



2003

Introduction

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Recommended Citation

Gilbert Stein, *Introduction*, 10 Jeffrey S. Moorad Sports L.J. 1 (2003).

Available at: <https://digitalcommons.law.villanova.edu/mslj/vol10/iss1/1>

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VILLANOVA SPORTS & ENTERTAINMENT LAW JOURNAL

VOLUME 10

2003

NUMBER 1

INTRODUCTION

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Is baseball still the national pastime, or merely a once-almighty game whose time has passed?

That was the question I asked myself when Commissioner Bud Selig announced Major League Baseball owners had voted to contract the major leagues by two teams prior to the 2002 season.

Whether baseball was ever truly the “national pastime” is subject to debate. I, for one, would call politics our one true national pastime. However, baseball had been so dubbed for many years. In his classic history of baseball, *Lords of the Realm*, author John Helyar wrote that baseball “came to be called the National Pastime, not just because it was played and watched by so many people but because it so resembled the national character.”¹

One thing is for sure, baseball certainly has its quirky characteristics. For example, in what other sport do you see managers and coaches dressed like players? Can you picture Phil Jackson and Larry Brown wearing basketball uniforms, baggy shorts, Reeboks and all, while sitting on their benches coaching the Lakers and Sixers? Consider how foolish Scotty Bowman would look wearing

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1. JOHN HELYAR, *LORDS OF THE REALM, THE REAL HISTORY OF BASEBALL* 4 (1994) (stating baseball was source of unity throughout American society during economic and social change of Industrial Revolution).

shoulder pads under a Red Wings jersey, while standing behind his players and coaching them in a hockey game. Yet, we have become accustomed to seeing pot-bellied coaches waddle about in unbecoming baggy knickers while taking their posts alongside first and third base on baseball diamonds.

Another thing, in this day and age of fast-paced living, what other American professional team sport makes no use of a clock?

So, perhaps it should have come as no surprise, in an era when all four of the major professional sports are receiving record sums for expansion franchises, that baseball owners would embark on a program of contracting the size of their two major leagues.

Intriguing? Of course! Intriguing? Perhaps. It certainly caught the attention of the media, the baseball players, and the editors of Villanova Law School's Sports and Entertainment Law Journal, who decided to make it the subject of the Journal's 2002 Symposium.

Gathering together an array of distinguished speakers, the startling concept of contraction of Major League Baseball was analyzed from a number of perspectives for the benefit of a larger-than-usual Symposium audience.

The speakers included John T. Wolohan, Associate Professor in the Department of Sport Studies at Ithaca College, whose presentation dealt with the number one topic in any legal discussion dealing with Major League Baseball—its federal antitrust exemption. Although no exemption had been granted to baseball by Congress under the Sherman or Clayton antitrust laws, one was declared to exist by United States Supreme Court Justice Oliver Wendell Holmes in a landmark 1922 decision, wherein Holmes declared baseball was “sport not trade,” and therefore exempt from the antitrust laws.² Employing the theory that if Congress intended baseball to be included under the antitrust laws, it would have enacted clarifying legislation subsequent to the 1922 Holmes decision, the United States Supreme Court reaffirmed baseball's antitrust exemption in 1953 and 1972.³ Professor Wolohan serves up the meat and

2. See *Fed. Baseball Club of Balt. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200, 209 (1922) (holding transport of persons across state lines is an incidental, rather than essential, aspect of baseball and therefore does not constitute interstate commerce).

3. See *Flood v. Kuhn*, 407 U.S. 258, 283 (1972) (basing its decision on Congress's exemption of baseball reserve system from federal antitrust laws and restating any remedy concerning professional baseball's antitrust regulation exemption must be created by Congress); *Toolson v. N.Y. Yankees*, 346 U.S. 356, 357 (1953) (per curiam) (explaining professional baseball leagues are still exempt from federal antitrust regulation because Congress has not changed legislation to place

potatoes of the antitrust exemption issue in this edition of the Journal.

Stepping up to the plate at the Symposium after Professor Wolohan was Scott Rosner, who was then an Assistant Professor at the Stillman School of Business Finance & Legal Studies at Seton Hall University. Since participating in the Symposium, Professor Rosner has switched venues, and is now teaching at the Wharton School of the University of Pennsylvania. Professor Rosner presented a thorough history of contraction, in both professional baseball and other sports, focusing on the business justifications for contraction, and analyzing whether it made sense financially for Major League Baseball to consider contraction. For a full understanding of the financial details involved in contraction of the number of teams in the major leagues, Professor Rosner's article in this issue of the Journal is required reading.

A key concern of Congress whenever one of the ubiquitous attacks on baseball's antitrust exemption occurs is the effect elimination of the exemption would have upon minor leagues, and the many small communities that support and depend upon their Minor League Baseball teams. Andrew J. Giorgione, Esq., of Obermayer Rebman Maxwell & Hippel LLP, and Stanley M. Brand, Esq., of Brand & Frulla, P.C., spoke regarding the Professional Baseball Agreement between the major and minor leagues, and the player development contracts, under which needed subsidies are provided in the form of assignment of players to minor league teams by their major league affiliates. Messrs. Giorgione and Brand continue their discussion of Minor League Baseball in this issue of the Journal, spotlighting the effect contraction of the major leagues would have on minor league teams.

Major League Baseball Players' Association leader Donald Fehr had weak rank-and-file support in the 1985 negotiations, which led to several significant concessions to the owners; namely, eligibility for salary arbitration was increased from two to three years of service, and, for the first time, the union agreed to accept less than one-third of the national television and radio revenue for the pension plan. Since then, however, Mr. Fehr has led the union with fervor and has strung together a series of collective bargaining successes. Pressing the players' union point of view toward contraction at the Symposium was Marianne McGettigan, Esq., of Verrill Dana in Portland, Maine. Ms. McGettigan has served, and continues to

within the scope of antitrust laws after Supreme Court decision in *Federal Baseball Club of Baltimore*).

serve as a keen right hand to Fehr in doing legal battle on behalf of the union. One cannot attempt to predict the outcome of the contraction issue without knowing the union's position.

Did Bud Selig and the owners he represents create the issue of contraction as a ploy to gain concessions from the union? Also, instead of eliminating unsuccessful franchises, why not just transfer them to cities still clamoring for Major League Baseball teams? Will the effort to contract the size of the major leagues succeed? You may be able to answer these and other questions after reading this issue of the Journal. And now, it is time to . . . PLAY BALL!