout contended "bars any claims that are brought under it from being arbitrated."[41] The First Circuit, however, found "no categorical bar to the arbitration of federal-statutory claims."[42] Still, following the Supreme Court's observation that "'all statutory claims may not be appropriate for arbitration,' as Congress retains the power to" make such decisions,[43] the court looked further into his argument. Trout, though, bore the burden to show that Congress meant for the Ali Act to preclude arbitration but failed to do so,[44]as he did not show anti-arbitration sentiment "either expressly or impliedly" in the law or its legislative history or find any "inherent conflict" between the Ali Act and arbitration .[45]

With his fourth argument, finally, Trout did sway the court, though not exactly in the way he intended.[46] He claimed that the conduct of the arbitration, as put forth in the WBO's Championship and Appeal Regulations, where the WBO had exclusive control as

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36 *Id.* at 75-79.

37. *Id.* at 79-80.

38. *Id.* at 74.

39. *See id.* at 78-82.

40. *See id*. at 75-78 (The first of these rejected claims involved supposedly conflicting language in the WBO's Championship Regulations that would lead to precluding arbitration, and the second contended that the WBO impliedly waived its right to arbitration because it was involved too actively in the litigation, both by asking for a change of venue and also by participating in discovery.).

41. *Id.* at 78.

42. *Id.* (citing Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26 (1991) ("It is by now clear that statutory claims may be the subject of an arbitration agreement, enforceable pursuant to the FAA.")).

43. *Id.* (quoting *Gilmer*, 500 U.S. at 26).

44. *Id.* (quoting Shearson/American Express v. McMahon, 482 U.S. 220, 227 (1987)).

45. *See id.*

46. *See id.* at 81.

to who would sit on the Grievance Committee,[47] was inherently unfair.[48] The Grievance Committee would consist of "three persons designated by the President [of the WBO]."[49] This Committee would also "act as a fair and independent arbitrator of any grievance" involving the WBO, and any boxers fighting under WBO's auspices would also abide by this Committee's decisions.[50] According to Trout, such a system "did not provide him with a 'fair opportunity' to pursue either his claims under MABRA or under Puerto Rico law because the arbitrator, in virtue of his method of selection, would be inherently biased."[51] Trout backed his contention by looking at a case from the Supreme Court of Puerto Rico: *Unisys v. Ramallo Bros. Printing*.[52]

Here, the court thought Trout was misguided and said *Unisys* "merely enumerates a series of factors that determine whether Puerto Rico contract law permits a forum-selection clause to be enforced."[53] However, Trout's "contention that the arbitration agreement is 'unreasonable and unjust' because the arbitrator-selection provision permits the WBO to act as both 'party and judge'" did have merit, according to the First Circuit.[54] At this point, since Trout provided no authority supporting that contention, the court sua sponte explored the Puerto Rico doctrine of unconscionability.[55]

Though Trout did not raise "unconscionability" in his arguments, the WBO preemptively argued that its policies did not violate Puerto Rico laws of unconscionability.[56] According to the WBO, two federal cases made clear that arbitration agreements in which one party has the exclusive right to pick the arbitrator are not necessarily unconscionable.[57] The First Circuit disagreed, noting that even if those cases

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47. *See id.* at 78-79; WBO, WBO APPEAL REGULATIONS 1 (2018), https://wboboxing.com/wp-content/pdf/wbo-appeal.pdf.

48. *Trout*, 965 F.3d at 78-79.

49. WBO, *supra* note 47 at 1.

50. WBO, *supra* note 47 at 2; WBO, *supra* note 32 at 31 ("These Regulations apply to all WBO Participants. The term WBO Participant includes any and all person or company who participates in any WBO activity," including current or former WBO champions, contenders, and other boxers.).

51. *Trout*, 965 F.3d at 79.

52. *See id.* (citing Unisys P.R. Inc. v. Ramallo Bros. Printing, 128 P.R. Dec. 842 (1991)).

53. *Id.* (citing *Unisys*, 128 P.R. Dec. at 855).

54. *Id.*

55. *See id.* at 79-80.

56. *See id.* at 79-81.

57. *See id.* at 80 (citing Willis v. Nationwide Debt Settlement Grp., 878 F. Supp. 2d 1208, 1224-25 (D. Or. 2012); Davis v. Glob. Client Sols., LLC, No. 3:10-CV-322-H, 2011 U.S. Dist. LEXIS 116063 (W.D. Ky. Oct. 7, 2011)).

"reflect the law of contract in Puerto Rico, their reasoning fails to show that the agreement here is not unconscionable."[58] To the court, unconscionability under Puerto Rico law is "a basis for 'judicial intervention where a contract exhibits "an excessively onerous quality that reaches the point of bad faith, and defeats those rules of collective conduct that must be observed by every honest and loyal conscience."'"[59]

Also, the cases the WBO cited had defendants who "promised in the arbitration agreements to select an 'independent' arbitrator to decide the plaintiffs' claims."[60] That did not happen in *Trout*. While the WBO's Appeal Regulations noted that "the Grievance Committee shall act as a fair and independent arbitrator,"[61] the court found that the WBO could not guarantee an "independent" arbitral tribunal.[62] It could not even guarantee "qualified" arbitrators.[63] The WBO's agreement did not require it to select "only 'qualified' and 'independent' individuals to the Grievance Committee."[64] Damningly, the WBO conceded that its president could even appoint his own assistant to the committee.[65]

Despite this, the WBO argued persuasively for arbitration, albeit with a court-appointed arbitrator, whether or not Trout's claims fell under the Ali Act or Puerto Rico law.[66] The court, following this logic, saw that "the Championship Regulations contain a savings clause,"[67] reading that "if any of these Rules are determined to be unenforceable, the balance of these Rules shall remain in full force and effect."[68] Continuing in this vein, under Article 5 of the Federal Arbitration Act (FAA), when arbitration agreements fail to provide for valid arbitrator selection, courts are given power to "designate and appoint an arbitrator or arbitrators . . . who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein."[69]

58. *Trout*, 965 F.3d at 80.

59. *Id.* (quoting Lopez de Victoria v. Mercedes Rodríguez, 13 P.R. Offic. Trans. 341, 349 (1982)).

60. *Id.* at 80 (citing *Willis*, 878 F.Supp. 2d at 1224; *Davis*, 2011 U.S. Dist. LEXIS 116063, at *3).

61. WBO, *supra* note 47 at 2.

62. *Trout*, 965 F.3d at 81.

63. *Id*.

64. *Id.*

65. *See id.*

66. *See id.* at 82.

67. *Id.*

68. *Trout*, 965 F.3d at 82; *see also* WORLD BOXING ORG., *supra* note 32 at 34.

69. 9 U.S.C. § 5 (1947); *see also Trout*, 965 F.3d at 82.

The court hedged a bit here, however. Instead of naming arbitrators to the case, it "le[ft] it to the District Court to determine in the first instance whether the arbitrator-selection provision at issue here is severable from the remainder of the arbitration agreement."[70] The First Circuit believed party intent, federal policy in favor of arbitration, and "the interplay between state law and that federal policy" ought to be considered by the district court.[71] The First Circuit, though, could not decide the issue itself, as neither party "fully engaged with those factors or the applicability of the savings clause in the Championship Regulations in their briefing to us."[72]

IV. IMPLICATIONS

Trout v. Organizacíon Mundial de Boxeo, Inc. has implications both within and beyond boxing. First, *Trout* helps define the processes of arbitration in boxing to be fairer to fighters and less biased toward the sanctioning bodies. It also may lead to a more unified arbitration system within boxing and perhaps a coming together of the various sanctioning organizations. Second, and more globally, in *Trout*, the First Circuit states explicitly rules once perhaps only implied: parties have a right to impartial arbitrators.[73]

Trout also raises some important ideas regarding the severability doctrine. The notion that an arbitration clause can be severed from the rest of the contract is well-founded.[74] With *Trout*, it seems that individual parts of an arbitration clause can be severed from the clause as a whole.[75] Such an idea helps ensure that parties who agreed to arbitrate do get to arbitrate, which is in line with the general federal policy favoring arbitration.

A. What Does This Mean for Boxing?

Most simply, *Trout* means that the WBO (and potentially other sanctioning bodies as well) will have to revamp its appeals and grievance processes. The WBO's arbitration procedures will need to allow the boxer (or the promoter or any other party in a dispute with the WBO) to be able to select his or her own arbitrator. It seems likely the three-member approach the WBO currently uses would be allowed to stand, but only one of the panelists would be chosen solely by the WBO. The WBO-appointed arbitrator and the

70. *Trout*, 965 F.3d at 82.

71. *Id.* (quoting McMullen v. Meijer, Inc., 355 F.3d 485, 495 (6th Cir. 2004)).

72. *Id.*

73 *See id.* at 80-81.

74 *See* Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 445-447 (2006); *see also* Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967); Southland Corp. v. Keating, 465 U.S. 1 (1983).

75 *See Trout*, 965 F.3d at 82.

one appointed by the grievant would likely choose the impartial third arbitrator together, as is common practice in arbitration proceedings worldwide.[76]

Additionally, *Trout* may lead to more cooperation among the Big Four sanctioning bodies, and it appears such cooperation is already taking place. Following an October 2021 "summit" by the four leaders of the WBO, IBF, WBC, and WBA at the WBO headquarters in San Juan,[77] it was announced, that by 2023, the WBO, IBF, WBC, and WBA, would work together to provide a more streamlined method toward having unified champions as well as "mandatory contenders" for those unified champions.[78] Whether this is a result in part from the *Trout* case or from other recent high-profile controversies, or simply a hope that a simpler system can stem boxing's decline in popularity, the big four sanctioning bodies are coming closer together. This more ecumenical approach could help boxing get back on its feet and better compete in the modern sports landscape if its champions are universally recognized more easily. It also could lead to more transparency and, importantly, less perceived corruption.

Also significant for boxing is the fact that the court stated that the Ali Act and arbitration are not incompatible.[79] Only the WBO's method of handling arbitration was found unconscionable.[80] Arbitration can still be the primary means for boxers falling under the aegis of the Ali Act and for others holding grievances to settle disputes with the various sanctioning bodies.

B. How Does This Affect Arbitration More Widely?

Because of *Trout*, even non-boxing organizations ought to look more closely at their arbitration clauses, especially within in the First Circuit, if only one party can pick the arbitrator(s) in the settlements of their disputes. More courts may choose to follow the First Circuit's directive and render other one-sided agreements "unconscionable." Likely, to avoid any possibility of litigation, those agreements will need to be rewritten so that either both parties have some say in arbitration selection or provide guarantees for a fair and neutral arbitrator.

Even though the First Circuit did not outright sever the WBO's arbitration-selection clause from the rest of the contract and asked the district court to look into the

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76. See, e.g., *Arbitration Panels: Advantages and Disadvantages*, ADR TIMES (Oct. 25, 2021), https://www.adrtimes.com/arbitration-panels/.

77. Jake Donovan, *Heads of WBA, WBC, IBF, WBO Meet in Hopes of Standardizing Title Unification Bouts Among Other Matters*, BOXING SCENE (Oct. 29, 2021; 12:03 AM), https://www.boxingscene.com/heads-wba-wbc-ibf-wbo-meet-hopes-standardizing-title-unification-bouts-among-other-matters--161578.

78. *World Boxing Council Outline 2023 WBO, IBF, and WBA Rule Merge Plan*, WORLD BOXING NEWS (Nov. 30, 2021) https://www.worldboxingnews.net/2021/11/30/world-boxing-council-2023-wba-wbo-ibf/.

79. *See Trout*, 965 F.3d at 78.

80. *See id.* at 81.

matter,[81] there is much precedent in favor of severability. As the Supreme Court noted in *Buckeye Check Cashing v. Cardegna*, both federal and state courts have long held an arbitration clause to be severable from the contract as a whole.[82] Relying on the Court's earlier decisions in *Prima Paint* and *Southland v. Keating*, the *Buckeye* opinion stated that "as a matter of substantive arbitration law, an arbitration provision is severable from the remainder of the contract."[83]

Presumably, a sub-clause of an arbitration provision (such as how to select arbitrators) should also be severable. This was likely how the First Circuit saw it, as it even made reference to *Buckeye*.[84] Such an idea was obliquely discussed by the Supreme Court in *Rent-A-Center v. Jackson*, where the court discussed how to proceed "when a precise agreement to arbitrate is itself part of a larger arbitration agreement."[85] Now, following the First District's decision in *Trout*, it appears arbitrator-selection provisions are also separable from the rest of the arbitration agreement.[86] Federal policy toward arbitration combined with doctrines such as freedom of contract and party intent seem likely to tip the scales toward a wider notion of "arbitrator-selection clause severability" at some point, even if the District of Puerto Rico were to demur here (which seems unlikely, as the District Court was strongly in favor of arbitration in the first place).[87]

Trout aside, arbitrator-selection and other provisions have already been viewed as severable from the rest of an arbitration clause by some courts. For example, the Virginia Supreme Court found in *Schuiling v. Harris* that an arbitration-selection clause naming a specific arbitral body that was no longer extant could be severed from the larger arbitration clause, and thus the parties' agreement to arbitrate stood.[88] The D.C. District agreed with *Schuiling* when it severed a delegation provision within an arbitration clause of a contract possessing a severability clause similar to the "savings clause" the First Circuit brought up in *Trout*.[89]

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81. *See id.* at 82.

82. *See* Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 445-447 (2006).

83. *Buckeye*, 546 U.S. at 445; *see generally* Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967); Southland Corp. v. Keating, 465 U.S. 1 (1983).

84. *Trout*, 965 F.3d at 83 n.11.

[85] Rent-A-Center, W, Inc. v. Jackson, 561 U.S. 63, 64.

86. *See Trout*, 965 F.3d at 82.

87. *See id.* at 73.

88. *See generally* Schuiling v. Harris, 286 Va. 187 (2013).

89. *See* Andresen v. Intepros Fed., Inc., 240 F.Supp. 3d 143, 162 (D.D.C. 2017); *see also Trout*, 965 F.3d at 82.

Following both the First Circuit's ideas of severability and the powers given to courts by Article 5 of the FAA,[90] the decision in *Trout* could also embolden courts to select arbitrators themselves for parties with contracts containing problematic arbitrator-selection provisions. Parties wishing to avoid such actions should review their contracts' arbitration clauses. Also, not to be forgotten with *Trout*, the court also affirmed the idea that no piece of federal legislation could bar arbitration, except under narrow circumstances.[91]

V. CONCLUSION: COURT INTERVENTION IN *TROUT* ENSURES A "CLEAN FIGHT"

The Supreme Court, especially since the days of *Moses Cone* in the 1980s, has advocated a *laissez faire* approach to arbitration, seeing arbitration as a legitimate and effective method of settling civil disputes while also freeing up valuable space on crowded dockets.[92]. The First Circuit followed through with this directive at each step in *Trout*, even when it found the WBO's arbitrator-selection clause unconscionable.[93]

Even though it struck down the WBO's arbitrator-selection policy, the First Circuit in *Trout* remained steadfast in its support of arbitration, both in this particular case and more broadly. In fact, by noting that the arbitration-selection clause could be severable from the other arbitration provisions in the WBO's regulations and applying FAA Section 5, the court ensured the possibility of a "clean fight," as a boxing referee might say.[94] Arbitration, like litigation, and like a boxing match, ought to have impartial parties making important decisions. Court intervention in *Trout* was an attempt to fulfill the spirit of the agreement to arbitrate made by Austin Trout and the WBO in their signed contract, while also ensuring fairness to both parties.

90. *See Trout*, 965 F.3d at 82.

91. *See id.* at 78.

92. *See, e.g., Trout*, 965 F.3d at 82 ("we must consider … the 'federal policy favoring arbitration.'"); *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983).

93. *See Trout*, 965 F.3d at 79-81.

94. *See id.* at 82; 9 U.S.C. § 5.