

Review Article

The Unstable Oligopoles That are Professional Team Sports

Braham Dabscheck
School of industrial Relations
University of New South Wales

Daniel R Marburger, ed., *Stee-rike Four!: What's Wrong With The Business of Baseball*, Praeger, Westport, 1997. pp. x + 218.

Jerome Holtzman, *The Commissioners: Baseball's Midlife Crisis*, Total Sports, New York, 1998. pp. 296. US\$ 22.95.

Gil Stein, *Power Plays: An Inside Look at the Big Business of the National Hockey League*, Birch Lane Press, Secaucus, 1997. pp. xvi + 240. US\$ 21.95, hardback

The general rule of commercial life is for rival producers to compete with each other for customers and income. It is rational for producers to seek to drive each other out of business in attempting to capture markets and enhance their economic welfare. Indeed, public policy frowns on anti-competitive, or collusive, behaviour between producers because of its perceived harm to consumers in the form of restrictions on output and/or increases in prices.¹

In professional team sports, however, it is irrational and counterproductive to seek the business destruction of rivals. If clubs, or teams, do not have someone to compete against, then, tautologically, a contest or game cannot be played from which anyone can derive income. Hence, a mutual interdependence exists between competitors within a sporting league that does not operate or characterise other forms of commercial life.²

Acknowledgment of such mutual interdependence, however, is not meant to imply that entities within a particular league do not compete with each other commercially. They do. While such competitors may be in league with each other, cooperative behaviour does not extinguish the general rule of commercial life. Members of a league compete with each

other in seeking to enhance their own economic welfare. The dynamic of league behaviour is how to outwit or take advantage of rivals with whom one is having a continuing or interdependent relationship. Illustrative of this is the following mid-1940s quote from Alva Bradley, owner of the Cleveland Indians Baseball Club, reproduced in Jerome Holtzman's *The Commissioners*. Bradley said of himself and his fellow owners 'We all cheat if we have to ... This fellow cheats, that fellow cheats. I cheat too. We all cheat.' (p. 43).

The 1994 baseball season was cut short — and the World Series cancelled — due to a 232 day strike following a breakdown of negotiations between club owners/Major League Baseball and the Major League Baseball Players' Association over the negotiation of a new collective bargaining agreement.³ A major background factor that aids in understanding this dispute is the disparity in income between 'large' and 'small' market franchises. The overwhelming source of this disparity was the difference in the local broadcast rights generated by various teams. In 1990 the New York Yankees, for example, drew in excess of US\$55 million from such sources compared to US\$3 million by the Seattle Mariners.⁴ League wide broadcasting rights are shared equally between clubs, and there is also some sharing of gate receipt income.

In an attempt to overcome such 'disparity' Major League Baseball sought to introduce revenue sharing, a salary cap and a luxury tax (a 'fine' on clubs that spend more than a specified amount on total player salaries) to restrain what they regarded as unduly escalating player salaries — which they, themselves, offered to players. The Major League Baseball Players' Association maintained that players should not be required to pay for the inability, or disinclination, of owners to exercise fiscal restraint.

Daniel Marburger, an unabashed baseball fan and an economist to boot was outraged at the cancellation of the 1994 season. He decided he would 'immediately set forth to edit a book on the economics of baseball ... understandable to individuals across all disciplines' (p. ix).⁵ He contacted a number of economists and one industrial relations scholar with expertise in various areas of baseball economics. The resulting chapters are readable, non-technical examinations of various issues associated with the 1994/95 strike. To be able to appreciate the respective contributors readers would need to be acquainted with information concerning pertinent historical developments within baseball, its employment rules and the course of

collective bargaining following the appointment of Marvin Miller as director of the Major League Baseball Players' Association in 1966.⁶ The starting point with many analyses of baseball economics is the 1922 Supreme Court decision granting baseball exemption from the *Sherman Antitrust Act 1890*; a decision which was upheld on *stare decisis* in the 1953 *Toolson* and 1972 *Flood* cases respectively.⁷

Traditionally, baseball's employment rules were characterised by a reserve system which provided clubs with a one-way option to re-employ a player following the expiration of his contract. All contracts contained this option clause. Its operation prevented players from negotiating with alternative clubs, reducing their ability to enhance their income earning potential. At the end of 1975 private arbitrator Peter Seitz ruled that if a player did not sign a new contract and played out his option, at the end of the said option year he would become a free agent.⁸ Subsequent to this decision the owners and players entered into a collective bargaining agreement, which, amongst other things, enabled players with six years experience to become free agents. In the twenty-plus years since the negotiation of this agreement both the revenue generated by clubs (including the value of franchises) and the income earned by players has increased dramatically.

Notwithstanding such increases baseball has been characterised by intra-organisational conflict between 'small' and 'large' franchises and seemingly increasing antipathy between owners and the Major League Baseball Players' Association. It may not be unfair to say that the owners have never forgiven themselves for the concessions they granted to players, especially free agency status after six years; and for their part players have not been prepared to forego concessions obtained in the past. Collective bargaining in baseball has been punctuated by a series of strikes and lock-outs as owners and players have struggled to exercise authority over each other.

Marburger's *Stee-rike Four!* provides a description of collective bargaining in baseball over the years; maintains that high salaries are due to the increased wealth generated by baseball, especially from rising broadcasting revenue; demonstrates that free agency has been associated with an increase, not a diminution, of competitive balance; examines various aspects of final-offer salary arbitration (where an independent arbitrator has to choose the final-offer of either the player or club — he/she cannot split the difference) for players with two to three years playing

experience; concludes that revenue sharing, salary caps and luxury taxes will act to restrict players' incomes—ergo the stance of the players' association; examines issues associated with baseball's antitrust exemption and how this exemption has contributed to baseball receiving major subsidies from the public purse in the provision of state funded, or subsidised, stadium facilities.

Many of the authors argue that removal of baseball's antitrust exemption would help to overcome problems which have bedeviled the sport. They adopt the traditional economists approach of perceiving market mechanisms providing the best means to determine the distribution of income within and between clubs/owners and players and the allocation of clubs to different geographic/market locations. Concerning the latter the import of their recommendations would be that 'small' market teams would be free to locate to new, richer markets and/or to compete, as would new entrants, with franchises in 'large' markets. William Shughart is the only author to oppose such a policy recommendation. He maintains that rather than viewing clubs as being involved in economic competition with each other, a sporting league should be viewed as a single economic entity⁹ freeing it from the purview of antitrust regulation. Such a stance seems to be simply a celebration of the status quo. Moreover, Shughart seems to be oblivious to the tensions and intra-organisational conflict which has characterised baseball, despite the 1922 antitrust exemption granted to it by the Supreme Court.¹⁰

In the latter part of the nineteenth century, and continuing into the early years of the twentieth, baseball was subject to a battle between two rival leagues. The incumbent National League experienced competition from a 'minor' league known as the Western Association, which subsequently changed its name to the American League. In 1903 the two leagues settled their differences in the Cincinnati Peace Compact where they agreed not to raid each others' 'reserved' players. The champions of both leagues played each other in a competition that became known as the World Series.

Relations between the two 'leagues were regulated by a National Commission which comprised the presidents of both leagues and August Herrmann of the National's Cincinnati club. Herrmann was regarded as a 'neutral' chairman acceptable to the American League because of the role he had played in brokering the 1903 peace deal and his friendship with American League president Ban Johnson, baseball's dominant figure in

the first two decades of the twentieth century. Feelings of disquiet developed, especially amongst National Leaguers, to the National Commission in its role of resolving disputes with Herrmann being sacked as chairman late in 1919.¹¹ The dissidents wanted a commissioner, to take over the type of functions that had previously been performed by the National Commission.

In *The Commissioners* Jerome Holtzman, a columnist with the *Chicago Tribune*, draws together information associated with the nine persons who have assumed responsibility as baseball's commissioner-or, in the case of Bud Selig, acting commissioner since 1992. Holtzman's account is mainly derived from already published work. He produces a very readable, journalistic account of the careers of the commissioners and the major issues and events which characterised their respective periods of office.

Two types of commissioners can be distinguished. The first are those who are essentially passive and/or adopt more of a back seat role. Such persons are usually circumspect in their preparedness to make decisions that will antagonise or take on owners. In moments of crisis they will act, but they are ever-conscious of the fact that they hold office at the pleasure of the owners. The second type is more activist and they perceive themselves as enjoying an exalted position over and above that of owners and other baseball stakeholders. Such persons have sometimes been described as being afflicted by a condition known as 'commissioneritis'. With the exception of baseball's first commissioner, Kenesaw Mountain Landis, such persons have had a more tumultuous relationship with owners — their employers — and have been unceremoniously removed from office. Passivity has been the cornerstone for survival as a commissioner. The experience of baseball demonstrates that self-regulation in the form of a commissioner has been unable to diminish, or *resolve*, the competitive dynamic inherent in the operation of professional team sports.

Gil Stein is a lawyer who acted for and advised the Philadelphia Flyers club of the National Hockey League. In his capacity as a legal representative of the Flyers he was able to sit in on meetings of the league's board of governors beginning in May 1972. Following John Zeigler's appointment as league president (a position equivalent to baseball's commissioner) in 1976 Stein became vice-president and general counsel to the National Hockey League. He was appointed league president in 1992, a position he held for eight months as an interim measure, until his replacement by ice-hockey's first commissioner, Gary

Bettman, in early 1993. Stein has continued to act as an adviser or consultant to the National Hockey League.

In *Power Plays* Stein provides an account of the decision making processes that have operated in the National Hockey League since the early 1970s. His major focus is on the ever present wrangling and back-biting that has characterised relationships between the owners of various franchises — whom he depicts as the ‘haves’ and ‘have mores’. In the preface Stein says ‘Behind closed doors, there are power plays, stickhandling, bare-knuckle fisticuffs, and shoot-outs that put to shame anything you will see on the ice’. (p. vii) In the process, Stein furnishes information on behind the scenes manoeuvring concerning the entry of new teams into the league, particularly the expansion into more lucrative markets in the United States; resolution of the trade war between the National Hockey League and the upstart World Hockey Association; battles between beer barons over broadcasting rights and an account of negotiations between the league and the National Hockey League Players’ Association.

With respect to this last issue, Stein is supportive of the cozy relationship that existed between Zeigler and Alan Eagleson, executive director of the players’ body, and is dismissive of the more aggressive Bob Goodenow who replaced Eagleson in 1992. Ice-hockey experienced a strike in 1992 and a lock out in 1994/95. At one point Stein says ‘Eagleson’s methods may have been subject to challenge, but not his results’. (p. 115) Other, what might be called more ‘disinterested’, commentators have been most critical of Eagleson’s stewardship of the National Hockey League Players’ Association.¹² Besides problems experienced with conflicts of interest as a player association leader, player agent, promoter and having other business interests Eagleson ran dead on issues at the bargaining table, negotiated poor pension and accident/insurance schemes for members, enabled owners to use surpluses from pension schemes to defray their contributions and channelled player association revenue and used its facilities and good name to enhance his business interests. Stein’s treatment of Eagleson has the appearance of constituting a rewriting of history.

Stein appears to have been skilled in the arts of small ‘p’ politics, which undoubtedly explains his rise to the top of ice-hockey’s slippery pole. During his presidency he discovered that two members of a (non-player) Hall of Fame nominating committee were seeking to have

themselves so nominated. He confronted the persons concerned and initiated action to change the rules of nomination to ensure that such a phenomenon could not happen. Simultaneously he allowed his own name to go forward for such a nomination. When his nomination succeeded all hell broke loose with Stein being accused of self-serving, contradictory behaviour. After an inquiry found against him, Stein declined to accept his nomination to the Hall of Fame.

The last chapter, which comprises almost one-sixth of his text, constitutes an apologia by Stein concerning his actions in this affair. What is interesting is how someone with such a politically acute and sensitive nose did not foresee the consequences that would result from his nomination. If he had held back for a few years, when sensitivities associated with the self-nominees had dissipated, it appears more than likely that his election to the Hall of Fame would have occurred without controversy. Previous presidents had been so elected. Stein himself admits that his ego got the better of him (p. 210), something he deeply regrets. (p. 228)

Both baseball and ice-hockey — and for that matter other North American (and other nations') professional team sports-have prospered in the last three decades. While such undertakings have required cooperation between business entities to produce a product, their relationships have been characterised by unceasing competition and conflict as various owners and other stakeholders have sought to take advantage of each other. These three books illustrate the unstable nature of the oligopolies that are professional team sports.

Notes:

- 1 See the United States of America's *Sherman Antitrust Act 1890* and Australia's *Trade Practices Act 1974* (Comm.).
- 2 For one of the earliest, if not wittiest, expositions of this view see Walter C Neale, 'The Peculiar Economics of Professional Sport: A Contribution to the Theory of the Firm in Market Competition and in Sporting Competition', *Quarterly Journal of Economics*, Feb. 1964.
- 3 For an extensive analysis of this dispute see Kenneth M Jennings, *Swings and Misses: Moribund Labor Relations in Professional Baseball*, Praeger, Westport, 1997.
- 4 Andrew Zimbalist, *Baseball and Billions: A Probing Look Inside the Big Business of Our National Pastime*, Basic Books, New York, 1992, p. 49.
- 5 The 1990s has witnessed a genre of writing on baseball which laments the sport's loss of innocence, of the internecine struggles between owners, and between owners and players for enhanced wealth and prestige. Besides Zimbalist also see Neil J Sullivan, *The Diamond Revolution: The Prospects for Baseball and the Collapse of its Ruling Class*, St. Martin's Press, New York, 1992; Jack Sands and

- Peter Gammons, *Coming Apart at the Seams: How Baseball Owners, Players and Television Executives Have Led our National Pastime to the Brink of Disaster*, Macmillan, New York, 1993; and John Helyar, *Lords of the Realm: The Real History of Baseball*, Ballantine Books, New York, 1995.
- 6 On collective bargaining in baseball, beside Jennings, *Swings and Misses*; see James B Dworkin, *Owners versus Players: Baseball and Collective Bargaining*, Auburn House, Boston, 1981; Lee Lowenfish, *The Imperfect Diamond: A History of Baseball's Labor Wars* (Revised Edition), Da Capo Press, New York, 1991; and Marvin Miller, *A Whole Different Ball Game: The Sport and Business of Baseball*, Birch Lane Press, New York, 1991.
 - 7 *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922); *Toolson v. New York Yankees*, 346 U.S. 356 (1953); and *Flood v. Kuhn* 407 U.S. 258 (1972).
 - 8 For examinations of this decision, its background and implications for baseball see Dworkin, *Owners Versus Players*, pp. 72-89; and Miller, *A Whole Different Ball Game*, pp. 238-53.
 - 9 For an examination of such a concept in Australian sport see Simon Davidson, 'The Single Economic Entity Theory and Sports Leagues in Australia', *Competition and Consumer Law Journal*, Nov. 1994.
 - 10 Heylar, *Lords of the Realm*, provides a dramatic illustration of this. It is also pertinent to note that in late Oct. 1998 President Bill Clinton signed into law the *Curt Flood Act 1998*, which passed both the House of Representatives and Senate unanimously. Curt Flood unsuccessfully challenged baseball's reserve clause in 1972 — see note 7. The Act removes baseball's labour exemption from the *Sherman Antitrust Act 1890*, bringing baseball into line with other professional team sports in the United States, enabling the use of antitrust litigation in future disputes. Other aspects of baseball's operations are not touched by this legislation.
 - 11 For an examination of the role of the National Commission see Harold Seymour, *Baseball: The Golden Age*, Oxford University Press, New York, 1971, pp. 3-18 and 259-73.
 - 12 See David Cruise and Alison Griffiths, *Net Worth: Exploding the Myths of Pro Hockey*, Penguin, Toronto, 1991; and Russ Conway, *Game Misconduct: Alan Eagleson and the Corruption of Hockey*, Macfarlane Walter and Ross, Toronto, 1995.