

Labor Relations in Professional Sports, ROBERT C. BERRY, WILLIAM B. GOULD & PAUL D. STAUDOHAR, Auburn House Publishing Company, Dover, Massachusetts, 1986, pp. 289.

Contemporary professional sports are a unique, dynamic amalgamation of entertainment arts and big business. Although not the only variable, economics is the single major influence in professional sports.¹ During the last quarter century, labor relations has also become an increasingly important component in these activities. As a recent commentary notes, "In [professional sports], labor relations are a focus, and the changes wrought by collective bargaining are deep and decisive."²

In the important and interesting new book, *Labor Relations in Professional Sports*, Professor Robert Berry of Boston College Law School, Professor William Gould of Stanford Law School, and Mr. Paul Staudohar examine the direction of professional sports in the United States. Their study focuses on the growing influence of labor relations law in sports and their "thesis [is] that today labor relations and the labor laws have assumed pivotal roles in determining the development of professional sports."³ The genesis of the book was in a major law review article written by two of the authors, Professors Berry and Gould, in 1981.⁴

In this new book, the authors trace the development of labor relations in each of the four major sports: baseball, football, basketball, and hockey. One full chapter is devoted to each sport, and helpful notes and further references follow each chapter. The early history of each sport is first briefly presented. Then, colorful descriptions ensue, concerning the evolution of the clubs and the leagues and the concomitant unionization efforts of the players.

¹ R. BERRY, W. GOULD & P. STAUDOHAR, *LABOR RELATIONS IN PROFESSIONAL SPORTS* 260 (1986) [hereinafter cited as *LABOR RELATIONS*]. The authors state:

Future areas of negotiation in collective bargaining will be determined by the economic realities and prospects for a league. While there also will be issues that are largely noneconomic, they will not dominate either the time or efforts devoted to negotiations, nor will they generate the controversy that surrounds the economically based proposals. The money has grown so large—and the pie sits there so temptingly to be split—that economics have to prevail. . . . [E]conomics will be the chief determinant for framing the issues.

Id.

² *Id.* at 251.

³ *Id.* at xi.

⁴ See Berry & Gould, *A Long Deep Drive to Collective Bargaining: Of Players, Owners, Brawls, and Strikes*, 31 CASE W. RES. L. REV. 685 (1981).

Today, collective bargaining union initiatives and individual player contracts are related factors that provide structure to labor relations in professional sports. Whether they also provide stability, or merely a minimum floor to undergird the dizzying financial spiral of dramatic salary escalations, is an open question. Legal developments, such as the extent of the applicability of antitrust law to professional sports, also receive important attention. The technical, legal, and dynamic collective bargaining developments in professional sports highlight the current economic considerations impacting on player compensation and franchise and league financial stability. A good example is the application of the antitrust laws to player compensation. For instance, the viability of free agency and reserve clauses in professional sports contracts couple with the availability of salary arbitration, established through collective bargaining, to explain the compensation status of players. In addition, these factors illustrate the team owners' ability to meet increasing salary demands.

The recent, important phenomenon of strike activity in sports merits special study. The football strike of 1982, which cut the season in half, is the subject of a separate, full chapter. The crippling baseball strike of 1981 and the ominous but short-lived strike of 1985 also receive significant attention. The book concludes with a commentary on the volatile labor relations in baseball during 1984 and 1985, which had the potential to cause a strike that could have vitiated the 1985 season, rather than the almost anticlimactic one-day stoppage that occurred in August. Through analysis of strike activity, with the focus on player salary escalation and club financial conditions, the book conveys a controversial, well-researched, and dynamic sense of many of the major issues now confronting professional sports.

Baseball and football receive the lion's share of attention in the book because these sports have been the settings for the major strike activity, have enjoyed the greatest public visibility, and have had the longest histories. Basketball is used to highlight the many financial variables—with special concentration on the explosion in player salaries—because basketball players' compensation levels far outdistance those of their counterparts in other sports. Salary caps were first initiated in basketball in a partial attempt to bring the stratospheric salaries under some control. Furthermore, the labor relations peace in basketball and hockey is contrasted to the turbulence in baseball and football. The for-

mer is attributable more to the unique influence of the union, to the player-representative personality of attorney Larry Fleisher in basketball, and to the historic dominance of the ownership elite in hockey than to any other factors.

Although professional sports has certainly, and perhaps inevitably, become a multi-billion-dollar big business, the book does not read as a dry financial report. While sports is a business, it is also undeniably *show* business, full of drama, hype, outrageous egos, and colorful personalities.⁵ The authors infuse the book with their personal love of sports. They are fans, in the best and most enthusiastic sense of the word, as well as scholars.⁶ If professional sports were to vanish suddenly from American life, there would be a deep, intangible, and real impoverishment of the human spirit potentially more profound in its consequences than the financial losses to the national economy and to the individual athletes and owners. The authors' love of sports permeates the book, spices it with sports trivia and anecdotes, and makes it a fascinating as well as a scholarly study.

The first two chapters provide a firm basis for understanding the legal and the labor relations structures in professional sports.⁷ From the outset, the authors stress the roles of the leagues, the unions, and the players' individual agents, as well as

⁵ See, e.g., J. BOUTON, *BALL FOUR* (1970) (recounting the exploits of some of the biggest baseball stars of the 1960's); R. CREAMER, *STENGEL: HIS LIFE AND TIMES* (1984) (chronicling the career of Charles Dillon "Casey" Stengel, one of the most colorful personalities in sports history); S. LYLE & P. GOLENBOCK, *THE BRONX ZOO* (1979) (discussing the "outrageous egos" and "colorful personalities" of the 1978 New York Yankees).

⁶ In August of 1984, Professor Gould, one of the co-authors of the book, was a principal invited speaker at the annual summer conference on comparative industrial relations at Oxford University. At that time, his important book, *Japan's Reshaping of American Labor Law*, had just been released. See W. GOULD, *JAPAN'S RESHAPING OF AMERICAN LABOR LAW* (1984); see also Gregory, Book Review, 44 MD. L. REV. 926 (1985) (reviewing W. GOULD, *supra*). Professor Gould enthusiastically led the "team" of American conference participants in, of all things, a softball game against the British hosts. Because Oxford University lacked softballs, softball bats, and baseball gloves, a cricket bat and tennis ball were put to good use. This incongruous and unwieldy incident is perfect evidence of the sports fan/participant in the most enthusiastic, if not the "best," sense of the word.

⁷ See *LABOR RELATIONS*, *supra* note 1, at 2. More specifically,

Chapter 1 discusses the general background of the sports industry: the unique positions that leagues occupy, the components of the industries, the economics of professional sports, the political and cultural roles affecting and affected by sports. Then Chapter 2 considers the legal structure of the sports industry, notably as developed through cases relating to baseball, the oldest of the professional sports leagues.

the influences of both individual players and unionized collective bargaining. In addition, the authors highlight the unique factors of the sports industries. These industries are lucrative, but still relatively embryonic enterprises; in many cases, they are not completely removed from the ownership paternalism of a few decades ago. Contrary to popular stereotypes, not all franchises are on firm financial ground, and few athletes are multimillionaires. The sports industry is very small. The book estimates that no more than 5000 athletes are involved in professional sports today.⁸

Chapter two concentrates on the salient legal principles that most directly influence labor relations in professional sports. Contract, antitrust, and labor law are emphasized, with thorough reference to the landmark cases in each area. Historically, when a player signed with a team, he was effectively indentured to that team for the remainder of his professional career. Unless he was retired, terminated, or traded at the option of the team owner, he remained permanently bound to the team. Operating in the context of hierarchical paternalism, the league cartels and the owners, operating their clubs as personal fiefdoms and regarding their players as privileged serfs, made the contractual relationship between the athlete and the team very much a one-way street, in the sole control of the team owner.⁹

The application of the Federal antitrust laws to professional sports is also analyzed. Throughout its history, baseball alone has been held expressly exempt from the antitrust laws. The authors critically trace this notorious exemption through the landmark 1972 Supreme Court decision in *Flood v. Kuhn*.¹⁰ *Flood* upheld the reserve clause principle in baseball,¹¹ which effectively bound the player to his original team and vested virtually all discretion as to the player's career mobility in the team owner, not the athlete. The *Flood* Court, in 1972, relied on decades of precedent holding baseball exempt from the Federal antitrust law prohibitions of restraints of trade.¹² The Court exalted this precedent, however illogical, and recognized its archaic result:

With its reserve system enjoying exemption from the federal

⁸ *Id.* at 4.

⁹ *See id.* at 27. Furthermore, the authors state, "When it came to the one-on-one contract, the players were overmatched and undersized." *Id.*

¹⁰ 407 U.S. 258 (1972).

¹¹ *Id.* at 282.

¹² *See id.* at 269-81.

antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly.

. . . It is an aberration that has been with us now for half a century, one heretofore deemed fully entitled to the benefit of *stare decisis*, and one that has survived the Court's expanding concept of interstate commerce. It rests on a recognition and an acceptance of baseball's unique characteristics and needs.¹³

The *Flood* Court concluded that any change subjecting baseball to the Federal antitrust laws would have to come from Congress and not from the Court.¹⁴ The effective collapse of the reserve clause system in baseball, however, soon came through the initiatives of collective bargaining rather than through remedial legislation. In the late seventies, private arbitration decisions pursuant to baseball's collective bargaining agreement put an end to the reserve system that Curt Flood had heroically, but unsuccessfully, challenged in the Federal courts less than a decade earlier.¹⁵

The legal overview chapter concludes with a brief synopsis of the cornerstone Federal labor law. The National Labor Relations Act¹⁶ and the jurisdiction of the National Labor Relations Board¹⁷ are quickly reviewed insofar as they bear on labor relations in professional sports.

With the stage set, the book then devotes at least one full chapter to each of the four major professional sports: baseball, football, basketball, and hockey. Each of these specific chapters proceeds in similar fashion, first outlining the beginnings of the particular sport through the clubs and leagues. Legal and economic issues are quickly introduced, and a framework is provided for concentrating on the labor relations in the sport. The role of the players' union, the attitude of the club ownerships and the league, the influence of the media, the response of the fans, the challenge of new leagues, and the increasingly pivotal role of the player agents in the recent and rapid salary escalations are all carefully examined.

¹³ *Id.* at 282.

¹⁴ *Id.* at 284. Justice Blackmun stated that "[i]f there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court." *Id.*

¹⁵ See LABOR RELATIONS, *supra* note 1, at 56-58 (discussing the successful labor arbitrations of players Andy Messersmith and Dave McNally).

¹⁶ 29 U.S.C. §§ 151-166 (1982). The major emphasis is on the Act's protections of the employees' right to organize and to take collective action and the prohibition of unfair labor practices by both management and labor. See *id.* §§ 157, 158(a). There is also particular emphasis on the duty of, and the appropriate subjects for, collective bargaining. See *id.* § 158(d).

¹⁷ See 29 U.S.C. §§ 153, 158, 160 (1982).

Although the book meticulously traces the early days of each sport, the primary emphasis is on current labor relations problems. The book explains cold business reality; it may often be more profitable to the club ownership to field mediocre, losing teams. If the team is the historic beneficiary of intense fan loyalty and consistently operates at or near ticket sales capacity, it may be financially imprudent to pay top rates for premier athletes. Championships do not uniformly generate corresponding economic returns to ownership. On the other hand, premier salaries may be expended and championships still not attained, clearly the worst scenario from the perspective of ownership. Therefore, if fan devotion is unwavering and capacity home crowds are routine, economic restraint in salaries and the usual accompanying mediocrity in the team's achievements may be the wisest business course. Ownership pragmatics and economic efficiency may be the most significant curbs on athlete salaries. Fan allegiance is not inexhaustible, however. If the fans abandon the team, the restrained economics of the owners may prove counterproductive.

The reader who is a fan of any of the four particular sports will find a great deal of both general information and important, technical legal analysis of salient labor relations developments. The chapters devoted to labor relations in each of the four particular sports are the heart of the book. They are rich repositories of data for both the fan and the labor relations professional.

The final two chapters are perhaps the most intriguing. The authors engage in well-informed and provocative prognostication regarding the future course of unresolved labor relations issues in professional sports. They incisively predict that the growing tension between the players' unions and the individual players' agents will be one of the most explosive issues in the coming years. Despite the significant strides made by the players' unions, the collective bargaining interests of the unions have been essentially that—collective. The unions have successfully established significant pension rights and have raised the minimum compensation and benefit levels. The master collective bargaining agreements provide adequate, comprehensive floors for the unions' constituents. The real "excitement" in player compensation, however, is achieved by the lucrative individual contracts negotiated on behalf of individual athletes by the small cadre of professional agents. Between the pressures of salary escalation achieved through individual arbitration pursuant to the master collective bargaining agreement and the often frantic bidding wars conducted by owners for free agents,

many franchises and some leagues are now reeling under the tremendous weight of exorbitant salary packages. In fact, more than thirty-five athletes now earn more than one million dollars annually.

Professional basketball has attempted to "cap" total team compensation in an effort to stabilize team and league finances. The authors' treatment of these salary developments bring the reader to the bargaining table. The often dizzying sums and the colorful personalities involved in these financial wars give the book the exciting tenor of the sports pages, supplemented by the erudite addition of careful and informed academic reflection on the labor relations ramifications. Union and individual agent interests are potentially widely disparate. This tension between union collective incremental gains and the cowboy entrepreneurship of the agents is explored in the context of exclusive representation under the National Labor Relations Act. The degree to which the union and agent tension can be harmonized holds the key to stabilizing the players' side of the collective bargaining table.

The final chapter is devoted to informed and valuable ruminations on the future of labor relations in professional sports. The authors predict that volatility will increase. Strikes, unthinkable until a few years ago, have now been used by players with a no-win vengeance. They are but a harbinger of future prospects. The strikes that have afflicted baseball and football in the 1980's may plague the previously unscathed basketball and hockey industries before the end of the decade.

The book also explores the impact of new technologies. It suggests the possibility that sports leagues will move to exclusive cable franchises to televise their events. This is potentially far more lucrative than current network arrangements. For example, NFL teams could each realize \$400 million per year from exclusive cable arrangements, rather than the \$14.5 million each team now receives from major television network contracts.¹⁸ This development raises the question of whether leagues will be able to continue to operate as cartels. The previous paternalism of ownership is, in fact, fast disappearing. Teams are businesses, not families. The challenges of new leagues, of new teams, and of the relocation of established teams to more desirable areas of the country all militate against the cartel influences of old. Volatility is all but insured.

The authors predict that the unions will also have to adjust rapidly in order to remain effective in this new environment. Some

¹⁸ LABOR RELATIONS, *supra* note 1, at 253.

workable, equitable balance will ultimately have to be struck between ever-increasing salary demands and club and league financial stability. The failure to do so would seem to generate a clear no-win situation for all but a few players and owners. In future years, unions will have to employ increasingly astute economic, political, and legal leverage to stay on the same labor relations playing field as the owners.¹⁹

Furthermore, all parties will have to deal with the unfortunate social problems to which many professional athletes seem prone, particularly drug abuse. No one can rest on past laurels. Fierce, mass fan loyalty is not guaranteed in perpetuity. Crippling strikes can discourage even the most loyal fan and can indirectly contribute to other forms of entertainment industries, which may garner increased popular attention.

In summary, this is a book that certainly accomplishes its objectives. It is a scholarly, enthusiastic, and comprehensive analysis of labor relations in baseball, football, basketball, and hockey. Although the book's scope was purposefully limited to labor relations in these four sports, it would have been enhanced by a few subsections dealing with employee relations, if not organized labor relations, in other professional sports such as tennis, golf, and wrestling. Of course, tennis and golf operate largely on the principle of the athlete as an independent contractor. Thus, the collective element is minimal. Nevertheless, even peripheral, comparative assessment of the compensation arrangements, tours, tournament prizes, and the relationship between tennis and golf athletes, their agents, and their professional associations would have been very worthwhile. Wrestling, the contemporary sports carnival par excellence, is a lucrative television media sport with fanatic, large audiences. Again, the wrestlers are closer to independent contractors than to organized athletes, and they are especially susceptible to financial exploitation by the controlling promoters. Because of the significant finances involved and the decidedly subordinate status of the individual performers, even the "silly"²⁰ sport of wrestling deserves some tangential analysis. The authors flirt with the possible analogy between wrestling and hockey, as they criticize the negative impact of increasingly excessive violence in the latter sport.²¹ Perhaps this comparison could have been more fully developed.

The book concludes as it began, emphasizing the pivotal role of

¹⁹ See *id.* at 257.

²⁰ See *id.* at 201.

²¹ *Id.*

labor relations in professional sports: "[T]he labor movement has been the central catalyst for change in the sports industry. . . . The intriguing question is whether the labor movement will dominate the industry for the next few years."²² The book poses many intriguing, salient questions. Through their fine, comprehensive, and energetic analysis, the authors provide a viable framework that may eventually yield some of the essential answers.

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²² *Id.* at 252.

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