

UCLA

UCLA Entertainment Law Review

Title

Labor Pains on the Playing Field: Why Taking a Page from Europe's Playbook Could Help the United States

Permalink

<https://escholarship.org/uc/item/8b39c9xf>

Journal

UCLA Entertainment Law Review, 20(1)

ISSN

1073-2896

Author

Brice, Trevor E.

Publication Date

2013

DOI

10.5070/LR8201027163

Copyright Information

Copyright 2013 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

Labor Pains on the Playing Field: Why Taking a Page from Europe's Playbook Could Help the United States

Trevor E. Brice*

Work stoppages have become commonplace in American professional sports. Whether it takes the form of a strike or a lockout, a work stoppage, or the threat thereof, accompanies nearly every labor dispute between owners and players. This is hardly surprising, though, because the current system for resolving labor disputes—the National Labor Relations Act and its implementing body, the National Labor Relations Board—is ill-fitted to the unique challenges posed by sports labor issues. Additionally, there is no institution tasked with directly overseeing professional sports in America.

The same is not true in Europe. Oversight bodies are common throughout Europe and help to resolve sports labor disputes before they turn into full-blown work stoppages. As this Article discusses, American professional sports need this type of oversight.

Therefore, this Article advocates a two-tiered approach to solving American professional sports' culture of frequent work stoppages. First, the United States should enact new legislation to govern the resolution of sports labor disputes, as it has already done to regulate labor disputes in other American industries. Second, the United States should create a body charged with overseeing professional sports and implementing this newly-created legislation. By taking these two steps, the United States can end the pattern of work stoppages that plagues professional sports labor disputes and provide stability to this critical American industry.

* Candidate for Juris Doctor, 2013, Emory University School of Law; Executive Managing Editor, Emory International Law Review; A.B., Political Science, 2009, University of Georgia. The author would like to thank Professor Joanna Shepherd-Bailey for her guidance on this Article, and his family and friends for their years of unconditional love and support.

I. INTRODUCTION.....	50
II. BACKGROUND	54
A. <i>The Current Framework Governing American Labor Disputes: The NLRA and the NLRB</i>	54
1. The NLRA.....	55
2. The NLRB.....	57
B. <i>A History of Work Stoppage in American Professional Sports</i>	58
1. The National Hockey League.....	58
2. The National Basketball Association.....	60
3. The National Football League.....	61
4. Major League Baseball.....	62
C. <i>Governing Bodies for Professional Sports: It's a European Thing</i>	64
III. ANALYSIS.....	65
A. <i>Why Do We Need to Change the System?: The True Value of Professional Sports</i>	65
1. Economic Impact.....	65
2. Noneconomic Impact	69
B. <i>How Should We Change the System?</i>	72
1. Create an Oversight Body for Professional Sports Like Those Found in Europe.....	72
2. Implement Legislation Based on the Railway Labor Act.....	75
IV. CONCLUSION.....	78

I always turn to the sports section first. The sports page records people's accomplishments; the front page has nothing but man's failures.

—Chief Justice Earl Warren¹

I. INTRODUCTION

In modern times, sports have become a profession. According to Forbes, the average National Football League (NFL) franchise is worth \$1.1 billion.² The average Major League Baseball (MLB) franchise is

¹ *They Said It*, SPORTS ILLUSTRATED, July 22, 1968, at 11.

² Mike Ozanian, *Dallas Cowboys Lead NFL with \$2.1 Billion Valuation*, FORBES (Sept. 5, 2012, 8:31 AM), <http://www.forbes.com/sites/mikeozanian/2012/09/05/dallas-cowboys-lead-nfl-with-2-1-billion-valuation>.

valued at \$605 million.³ National Basketball Association (NBA) and National Hockey League (NHL) teams are worth an average of \$393 million⁴ and \$282 million,⁵ respectively. Sport has evolved into a business, and for the four major American professional sports leagues, business is good. The same can be said for teams playing Europe's most popular sport—soccer. On a 2012 list of the twenty richest soccer clubs in the world, the average team value is \$770 million, with the top five teams on the list each worth at least one billion dollars.⁶ Sport is not just a business; it's a big, international business.

Along with sport's transition from recreation to business came labor disputes. Teams were bought by owners. Owners hired players. Players organized into unions. Unions chose representatives. And with organized labor came strikes and lockouts. This necessitated a means of conflict resolution in dealing with labor disputes.

In the United States, the framework for resolving these disputes was already in place. The National Labor Relations Act (NLRA), enacted by Congress in 1935, regulates all labor disputes within privately owned businesses.⁷ The Act's enforcing body, the National Labor Relations Board (NLRB), investigates and remedies charges of unfair labor practices.⁸ Because professional sports teams are privately owned, they are subject to the terms of the NLRA, and labor disputes are overseen by the NLRB.

In Europe, the rise of sport as a business led most nations to develop government and international bodies charged with overseeing

³ Mike Ozanian, *The Business of Baseball 2012*, FORBES (Mar. 21, 2012, 12:27 PM), <http://www.forbes.com/sites/mikeozanian/2012/03/21/the-business-of-baseball-2012>.

⁴ Kurt Badenhausen, *L.A. Lakers Top 2012 List of the NBA's Most Valuable Teams*, FORBES (Jan. 25, 2012, 11:47 AM), <http://www.forbes.com/sites/kurtbadenhausen/2012/01/25/the-nbas-most-valuable-teams>.

⁵ Mike Ozanian, *NHL Team Values 2012: Toronto Maple Leafs Are First Hockey Team Worth \$1 Billion*, FORBES (Nov. 28, 2012, 11:52 AM), <http://www.forbes.com/sites/mikeozanian/2012/11/28/nhl-team-values-2012-maple-leafs-first-hockey-team-worth-1-billion>.

⁶ Mike Ozanian, *Manchester United Again the World's Most Valuable Soccer Team*, FORBES (Apr. 18, 2012, 1:56 PM), <http://www.forbes.com/sites/mikeozanian/2012/04/18/manchester-united-again-the-worlds-most-valuable-soccer-team>. In early 2013, Manchester United, England's premier professional soccer club, became the first professional sports team in the world worth \$3 billion. Mike Ozanian, *Manchester United Becomes First Team Valued at \$3 Billion*, FORBES (Jan. 27, 2013, 11:44 AM), <http://www.forbes.com/sites/mikeozanian/2013/01/27/manchester-united-becomes-first-team-valued-at-3-billion>.

⁷ National Labor Relations Act of 1935, 29 U.S.C. §§ 151–169 (2006).

⁸ *Id.* § 153.

sports.⁹ These boards set government policy regarding various aspects of sport, putting them in a position to influence and shape the outcomes of these disputes through policymaking and public statements.¹⁰

Separate international organizations also formed specifically to govern soccer. Oversight bodies such as the Fédération Internationale de Football Association (FIFA) and Union of European Football Associations (UEFA) take a much more active role in the governance of sports disputes. They make and enforce their own statutes and rules. Any soccer league wishing to compete internationally must follow these rules. In addition, they contain their own mechanisms for dealing with disputes, including labor disputes. As this Article will discuss, the United States needs to adopt this same sort of active role to deter the use of economic weapons¹¹ in sports labor negotiations.

Work stoppages in professional sports leagues are costly, in both economic and noneconomic terms.¹² While the loss of jobs and revenue caused by a stoppage may seem like common sense, the noneconomic impact is much harder to quantify, and often goes unnoticed. However, this noneconomic impact is significant, and it takes a toll on the psyche of individuals, communities, and society as a whole.¹³

Work stoppages are a common result under the current procedures governing labor relations in American professional sports leagues. These stoppages can take the form of a lockout or a strike. For example, the NHL recently ended a lockout that lasted 113 days and resulted in the loss of 510 games from the 2012-2013 season, as well as the All-Star game and the annual Winter Classic.¹⁴ This work stoppage was the NHL's second in eight years; the entire 2004-2005 season was lost due to a similar lockout.¹⁵ These stoppages are not limited to hockey;

⁹ See, e.g., *Definicion y Competencia [Definition and Areas of Competence]*, CONSEJO SUPERIOR DE DEPORTES, <http://www.csd.gob.es/csd/informacion-en/02structure-of-the-csd/01definicion-and-areas-of-competence/view> (last visited Mar. 8, 2013) (Spain); *What We Do*, DEP'T FOR CULTURE, MEDIA & SPORT, http://www.culture.gov.uk/what_we_do/sport/3468.aspx (last visited Mar. 8, 2013) (United Kingdom).

¹⁰ See *infra* Part II.C.

¹¹ For the purposes of this Article, "economic weapons" refers to strikes and lockouts. See Michael H. LeRoy, *Lockouts Involving Replacement Workers: An Empirical Public Policy Analysis and Proposal to Balance Economic Weapons Under the NLRA*, 74 WASH. U. L.Q. 981, 983 (1996).

¹² See *infra* Part III.A.

¹³ See *infra* Part III.A.

¹⁴ Ira Podell, *NHL Lockout Ends, Training Camps Set to Open*, ASSOCIATED PRESS, Jan. 12, 2013, available at <http://news.yahoo.com/nhl-lockout-ends-training-camps-set-open-034540330--nhl.html>.

¹⁵ *Lockout over Salary Cap Shuts down NHL*, ASSOCIATED PRESS, Feb. 16, 2005, available

there have been thirteen work stoppages in the history of the other three major American sports leagues.¹⁶

In Europe, however, work stoppages are far less common.¹⁷ Because many European governments are not restricted from intervening in labor disputes by NLRA-type legislation, they are free to step in and prevent lengthy strikes and lockouts from even taking place.¹⁸ Additionally, European sports oversight bodies are in a position to influence labor disputes and affect the outcome through policymaking and public statements. As a result, the protracted labor disputes that are common in American professional sports occur less frequently in European sporting leagues, and those that do occur are usually resolved much more quickly.¹⁹

Because work stoppages have become commonplace in American professional sports, and because these stoppages are detrimental to America's economy and the psyche of its sports fans, this Article proposes a new system for dealing with labor disputes in professional sports leagues.

First, the United States should take a cue from Europe and create a government board to oversee all professional sports. While oversight boards in Europe do not control the outcome of labor disputes in sporting leagues, they provide a voice for the government, which can then set policy and offer public comment on the disputes. The complete lack of a government voice in the American sports leagues' labor negotiation process is worrisome. Because the outcome of sports labor disputes has an effect on the entire country,²⁰ the government should have some role in shaping the outcome of these disputes. The creation of some sort of oversight board would allow the government to take on such a role.

at <http://sports.espn.go.com/nhl/news/story?id=1992793>.

¹⁶ Anthony Castellano, *Work Stoppages in U.S. Sports History*, NEWSDAY, (Oct. 24, 2012, 9:40 AM), <http://www.newsday.com/sports/hockey/work-stoppages-in-u-s-sports-history-1.2720169>.

¹⁷ Simon Medcalfe, *Sports Economics: What's the Score?* (Apr. 17, 2003) (unpublished paper, Lehigh University), available at <http://www.ekospor.com/Sports-Economics/Sports%20Economics%20What%20s%20the%20Score.pdf>.

¹⁸ See, e.g., *Madrid Court Bars La Liga Strike*, STATESMAN (India), Mar. 31, 2011, available at 2011 WLNR 6276961.

¹⁹ Manuel Baigorri, *Spanish Soccer Strike Ends as Players Reach Agreement with League*, BLOOMBERG (Aug. 25, 2011, 9:34 AM), <http://www.bloomberg.com/news/2011-08-25/spanish-soccer-strike-ends-as-players-reach-agreement-with-the-league.html>.

²⁰ See *infra* Part III.A.

Second, the NLRA should no longer be applied to sports labor disputes. Instead, the United States should implement new legislation that discourages strikes and lockouts and puts an emphasis on mediation and negotiation. The Railway Labor Act would be a good model for this new legislation, because it is already applied to industries that are essential to the American economy and way of life. As this Article will discuss, sports fall into this category, and should be regulated accordingly.²¹ Thus, a new regime for handling sports labor disputes is necessary to solve the epidemic of work stoppages in American professional sports. This system should be based on the creation of a government oversight body for sports, modeled after existing European and international bodies, and the implementation of new legislation for dealing with disputes, modeled after the Railway Labor Act.

Part II.A. of this Article will discuss the current American system for resolving sports labor disputes, the NLRA/NLRB regime, and its fundamental inadequacies. Part II.B. will discuss the history of work stoppages in American professional sports. Part II.C. will discuss the prevalence in Europe of government oversight bodies in relation to professional sports, as well as international bodies that make and enforce their own rules. Part III.A. will discuss the negative impact of work stoppages in professional sports leagues, both economic and non-economic. Finally, Part III.B. will propose the adoption of a European-style government body to oversee professional sports, and crafting new legislation, modeled after the Railway Labor Act, that minimizes the use of economic weapons and focuses instead on mediation and negotiation.

II. BACKGROUND

A. *The Current Framework Governing American Labor Disputes: The NLRA and the NLRB*

All American professional sports teams and leagues are private businesses.²² As such, they are subject to the terms of the NLRA.²³ All labor disputes arising under the NLRA are handled by its governing body, the NLRB.²⁴ As discussed below, this system is not suited to

²¹ See *infra* Part III.A.

²² Gabe Gershenfeld, *Solution for the NFL–NFLPA: Change the Rules of the Game*, CORNELL ILR SPORTS BUS. SOC'Y BLOG (Mar. 12, 2011, 1:27 PM), <http://ilrsmc.blogspot.com/2011/03/solution-for-nfl-nflpa-change-rules-of.html>.

²³ *Id.*

²⁴ *Id.*

deal with labor disputes in an industry like professional sports because it places a premium on the use of economic weapons. Both sides in a professional sports labor dispute have tremendous leverage that is not common to most other types of labor disputes. Additionally, the expiration of collective bargaining agreements puts an artificial timer on the negotiation process. This time constraint further motivates the parties involved to initiate a work stoppage. Because both sides are incentivized to walk away from the negotiation table, work stoppages in American professional sports have become common under the NLRA/NLRB regime.

1. The NLRA

The NLRA creates collective bargaining rights for American workers in private industries.²⁵ Its central purpose is to eliminate “substantial obstructions to the free flow of commerce” by encouraging collective bargaining between employers and employees.²⁶ At its core, the NLRA rests on three key principles. First is the exclusivity principle. Under the NLRA, a union representative selected by a majority of employees is the exclusive representative of all employees.²⁷ Once a union representative has been chosen to represent the employees, the employer may not change the terms of employment without first consulting with the union representative.²⁸

The NLRA’s second key principle is free collective bargaining.²⁹ The decision of whether to organize is left entirely up to the employees.³⁰ If and when the employees organize and select a representative, the employer is required to bargain in good faith with the representative.³¹ However, the outcome of the bargaining process is left entirely up to the parties themselves.³² In many ways the collective bargaining

²⁵ National Labor Relations Act of 1935 § 7, 29 U.S.C. § 157 (2006).

²⁶ *Id.* § 151.

²⁷ *Id.* § 159(a).

²⁸ *Id.* § 158(d).

²⁹ *Id.* § 157.

³⁰ *Id.* §§ 157, 158(a)(1).

³¹ *Id.* § 157; *NLRB v. Montgomery Ward & Co.*, 133 F.2d 676, 686 (9th Cir. 1943) (“[A] sincere effort must be made to reach a common ground.”).

³² SRIYAN DE SILVA, INT’L LABOR ORG., COLLECTIVE BARGAINING NEGOTIATIONS 5–6 (1996), available at <http://www.ilo.org/public/english/dialogue/actemp/downloads/publications/srscbarg.pdf>.

process is similar to a private lawmaking system in that parties are free to dictate the terms and conditions under which the employees will work.³³ The result of this process is usually a collective bargaining agreement, which memorializes the agreed-upon terms of employment.³⁴ These agreements set forth arbitration procedures to settle grievances arising under the agreement.³⁵ Courts do not hear matters that are covered by the agreement's arbitration scheme.³⁶

The third key principle of the NLRA is structural autonomy. This principle requires that the employees' representative, which usually takes the form of a union, be solely the agent of the employees, and that it stands completely independent from the employer.³⁷ The NLRA expressly prohibits employers from "dominat[ing] or interfer[ing] with the formation or administration of any labor organization or [from] contribut[ing] financial or other support to it"³⁸

The theme behind the NLRA is that private parties engaged in business should resolve disputes arising out of that business without government interference. As such, it does not favor any one method of dispute resolution over another. Mediation and arbitration are merely options, the same as strikes and lockouts. But when it is in the parties' best interests to bypass mediation altogether and proceed to a work stoppage, as is often the case in professional sports leagues, the NLRA comes up short. By leaving to the parties the decision of whether to negotiate, and to what extent, the NLRA does little to encourage the timely resolution of labor disputes. Because of the unique circumstances present in professional sports labor negotiations that incentivize the use of economic weapons, the NLRA is an ineffective means of regulating these negotiations.

³³ *See id.*

³⁴ *Id.* at 6, 15.

³⁵ *See* David M. Washutka, *Collective Bargaining Agreements in Professional Sports: The Proper Forum for Establishing Performance-Enhancing Drug Testing Policies*, 8 PEPP. DISP. RESOL. L. J. 147, 159–60 (2008).

³⁶ *Id.*; *see also* Eliza Presson, *Opinion Analysis: 14 Penn Plaza, LLC v. Pyett*, SCOTUSBLOG (Apr. 7, 2009, 3:10 PM), <http://www.scotusblog.com/2009/04/opinion-analysis-14-penn-plaza-llc-v-pyett> (noting that collective bargaining agreements can require even statutory discrimination claims to be arbitrated).

³⁷ *See* National Labor Relations Act of 1935 § 8, 29 U.S.C. § 158 (2006).

³⁸ *Id.* § 158(a)(2).

2. The NLRB

The NLRB is the body that enforces the NLRA.³⁹ The Board consists of five members who serve five-year terms.⁴⁰ The members are appointed by the President and confirmed by the Senate.⁴¹ In addition, a general counsel is appointed to four-year terms.⁴² The members' duties include investigation into charges of unfair labor practices by employers.⁴³ The agency is also supported by twenty-eight regional offices,⁴⁴ as well as a host of administrative judges who make initial rulings.⁴⁵

When an employee has an issue with an employer, the employee files a complaint with the regional NLRB office.⁴⁶ Each year the NLRB receives about 20,000-30,000 claims,⁴⁷ but it usually determines that only a third of them have merit.⁴⁸ If it appears that a violation of the NLRA has occurred, the charged employer is asked to remedy the situation through a voluntary settlement.⁴⁹ If no settlement is reached, the NLRB files a formal complaint for a hearing before an administrative judge.⁵⁰ The judge's decision can be appealed to the NLRB, whose decision can be appealed to a U.S. Court of Appeals.⁵¹

The result of the NLRA/NLRB regime is that parties are free to use whichever means of dispute resolution they choose. In a situation where both sides possess enormous leverage, such as in professional

³⁹ *Id.* § 153.

⁴⁰ *The Board*, NLRB, <http://www.nlr.gov/who-we-are/board> (last visited Mar. 8, 2013).

⁴¹ *Id.*

⁴² *The General Counsel*, NLRB, <http://www.nlr.gov/who-we-are/general-counsel> (last visited Mar. 8, 2013).

⁴³ *Investigate Charges*, NLRB, <http://www.nlr.gov/what-we-do/investigate-charges> (last visited Mar. 8, 2013).

⁴⁴ *Find Your Regional Office*, NLRB, <http://www.nlr.gov/who-we-are/regional-offices> (last visited Mar. 8, 2013).

⁴⁵ *Division of Judges*, NLRB, <http://www.nlr.gov/who-we-are/division-judges> (last visited Mar. 8, 2013).

⁴⁶ *Investigate Charges*, *supra* note 43.

⁴⁷ *Id.*

⁴⁸ *See Disposition of Unfair Labor Practice Charges*, NLRB, <http://www.nlr.gov/news-outreach/graphs-data/charges-and-complaints/disposition-unfair-labor-practice-charges> (last visited March 8, 2013).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

sports labor disagreements, there is little incentive for a party to pursue a cooperative means of resolution rather than initiate a work stoppage. Additionally, numerous steps must be taken before courts will get involved in a labor dispute, if at all. In the event that the employer does not commit any unfair labor practices, the courts play no role, leaving the parties free to bypass mediation and arbitration and move straight to the use of economic weapons. As applied to professional sports, this model is ineffective, and leads to frequent work stoppages in the four major American sports leagues. As this Article will discuss, frequent work stoppages have a number of detrimental effects, both economic and noneconomic.⁵²

B. *A History of Work Stoppage in American Professional Sports*

Under the current system, both labor and management⁵³ are allowed to use economic weapons to resolve contractual disputes.⁵⁴ These tactics are fair play as long as neither side commits any “unfair labor practices.”⁵⁵ Both labor and management are incentivized to escalate a labor dispute into a work stoppage rather than work through mediation or negotiation to reach a resolution.⁵⁶ As a result, there have been numerous work stoppages in the four major American sports leagues.⁵⁷ As this Article discusses, work stoppages have a wide range of negative impacts.⁵⁸

1. The National Hockey League

The freshest example of work stoppage in professional sports is the recently-ended NHL lockout.⁵⁹ The four-month lockout finally concluded on January 12, 2013, with the signing of a memorandum of un-

⁵² See *infra* Part III.A.

⁵³ In the context of professional sports labor disputes, the labor side consists of the various players associations. See, e.g., MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION, <http://mlbplayers.mlb.com> (last visited Mar. 8, 2013); NFL PLAYERS ASSOCIATION, <https://www.nflplayers.com> (last visited Mar. 8, 2013). The management side is made up of the league and the individual team owners. See, e.g., Tom Van Riper, *The NBA's Billionaire Owners*, FORBES (Jan. 23, 2013, 11:50 AM), <http://www.forbes.com/sites/tomvanriper/2013/01/23/the-nbas-billionaire-owners>.

⁵⁴ Gershenfeld, *supra* note 22.

⁵⁵ *Id.*

⁵⁶ George Yorgakaras, Op-Ed., *Avoiding the Next Sports Lockout*, N.Y. TIMES (July 26, 2011), <http://www.nytimes.com/2011/07/27/opinion/27Yorgakaras.html>.

⁵⁷ Castellano, *supra* note 16.

⁵⁸ See *infra* Part III.A.

⁵⁹ *NHL Lockout Ends, Training Camps Set to Open*, *supra* note 14.

derstanding on a new labor agreement,⁶⁰ allowing the teams to salvage part of the 2013 season and avoiding the disastrous result of the League's previous lockout.⁶¹ In 2004, a similar lockout resulted in the loss of the entire 2004-2005 NHL season,⁶² marking the first time that an American professional sports league missed a whole season due to a work stoppage.⁶³ The lockout set records, including the most games lost to a work stoppage, at 1230, and the longest-lasting stoppage, at 310 days.⁶⁴ However, the NHL and its fans can now enjoy a certain measure of peace; the signing of the new labor agreement guarantees that the League will not experience another work stoppage until at least 2020.⁶⁵ Unlike similar stoppages in the NBA and NFL, the central issue in 2004 was the implementation of a salary cap, not revenue distribution.⁶⁶ However, the agreement that ended the lockout included provisions for revenue distribution between the league and the players.⁶⁷

While the implementation of a salary cap was the central issue surrounding the 2004 lockout, it had its roots in a similar lockout staged ten years earlier. The 1994 NHL season was shortened to forty-eight games after the owners insisted on implementing a salary cap.⁶⁸ That ultimately did not happen, but a salary cap was set for rookies.⁶⁹

The National Hockey League Players Association went on a ten-day strike following the 1991-1992 season, initiating the first work stoppage in the League's history.⁷⁰ The issues here were relatively minor, and the players received desired changes to free agency, playoff bonuses, and the right to choose arbitrators in salary disputes.⁷¹

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Paul D. Staudohar, *The Hockey Lockout of 2004-05*, MONTHLY LAB. REV., Dec. 2005, at 23, 23, available at <http://www.bls.gov/opub/mlr/2005/12/art3full.pdf>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Sarah Kwak, *Who Gets What: Key Points of the NHL's New CBA Deal*, SI.COM (Jan. 6, 2013, 4:08 PM), <http://sportsillustrated.cnn.com/nhl/news/20130106/new-nhl-cba-who-gets-what>.

⁶⁶ Staudohar, *supra* note 62, at 25-26.

⁶⁷ *Id.* at 27.

⁶⁸ *Id.* at 24.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

2. The National Basketball Association

Another recent example of work stoppage can be seen in the NBA. The NBA engaged in a 149-day lockout that resulted in the cancellation of fifteen games (per team) from the 2011-2012 season.⁷² For the second time in thirteen years, the NBA did not have a full, 82-game season due to work stoppage.⁷³

The two sides were at a standstill over distribution of league revenue, with each side wanting more than a fifty percent share.⁷⁴ Dissatisfied with the owners' offers, the National Basketball Players Association (NBPA) was on the verge of decertifying as a union or disclaiming interest as a union.⁷⁵ Had either step been taken, the NBPA would no longer have been the bargaining unit for NBA players.⁷⁶ The players could have then filed an antitrust lawsuit against the owners, with damages possibly reaching triple the amount of current player salaries.⁷⁷ However, the entire 2011-2012 NBA season likely would have been lost.

Instead, the two sides reached an agreement to save the season. The new collective bargaining agreement saves the owners more than one billion dollars in player salary costs over the duration of the agreement, but retains the soft salary cap system that the players fought hard to maintain.⁷⁸ Additionally, it expands the NBA's revenue-sharing program, nearly quadrupling the amount of money shared among teams.⁷⁹ In all, the agreement cut player salaries by twelve percent, but the time-consuming negotiations over the economic issues left

⁷² Michael Soze, *NBA Lockout Ends: 2012 Season to Start Dec. 25*, INQUISITR (Nov. 26, 2011), <http://www.inquisitr.com/162837/nba-lockout-ends-2011-2012-season-start>.

⁷³ Michael Lee, *NBA Cancels First 2 Weeks of the Season*, WASH. POST, Oct. 11, 2011, at D1.

⁷⁴ Sam Amick, *Players to Discuss NBA's Offer Monday; Decertifying Worries Stern*, SI.COM, (Nov. 12, 2011, 2:41 PM), http://sportsillustrated.cnn.com/2011/writers/sam_amick/11/12/nba.players.meeting.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *NBA Owners, Players Approve New Labor Deal*, NBA.COM (Dec. 9, 2011, 10:45 AM), <http://www.nba.com/2011/news/12/08/labor-deal.ap/index.html>.

⁷⁹ *Id.* There are many models for revenue-sharing programs, but they all have one goal: to maintain the competitive balance of the league. See Stefan Késenne, *Revenue Sharing and Competitive Balance in Professional Team Sports*, 1 J. SPORTS ECON. 56, 56-57 (2000). The idea is to level the imbalance created by the disparity in revenue between large- and small-market teams; thus, revenue-sharing programs function to redistribute a portion of high-revenue teams' monetary gains league-wide. *Id.*

little time to address several noneconomic factors.⁸⁰ The draft age limit remained at nineteen—the owners wanted to move it to twenty—and the league would not test for human growth hormone during the 2011-2012 season, both wins for the players.⁸¹

Fortunately, the two sides were able to reach an agreement in time to save the season, and only fifteen games were lost. The last time the two sides had a labor dispute, the NBA lost thirty-two games when the owners locked out the players for the first three months of the 1998-1999 season.⁸²

3. The National Football League

The NBA was not the only American sports league to experience a lockout in 2011; the NFL narrowly avoided a shortened season by resolving its own lockout in late July.⁸³ While there were other issues at play, the main issue was once again the distribution of league revenue among owners and players.⁸⁴ The owners wanted to take one billion dollars in league revenue before splitting the remaining revenue with the players.⁸⁵ The players felt that a \$500 million reduction in salary was unacceptable.⁸⁶ In response, the National Football League Players Association decertified as a union, and individual players filed an anti-trust lawsuit against the owners.⁸⁷ In the end, the players' salaries were not reduced, the lawsuit was dismissed, and a shortened season was narrowly averted.⁸⁸

⁸⁰ *NBA Owners, Players Approve New Labor Deal*, *supra* note 78.

⁸¹ *Id.*

⁸² *Season Review: 1998-99*, NBA.COM (Aug. 3, 2011, 1:14 PM), <http://www.nba.com/history/seasonreviews/1998-99/index.html>.

⁸³ Paul D. Staudohar, *The Football Lockout of 2011*, MONTHLY LAB. REV., Aug. 2012, at 29, 33-34, available at <http://www.bls.gov/opub/mlr/2012/08/art4full.pdf>; Adam Schefter, *Sources: Deal to End Lockout Reached*, ESPN.COM (July 25, 2011, 12:14 AM), http://espn.go.com/nfl/story/_id/6797238/2011-nfl-lockout-owners-players-come-deal-all-points-sources-say.

⁸⁴ Staudohar, *supra* note 83, at 31; *Players, Owners Sign Deal to End NFL Lockout*, CNN.COM (July 25, 2011), <http://edition.cnn.com/2011/SPORT/07/25/nfl.deal/index.html>.

⁸⁵ Lester Munson, *NFL Lockout Question: Was It Worth It?*, ESPN.COM, (July 26, 2011), http://espn.go.com/espn/commentary/story/_page/munson-110725/nfl-lockout-settlement-questions-answers.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Brady vs. NFL: A Court Case No More*, ASSOCIATED PRESS, Aug. 26, 2011, available at <http://news.yahoo.com/brady-vs-nfl-court-case-no-more-181707108.html>.

While no games were lost due to the NFL's most recent work stoppage, the same cannot be said for the 1987 NFL strike. Unhappy with a number of issues, including the state of free agency and the distribution of new television revenue, the players went on a twenty-four day strike.⁸⁹ In response, the league cancelled one week of games and brought in replacement players for three more weeks of games.⁹⁰

Similarly, the NFL players' strike of 1982 resulted in a shortened season.⁹¹ The strike forced the league to play an abbreviated schedule of nine games, rather than the full slate of sixteen.⁹² Once again, the main focus of the dispute was distribution of revenue between owners and players.⁹³

4. Major League Baseball

As discussed above, all major American sports leagues have dealt with significant instances of work stoppage in the past. But no league's history is as marred by stoppages as that of MLB. While none are as recent as those found in other leagues, MLB has had eight work stoppages since 1972.⁹⁴ The most recent, the strike of 1994, resulted in a shortened season and the cancellation of the World Series for the first time since 1904.⁹⁵ Additionally, part of the 1995 season was cancelled, and the season was shortened to 144 games.⁹⁶ The main issue in this dispute was the implementation of a salary cap, which ultimately did not happen.⁹⁷ The strike ended when future Supreme Court Justice Sonia Sotomayor issued an injunction against the owners—a rare example of government intervention in American professional sports labor disputes.⁹⁸

⁸⁹ Paul D. Staudohar, *The Football Strike of 1987: The Question of Free Agency*, MONTHLY LAB. REV., Aug. 1988, at 26, 26–29, available at <http://www.bls.gov/opub/mlr/1988/08/rpt1full.pdf>.

⁹⁰ *Id.* at 29–30.

⁹¹ *Id.* at 26.

⁹² See Gene Wojciechowski, *NFL Strike: 1982: A History Lesson Not Learned*, L.A. TIMES (Sept. 23, 1987), http://articles.latimes.com/1987-09-23/sports/sp-6303_1_nfl-strike.

⁹³ *Id.*

⁹⁴ Paul D. Staudohar, *The Baseball Strike of 1994-95*, MONTHLY LAB. REV., Mar. 1997, at 21, 22, available at <http://www.bls.gov/mlr/1997/03/art4full.pdf>.

⁹⁵ Castellano, *supra* note 16.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Silverman v. Major League Baseball Player Relations Comm., Inc.*, 880 F. Supp. 246, 261 (S.D.N.Y. 1995) (“[T]he harm to the public, the players, and the NLRB compels the issuance of a [preliminary] injunction in this case.”); Richard Sandomir, *Sotomayor's Baseball Ruling Lingers, 14 Years Later*, N.Y. TIMES (May 26, 2009), <http://www.nytimes.com/2009/>

The owners' desire to implement a salary cap first surfaced in 1990, when they instituted a lockout that lasted thirty-two days.⁹⁹ In addition, the owners wanted a revenue-sharing program and a "pay-for-performance" system for players with less than six years of experience; meanwhile, the players sought modifications to arbitration procedures, an increase in minimum salaries, and the continuation of the formula for owner contributions to player pension and health plans.¹⁰⁰ No games were lost, but the majority of spring training was cancelled.¹⁰¹

In addition to these two strikes, MLB also experienced several relatively minor disputes throughout the 1970s and 1980s. In 1985, the players went on strike over issues including salary arbitration.¹⁰² Twenty-five games were missed during the strike, but all of them were made up before the end of the 1985 season.¹⁰³ In 1981, a work stoppage occurred because teams were unhappy with the current rules governing free agency.¹⁰⁴ The strike lasted fifty days, and 713 games were cancelled.¹⁰⁵ In a shorter strike, work stopped for eight days in March 1980.¹⁰⁶ A four-year agreement was eventually reached, and no regular-season games were lost.¹⁰⁷

The 1970s saw MLB undergo three of the shortest work stoppages in American professional sports history. Work stopped for seventeen days in 1976 when the owners instituted a lockout over the issue of free agency.¹⁰⁸ No games were lost, but part of spring training was cancelled.¹⁰⁹ In 1973 work stopped for twelve days as the owners locked out the players until a new collective bargaining agreement

05/27/sports/baseball/27sandomir.html.

⁹⁹ Staudohar, *supra* note 94, at 23.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* The lockout originally resulted in the loss of seventy-eight games at the beginning of the 1990 season. *Id.* However, MLB Commissioner Fay Vincent was able to work out a deal with CBS to delay postseason play, allowing the teams to make up the games before the playoffs. *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 22.

¹⁰⁵ Castellano, *supra* note 16.

¹⁰⁶ Staudohar, *supra* note 94, at 22.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

could be reached.¹¹⁰ No games were lost.¹¹¹ Likewise, in 1972 the players went on strike in early April, causing a delay to the start of the season.¹¹² This was the first strike in the history of American professional sports, and resulted in most teams losing six to eight games.¹¹³

C. Governing Bodies for Professional Sports: It's a European Thing

In keeping with the essence of the NLRA, the American government is generally very hesitant to interfere to prevent or end work stoppages resulting from sports labor disputes. Although federal courts did issue a temporary injunction to end baseball's 1994 strike, federal courts ultimately did not intervene in the NFL's 2011 lockout.¹¹⁴

In Europe, however, governments will sometimes intervene to put an end to work stoppages resulting from sports labor disputes. In March 2011, a Madrid court blocked a planned player strike in Spain's top-flight soccer league, la Liga de Futbol Profesional (La Liga).¹¹⁵ Because parties are not subject to the limitations of NLRA-type legislation, European courts can get involved in sports labor disputes more freely.¹¹⁶

Furthermore, there is no government position or body in America dedicated to overseeing professional sports. However, these positions and bodies are commonplace in Europe. Spain has the Consejo Superior de Deportes (the Sports Council), which is run by the Secretary of State for Sport.¹¹⁷ Similarly, England has the Department for Culture, Media and Sport, and the Sport area is run by two ministers: the Secretary of State for Culture, Media and Sport and the Minister for Sport and Tourism.¹¹⁸ These oversight bodies have many responsibilities, but one of the most important is to give the government a voice in matters

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Castellano, *supra* note 16.

¹¹⁴ *Brady v. NFL*, 644 F.3d 661, 680–81 (8th Cir. 2011) (“[W]e conclude that [federal courts do not have the] power to issue an injunction prohibiting a party to a labor dispute from implementing a lockout of its employees.”); *NFL Lockout Resumes on Appeals Court Order*, ASSOCIATED PRESS, Apr. 30, 2011, available at 2011 WLNR 8407880.

¹¹⁵ *Madrid Court Bars La Liga Strike*, *supra* note 18.

¹¹⁶ *Cf. id.* (illustrating the willingness of Spanish courts to get involved in sports labor disputes).

¹¹⁷ *Governing Bodies*, CONSEJO SUPERIOR DE DEPORTES, <http://www.csd.gob.es/csd/informacion-en/02structure-of-the-csd/02governing-bodies/view> (last visited Mar. 8, 2013).

¹¹⁸ *Our Ministers*, DEP'T FOR CULTURE, MEDIA & SPORT, http://www.culture.gov.uk/about_us/our_ministers/default.aspx (last visited Mar. 8, 2013).

concerning professional sports, including labor negotiations. Through these bodies, governments are able to set policy and make public statements, both of which help guide the parties to a resolution that is in the country's best interest.

Additionally, there are international oversight bodies for European sports, including soccer, that also govern all aspects of the game, including labor relations.¹¹⁹ Organizations such as FIFA and UEFA are autonomous from national governments and have their own statutes and rules that all member leagues must follow.¹²⁰ By requiring participation as a condition of international play, these international organizations are able to take their oversight role a step further, forcing members to comply with statutes and rules or face discipline from the organization. A strong governing organization with the power to intervene in disputes, including labor disputes, helps to minimize the usage of economic weapons which can be detrimental to the game itself.

Because many European countries have government bodies that focus specifically on overseeing sports, and because their courts are not hamstrung by legislation providing for alternate remedies, they are in a much better position to prevent lengthy work stoppages. As this Article will discuss, this is a desirable outcome. Therefore, the United States needs to take two steps: create a government body charged with overseeing all aspects of professional sports, including labor relations, and adopt new legislation for dealing with labor relations in professional sports. The implementation of these two steps would go a long way toward changing American sports' culture of work stoppage.

III. ANALYSIS

A. *Why Do We Need to Change the System?: The True Value of Professional Sports*

1. Economic Impact

As a multi-billion dollar per year industry, it is clear that professional sports have a significant economic impact. This impact is felt by many different people in many different ways. Residents of the cit-

¹¹⁹ See *The Organisation*, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/footballgovernance/process/structure.html> (last visited Mar. 8, 2013).

¹²⁰ *Id.*; *About UEFA*, UEFA.COM, <http://www.uefa.com/uefa/aboutuefa/organisation/history/index.html> (last visited Mar. 8, 2013).

ies that host the teams, league or team employees, stadium workers, and those dependent on the tourism and food service industries are all encompassed within the economic impact of professional sports. The loss of the economic benefits sports bring can significantly harm local economies.

First, professional sports teams have a significant economic impact on the cities that host them. One study estimates the average net economic impact of an MLB team on a host city to be between \$16.2 million and \$132.3 million.¹²¹ Another study estimates that, had the 2011 NFL season been cancelled due to the lockout, each city stood to lose up to \$160 million and 3000 jobs.¹²² Yet another study claims that one NFL franchise, the Seattle Seahawks, has an economic impact on Washington state of \$129 million annually, while the team generates \$103 million per year in King County alone.¹²³ When professional sports leagues go on strike, the communities that host teams lose this significant revenue stream.

Second, when professional sports teams go on strike, it is not only the players who find themselves unemployed. Front office personnel, coaches, scouts, and numerous others face the possibility of less work, or none at all. Worse yet, these team employees are powerless to aid in the resolution of the dispute, and must simply wait for the players and owners to reach an agreement. The players and owners alone hold the power to end a work stoppage, yet countless others depend on the sports league for their paycheck. Allowing a dispute between two subsets of an industry to hold the entire industry hostage is inefficient and simply unfair. This is especially true since the players and owners are usually in a much better economic position than the support employees and are accordingly much more capable of weathering a protracted work stoppage.

Another class of workers affected by a work stoppage is stadium workers. Ticket collectors, concession stand workers, and maintenance personnel all depend on professional sports for their livelihood.¹²⁴ But

¹²¹ Robert A. Baade et al., *The Economic Consequences of Professional Sports Strikes and Lockouts: Revisited 4* (Int'l Ass'n of Sports Economists, Working Paper No. 06-09, 2006), available at http://college.holycross.edu/RePEc/spe/BaadeBaumannMatheson_Strikes.pdf.

¹²² *NFL, Players Can't Agree on Impact*, ASSOCIATED PRESS, Dec. 3, 2010, available at <http://sports.espn.go.com/nfl/news/story?id=5879654>.

¹²³ Tom Griffin, *Pro Sport's Impact on the Economy is Closer to a Bunt than a Home Run, but There May Be Other Reasons to Keep Teams Swinging at Home*, COLUMNS, June 1997, available at <http://www.washington.edu/alumni/columns/june97/game1.html>.

¹²⁴ Robby Robertson, *The Economic Impact of Sports Facilities*, SPORT DIGEST (2009), <http://thesportdigest.com/archive/article/economic-impact-sports-facilities>.

again, this class of workers is powerless to end the work stoppage themselves. Completely unaffected by the issues giving rise to the strike, stadium workers are forced to sit back and wait it out. In the event of a work stoppage, these support employees are unable to spend money in the local community, further compounding the economic impact.¹²⁵

In addition to local residents, tourists bring in outside money when they come to a sporting event. The extra spending can have a “multiplier effect;” that is, “as income within the community increases, there will continue to be more new spending and, as a result, more jobs created.”¹²⁶ In this way, a professional sports team can act as a sort of money magnet, attracting money from other communities and bringing it to the host community.

Finally, visiting teams can also have an impact on the local economy of the host city. In Springfield, Massachusetts, home of the American Hockey League’s Springfield Falcons, local hotels report that visiting teams book about 1500 hotel rooms at local hotels each season.¹²⁷ The teams also eat at local restaurants and rent cars locally.¹²⁸ The money spent by visiting teams may seem like a small contribution to the local economy, but it adds up quickly. An MLB team, for example, plays eighty-one home games per season. Visiting teams travel with a roster of twenty-five players and a handful of coaches, trainers, and ball boys—about forty people in all. That means that over the course of an MLB season, visiting teams will bring around 3240 people to the host city, all of whom spend money locally. In this sense, the economic impact of the visiting team and its players can be very important.

Concerns over the economic impact of professional sports teams are similar in Europe. Calls for increased regulation of European soccer leagues have become more frequent as financial woes threaten some clubs’ very existence.¹²⁹ Spain’s Secretary of State for Sport, Jaime Lissavetzky, echoed this sentiment in opposing a possible La Liga strike in March 2011, stating, “The main losers [in the event of a

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Sharienne Walker & Michael Enz, *The Impact of Professional Sports on the Local Economy*, 29 W. NEW ENG. L. REV. 149, 152 (2006).

¹²⁸ *Id.*

¹²⁹ Alen Mattich, *Europe’s Economic Woes Mirrored on Football Pitch*, WALL ST. J. (Sept. 16, 2011), <http://online.wsj.com/article/SB10001424053111903927204576572690166107136.html>.

strike] are the citizens and [soccer] players . . . [W]e maintain our readiness to defend the interests of citizens.”¹³⁰

Major sporting events can have such a significant effect on the host city’s economy that they can spur rejuvenation of urban centers.¹³¹ In 2001, a study of the economic impact of major championship games in six U.K. cities found that major spectator events that are part of an annual domestic cycle of sports events can have a significant economic impact on the host city.¹³² The study also found that even irregular, one-off events could generate a significant impact if they were “spectator driven.”¹³³ In both instances, the presence of a sporting event brought money to the host city. The economic impact of a professional sports team, which could be classified as part of a “domestic cycle of sports events,” is significant overseas as well as in the United States.

Another way in which professional sports can impact the economy of a host city is by increasing the property value of homes surrounding the stadium. A 2010 study by Gabriel Ahlfeldt and Georgios Kavetsos looked at the property values before and after the construction of two new soccer stadiums in London.¹³⁴ They found that for the New Wembley stadium, there was a property value increase of up to 15% near the stadium, which gradually decreased as distance to the stadium increased.¹³⁵

The same trend was observed near the new Emirates Stadium in London, where the results indicated a 1.7% increase in property value for any 10% decrease in distance to the new stadium.¹³⁶ This study indicates that the presence of a professional sports team can have a beneficial effect on the economy of the host city not only by bringing mon-

¹³⁰ *Madrid Court Bars La Liga Strike*, *supra* note 18.

¹³¹ CHRIS GRATTON, NIGEL DOBSON & SIMON SHIBLI, *The Role of Major Sports Events in the Economic Regeneration of Cities*, in *SPORT IN THE CITY: THE ROLE OF SPORT IN ECONOMIC AND SOCIAL REGENERATION* 35, 35–45 (Chris Gratton & Ian P. Henry eds., 2001).

¹³² *Id.* at 43.

¹³³ *Id.* at 42–43. The authors divide sporting events into two categories—“spectator driven” and “competitor driven”—depending on whether the event relies on spectators or competitors “as the principal contributors of additional expenditure.” *Id.* at 83. For example, the Euro ’96 soccer championships generated about five million pounds by attracting spectators, while the 1996 World Masters’ Swimming Championships generated a similar amount off of competitors. *Id.*

¹³⁴ Gabriel M. Ahlfeldt & Georgios Kavetsos, *Form or Function? The Impact of New Football Stadia on Property Prices in London* (Univ. Library of Munich, Germany, MPRA Paper No. 25003, 2010), available at http://mpra.ub.uni-muenchen.de/25003/1/MPRA_paper_25003.pdf.

¹³⁵ *Id.* at 19.

¹³⁶ *Id.* at 19–20.

ey to the area, but also by improving the value of the area itself.

In addition to having a significant impact on the economies of host cities, professional sports supply jobs. In England, sports make up quite a significant portion of the national economy. A 2007 study by Sport England found that sport-related employment accounted for 1.8% of all jobs in 2005, greater than the combined employment of the radio, television, and publishing sectors.¹³⁷ The study also found that sports-related employment increased by 43% from 1985 to 2005, further demonstrating the sports industry's foothold in the English economy.¹³⁸ Finally, the study concluded that sport-related economic activity had increased by 124% over the ten-year study, while the rest of the English economy only grew by 67%.¹³⁹ Sports are not only an important source of jobs, but are also one of the fastest growing sectors of the English economy.

2. Noneconomic Impact

In addition to (and perhaps more important than) the economic impact of work stoppages in professional sports are the countless noneconomic impacts to consider. These impacts are nearly impossible to quantify, but that is not to say that they are not real, or that they do not play an integral role in society. While the actual economic impact of a sports team on a host city can sometimes be small, "the most prominent reasons for hosting a professional team may lie in the sociocultural domain."¹⁴⁰

The viewing of sports can have a marked positive impact on the psyche of the viewer. One study suggests that "fans . . . experience increased positive feelings after viewing sports and are therefore attracted to sports as a result of the increased physical and mental well-being sports provide."¹⁴¹ Another study suggests that the viewing of sports can provide an escape from reality, adding "a new dimension to the individual's life and contribut[ing] to the individual's well-being."¹⁴²

Professional sports can also provide a safe avenue for desired stress

¹³⁷ SPORT INDUS. RESEARCH CTR. ET AL., THE ECONOMIC IMPORTANCE OF SPORT IN ENGLAND, 1985-2005 6 (2007).

¹³⁸ *Id.*

¹³⁹ *Id.* at 3.

¹⁴⁰ Ioannis Douvis, *Perceived Impact of Sport*, 4 SPORTS MGMT. INT'L J. 21, 23 (2008).

¹⁴¹ *Id.* at 24.

¹⁴² *Id.*

and stimulation. Used in this fashion, sport “provides a socially acceptable mechanism for creating and experiencing tension, risk and stress.”¹⁴³ The catharsis theory states that sport can provide an outlet for pent-up aggression, predicting “that aggression will decrease after viewing an aggressive sport, regardless of the outcome.”¹⁴⁴ Along these same lines, another theory proposes that aggression in sport is an attractive element to some individuals, allowing “fan aggression in sport [to] increase by watching an event that justifies aggression, thus making the target for aggression more legitimate.”¹⁴⁵

Moving to the more traditional theories regarding the individual psychological value of sports, the entertainment theory postulates that the main benefit of watching sports is “the pleasure and satisfaction that is generated as a result of being entertained by the sport experience.”¹⁴⁶ That watching sports is fun may seem like common sense, but that does not negate the significant value afforded to the viewer. Other viewers may be aesthetically drawn to sports by “appreciation of the movement and beauty” displayed on the playing field.¹⁴⁷

Finally, the achievement-seeking theory stresses the importance of success and failure on the viewing experience of the fan.¹⁴⁸ Central to this theory is the concept of “Basking in Reflected Glory,” which suggests that “an individual . . . attempt[s] to associate with someone who has been successful in order to increase his/her feelings of success”¹⁴⁹ This theory also predicts that an individual is more likely to “Bask in Reflected Glory” if he has suffered a personal failure, further adding to the psychological benefit of watching his favorite sports team play and win.¹⁵⁰

Aside from the individual psychological benefits of watching professional sports, there are also social benefits to be reaped. Professional sports foster a sense of community in a host city. This sense of civic pride and identity created by one’s hometown team is unique to the sports industry. As Daniel Kraker and David Morris observe:

This combination of emotion, history and entertainment makes sports a business unlike any other. The people of Detroit don’t congregate

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 25.

¹⁴⁵ *Id.* (citation omitted).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* (citation omitted).

¹⁵⁰ *Id.*

around the television to watch Ford or GM workers build cars; Seattle residents don't watch Microsoft employees design software. But rooting for the Tigers and the Supersonics and the Lions is a natural communal activity.¹⁵¹

In that same vein, professional sports teams provide a common ground upon which people can come together; where "black and white, old and young, assembly line worker and CEO" can meet with a common purpose.¹⁵²

While professional sports have numerous noneconomic benefits for both individuals and communities, they can also have benefits for the host city itself. One of these intangible assets is the publicity perk associated with hosting a professional sports team. A professional sports team that participates in a league with several other teams "enjoys name and brand recognition in the other market cities."¹⁵³ The team will "appear in newspaper stories, league standings, and other advertising literature in [all league] markets."¹⁵⁴ Extra publicity can be very beneficial to a host city, especially one that is associated with a successful franchise. When the local sports team has a good image, that good image can rub off on the rest of the city. For example, the New Orleans Saints have played an important role in helping the city recover from the effects of Hurricane Katrina,¹⁵⁵ culminating in a Super Bowl victory in 2010. Darrell Guy, the director of special projects for the Boys and Girls Clubs of New Orleans, appreciates the beneficial impact the Saints have had on the city, noting that "[a]fter Katrina, [the Saints] came aboard here like God just gave them to us, and the whole city has wrapped their arms around them."¹⁵⁶

The economic and noneconomic benefits of professional sports teams are varied and plentiful. From bringing jobs and money to a team's host city, to providing a wealth of social and psychological benefits to the viewers and the host city itself, the presence of a profes-

¹⁵¹ DANIEL KRAKER & DAVID MORRIS, INST. FOR LOCAL SELF-RELIANCE, *ROOTS, ROOTS, ROOTS FOR THE HOME TEAM: COMMUNITY-OWNED PROFESSIONAL SPORTS I* (1998), available at <http://www.ilsr.org/wp-content/uploads/files/images/rootsroots.pdf>.

¹⁵² *Id.*

¹⁵³ Walker & Enz, *supra* note 127, at 151.

¹⁵⁴ *Id.*

¹⁵⁵ Jim Corbett, *Lifting up New Orleans: City Rising in Unison with Saints*, USA TODAY (Jan. 24, 2010), http://usatoday30.usatoday.com/sports/football/nfl/saints/2010-01-21-new-orleans-cover_N.htm.

¹⁵⁶ *Id.*

sional sports franchise is one of the greatest assets a city can have. But the flip side of this is that when professional sports leagues go on strike, they leave a gaping hole in their wake. Because so many people rely on professional sports for their livelihood, and because countless others receive real noneconomic benefits from them, the United States needs to ensure that professional sports continue to thrive. Achieving this goal means removing the incentive for a work stoppage. To remove the incentive, this Article advocates that Congress needs to change the system governing labor relations in professional American sports to include a government oversight body like those found in Europe. In addition, it needs to implement new legislation for dealing with sports labor disputes.

B. *How Should We Change the System?*

1. Create an Oversight Body for Professional Sports Like Those Found in Europe

For European professional sports teams, strikes are a rarity.¹⁵⁷ As discussed in Part II.B., the same cannot be said for American professional sports. The higher incidence of American sports strikes is even more notable given that strikes in general are much more prevalent in Europe.¹⁵⁸

It is important for America to create a governmental body similar to those seen in European countries to regulate professional sports for two reasons. First and foremost, the American government's "hands-off" approach lends itself to frequent work stoppages. Left to their own devices, sports leagues and players are too quick to use economic weapons which result in a work stoppage. As discussed above, work stoppages have a detrimental effect on the economy, individuals, and society as a whole.¹⁵⁹ Second, a regulatory body is needed to enforce the new proposed legislation for governing sports labor disputes, as discussed below.¹⁶⁰

In Europe, government bodies play an integral role in the oversight of professional sports leagues. For example, Spain's Sports Council has final approval over all rules and regulations relating to professional

¹⁵⁷ See generally Medcalfe, *supra* note 17.

¹⁵⁸ *Id.* at 29 ("In 2000 there were 966 strikes and lockouts in Italy, 750 in Spain, 212 in the U.K. and only 39 in the U.S.").

¹⁵⁹ See *supra* Part III.A.

¹⁶⁰ See *infra* Part III.B.2.

sports leagues.¹⁶¹ Comprised of representatives from within the State Administration, autonomous communities, and local and national sports federations, the members of the Council's Steering Committee have broad leeway to step in and oversee all aspects of professional sports, including labor relations.¹⁶² In addition, Spain's President may ask the Council to conduct studies and issue opinions or reports on issues pertaining to professional sports.¹⁶³ Policymaking can be a valuable tool in shaping the outcome of disputes.

Similarly, England's Department for Culture, Media, and Sport serves an advisory role in the professional sports sector.¹⁶⁴ Each professional sport in England is run by a National Governing Body (NGB), which sets the rules and regulations for that particular sport.¹⁶⁵ These NGBs are similar to the professional sports leagues found in the United States. The Department of Culture, Media, and Sport works closely with these bodies to advise on government policy issues, encourage the NGBs to better govern their sport, and help to operate traditional sports in a commercial environment.¹⁶⁶ This crucial advisory role allows the government to shape professional sports and to encourage the NGBs to act in the best interest of the country.

In addition to national governing bodies, European sports, and soccer in particular, are subject to oversight from international governing bodies such as FIFA and UEFA.¹⁶⁷ FIFA is the world governing body of soccer, while UEFA specifically governs European soccer.¹⁶⁸ Thus, all professional soccer teams are subject to the rules put forth by FIFA, and all European soccer teams are additionally subject to UEFA's rules. These international bodies serve more of an active role than the more advisory national organizations, illustrating yet another level of organizational control to which European professional sports must answer.

¹⁶¹ *The Legal System in Sport*, CONSEJO SUPERIOR DE DEPORTES, <http://www.csd.gob.es/csd/legislacion-en/01rexime-xuridico-do-deporte> (last visited Mar. 8, 2013).

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *What We Do: Professional Sport*, DEP'T FOR CULTURE, MEDIA & SPORT, http://www.culture.gov.uk/what_we_do/sport/3468.aspx (last visited Mar. 8, 2013).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Rodney Fort, *European and North American Sports Differences(?)*, 47 SCOT. J. POL. ECON. 431, 434 (2000).

¹⁶⁸ *Id.*

FIFA is a comprehensive international organization, established under the laws of Switzerland, which oversees all aspects of professional soccer.¹⁶⁹ Its headquarters are in Zurich.¹⁷⁰ Its main governing body is the FIFA Congress, which meets once a year to pass or change its statutes.¹⁷¹ The Congress elects all members of FIFA's Executive Committee, including the President and the General Secretary.¹⁷² The Executive Committee is the main decision-making body when the FIFA Congress is not in session.¹⁷³ One of FIFA's main purposes is to provide dispute resolution. To this end, the Dispute Resolution Chamber (DRC) acts as an arbitration body for disputes arising between players and clubs.¹⁷⁴ The DRC decides disputes based on a five-member vote; two player representatives, two club representatives, and one chairman all have a say.¹⁷⁵ The FIFA system is an effective means of dispute resolution, and helps to keep the number of strikes in professional soccer to a minimum.

In addition to compliance with FIFA, European soccer clubs must also follow the rules of UEFA. UEFA is organized in much the same fashion as FIFA, with a Congress, an Executive Committee headed by a President, a General Secretary, and numerous committees.¹⁷⁶ It also has its own statutes and "Organs for the Administration of Justice," which include the Control and Disciplinary Body, the Appeals Body, and the Disciplinary Inspector.¹⁷⁷ Together, these three organs issue decisions based on UEFA statutes.¹⁷⁸ Along with FIFA, UEFA helps to organize and standardize professional sports in a way that is unparalleled in the United States.

The existence of a neutral, third-party oversight body could help to take sports disputes out of the hands of self-interested parties and put them into the hands of those entrusted with preserving the country's interests or the interests of the game itself. When a labor dispute arises, a national sports oversight organization would be concerned with how

¹⁶⁹ *The Organisation*, supra note 119.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *About UEFA*, UEFA.COM, <http://www.uefa.com/uefa/aboutuefa/organisation/index.html> (last visited Mar. 8, 2013).

¹⁷⁷ *UEFA Organs for the Administration of Justice*, UEFA.COM, www.uefa.com/uefa/aboutuefa/organisation/legaljustice/index.html (last visited Mar. 8, 2013).

¹⁷⁸ *Id.*

the dispute and possible work stoppage would affect the country. This kind of third-party intervention is unheard of in American professional sports labor disputes, but that needs to change.

The United States needs to create an oversight body to handle all aspects of professional sports, including labor relations. The body should incorporate some aspects of the European national organizations, like the Spanish Sports Council and the English Department of Culture, Media, and Sport, as well as some aspects of international organizations like FIFA and UEFA. For example, the advisory and policymaking role taken by Spain's Sports Council would go a long way toward giving the American government a voice in sports labor negotiations. Getting the government involved in the quick resolution of sports labor disputes is essential because, as discussed above, preventing negotiations from turning into a protracted work stoppage is in the best interest of the country.

Additionally, the new body should enforce its own statutes through its own dispute-resolution system, similar to the structure of FIFA. While an advisory and policymaking role is a crucial step, the body needs to have real power to effect change and prevent long work stoppages. The question then becomes: What legislation should the new body enforce?

2. Implement Legislation Based on the Railway Labor Act

The creation of a new governing body to oversee professional sports would be meaningless if it simply applied the current NLRA model. The new body needs to enforce a new piece of legislation that enables intervention in sports labor disputes and encourages their timely resolution. While it would be extremely helpful to model a U.S. governing body for professional sports on existing governing bodies in Europe, a viable model for the new body's legislation already exists in domestic law.

The NLRA, when applied to professional sports, results in a system that incentivizes the use of economic weapons rather than the use of mediation and negotiation.¹⁷⁹ The result of this strategy is a culture of comparatively frequent work stoppages that, as discussed above, has numerous negative effects on the host cities of professional sports teams. However, these work stoppages are markedly different from

¹⁷⁹ Yorgakaros, *supra* note 56.

work stoppages in other industries, because professional sports are not like other industries.

An applicable example is the automobile industry. If workers strike at Ford, they immediately put the company at risk of falling behind its competitors, but the strike does not affect consumers' ability to purchase an automobile.¹⁸⁰ Likewise, if Ford locks out its employees, the employees take a short-term financial hit, but they can obtain jobs with other employers within the same industry.¹⁸¹

The same cannot be said of professional sports. There is only one employer: the league. There is only one pool of workers: the players. And both sides are incentivized to use economic weapons because both sides have a lot of leverage. For example, the league cannot hire players of the same quality should there be a work stoppage, and the players cannot play elsewhere without losing out on enormous amounts of money.¹⁸² The natural result of this system is that work stoppages are commonplace and widespread.

In light of this unique dynamic between professional athletes and team owners, an ideal system for dealing with labor relations in professional sports would be one which emphasizes mediation and negotiation and minimizes or eliminates the use of economic weapons. While the United States should look to Europe in terms of forming a governing body to oversee all aspects of professional sport, we can find a source for the new legislation that the body will implement right here at home. As George Yorgakaros suggests, instead of applying the NLRA to professional sports disputes, we should apply some version of the Railway Labor Act (RLA).¹⁸³

The RLA was enacted in 1926 and expanded in 1936 to apply to airlines.¹⁸⁴ The purpose of the RLA is to avoid interruption of interstate commerce by providing for the prompt resolution of labor disputes while still protecting the right of employees to bargain collectively.¹⁸⁵ It does so by imposing a duty on the parties to undertake all reasonable efforts toward negotiating a settlement before allowing for

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ See Gershenfeld, *supra* note 22.

¹⁸⁴ Railway Labor Act of 1926, 45 U.S.C. §§ 151–188 (2006); Yorgakaros, *supra* note 56.

¹⁸⁵ FED. R.R. ADMIN., HIGHLIGHTS OF THE RAILWAY LABOR ACT (“RLA”), AND THE U.S. DEPARTMENT OF TRANSPORTATION’S (“DOT”) ROLE IN RLA DISPUTES 1, available at <http://www.fra.dot.gov/eLib/Details/L03014>.

¹⁸⁵ *Id.*

the use of economic weapons.¹⁸⁶

Industries that are essential to the public interest are regulated by the RLA.¹⁸⁷ These are industries that should be discouraged from work stoppages because they would affect the rest of the country's economy.¹⁸⁸ For example, airline and railway companies are privately owned. But were they to strike, the effect on the nation's economy would be significant.¹⁸⁹ Thus, the RLA severely limits the ability of employers and employees to use work stoppages as economic weapons.¹⁹⁰ This approach has been described as a hybrid of the NLRA and public sector labor law.¹⁹¹

The RLA has many provisions that encourage the use of mediation and limit the use of economic weapons.¹⁹² Under the RLA, contracts, such as collective bargaining agreements, do not expire; instead, they have a date after which they can become amendable.¹⁹³ Taking the pressure out of the situation removes the need to ratify a new collective bargaining agreement quickly as the expiration approaches or risk the possibility of a work stoppage.

Strikes and lockouts cannot be used for disputes classified as "minor."¹⁹⁴ As applied to professional sports leagues, these classifications could be made by professional sports' new governing body, discussed above. The new governing body could use FIFA's Dispute Resolution Chamber as a model for handling labor disputes.¹⁹⁵ The RLA only al-

¹⁸⁶ *Id.*

¹⁸⁷ Gershenfeld, *supra* note 22.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *E.g.*, Railway Labor Act of 1926, 45 U.S.C. § 152 (2006). This section lists the General Duties of carriers and employees, including the duty to "exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce" *Id.* For a discussion of the RLA's collective bargaining requirements, see *Elgin, J & E Ry. Co. v. Burley*, 325 U.S. 711, 725 (1945) ("The parties are required to submit to the successive procedures designed to induce agreement.").

¹⁹³ FED. R.R. ADMIN., *supra* note 184, at 2.

¹⁹⁴ *Elgin*, 325 U.S. at 725-27. Prior to the 1934 amendments to the RLA, parties had the right to strike for "minor" disputes, and "[t]hey exercised this power to the limit. Deadlock became the common practice, making decision impossible. The result was a complete breakdown in the practical working of the machinery." *Id.* at 726; *see also* FED. R.R. ADMIN., *supra* note 184, at 3.

¹⁹⁵ *The Organisation*, *supra* note 119.

lows for the use of strikes and lockouts for disputes classified as “major.”¹⁹⁶ Even for these “major” disputes, strikes and lockouts may only be used after mandatory mediation, non-binding arbitration, and a required cooling-off period.¹⁹⁷ Requiring parties to wait a set period of time reduces the role of emotional decision-making and relegates the use of economic weapons to a measure of last resort.

As applied to professional sports, the RLA-type legislation would require parties to make more of a genuine effort at negotiating a resolution through mediation and arbitration before allowing a party to initiate a work stoppage. Removing this arrow from the parties’ arsenals, even if only temporarily, would be a great departure from the normal negotiating process in this sector, where sides are quick to strike as the expiration of a collective bargaining agreement approaches. Indeed, much of the pressure surrounding the expiration of a collective bargaining agreement could be alleviated by removing the expiration date altogether, and instead providing a date after which it could be amended. Without the ticking time bomb of the collective bargaining agreement’s expiration looming overhead, the parties can take their time to work out amendments to the old agreement or even draft an entirely new agreement. There would be no deadline, and no need to play hardball with economic weapons.

The implementation of some sort of RLA-type legislation for governing professional sports’ labor disputes, coupled with the creation of a government oversight body for sports similar to those found in Europe, would go a long way toward reducing the number, frequency, and duration of work stoppages. This would be beneficial to the host city and, in turn, beneficial to the American economy as a whole.

IV. CONCLUSION

The current American system for dealing with professional sports labor disputes is broken. More often than not, these disputes result in work stoppages that can cancel games or even entire seasons. The resulting culture of frequent work stoppage is costly in both economic and noneconomic terms, and should be avoided if possible. It is for this reason that the United States needs a new system for dealing with sports labor disputes.

Professional sports have become a part of American culture. As such, they have a significant economic impact on the country. When

¹⁹⁶ *Elgin*, 325 U.S. at 723–24.

¹⁹⁷ Gershenfeld, *supra* note 22.

sports are thriving, they bring in large amounts of money for their host cities. They provide countless jobs to residents of the host city, as well as to those working in secondary industries. They increase property values in the host city. But when professional sports are interrupted by a work stoppage that can cancel part or even all of a season, a massive vacuum is left in the affected local economies. The revenue stream provided by the sports team dries up. People lose jobs. Property values decrease. An industry upon which so much and so many depend should not be allowed to harm the economy in such a way simply because it is the strategic, self-interested thing to do for owners or players.

Separate from (and perhaps even more important than) the economic impact of professional sports teams, psychological impacts can be immense. Studies suggest that viewers of professional sports experience a sense of physical and mental well-being as a result. Professional sports can also provide a safe means of experiencing stimulation, risk, and desired stress. In this same vein, many fans enjoy sports as a legitimate focus for pent up aggression, another example of the psychological benefit of watching professional sports. In a more traditional sense, the viewing of professional sports is an excellent source of entertainment. The simplicity of this statement does not negate its undeniable truth.

While the individual psychological benefits of viewing professional sports may be hard to define, the social benefits are much clearer. The viewing of sports, by its very nature, is a social activity. Cheering for one's team fosters a sense of community in a host city. This sense of civic pride is unique to the sports industry, and it is another powerful noneconomic benefit provided by professional sports.

Because professional sports provide so many benefits to individuals, host cities, and society as a whole, a system that encourages frequent and protracted work stoppages does not make sense. The owners and players should not be incentivized to initiate a work stoppage at the drop of a hat, as is the case under the current NLRA/NLRB regime. Instead they should be encouraged, if not compelled, to exhaust every available means of dispute resolution before initiating a work stoppage that will affect so many people in so many ways. Therefore, we need a strong governing body, like those found in Europe, to ensure that these stoppages are not commonplace. Additionally, we need to use new legislation to govern the disputes, because the NLRA, as applied to professional sports, does not encourage cooperation.

History has shown that the NLRA, as applied to sports labor disputes, simply does not work. The incentive is too great for players and owners to use economic weapons rather than pursue mediation or negotiation. While waiting for the other side to blink in a lengthy test of wills may be fine for the parties involved, it is detrimental to the rest of the country. There is no replacement product for a sports league that is on strike; the country must simply live without it. As discussed above, this is not an acceptable outcome. Too many people rely on professional sports for their livelihood and enjoyment. The leagues should not be able to prop people up with jobs and entertainment when the labor situation is stable, only to pull the rug out from beneath them at the first sign of a labor dispute. Additionally, the leagues should not be allowed to initiate a self-interested work stoppage so flippantly when the stoppage will have such a detrimental effect on the economy. Thus, the United States needs to implement new legislation that discourages the use of economic weapons in sports labor disputes and instead focuses on mediation and negotiation. Placing a stronger emphasis on continuing negotiation would greatly reduce the frequency of deadlocks and resulting work stoppages.

Additionally, the NLRA hampers the courts from becoming involved in sports labor disputes. While European countries are free to intervene in order to stop or prevent a work stoppage, American courts may only get involved after all NLRA remedies have been exhausted. Requiring such procedural hurdles further promotes the prevalence of work stoppages in American professional sports, and is another reason we need to put an end to the NLRA/NLRB regime and implement new legislation for dealing with these disputes.

The creation of a government board to oversee professional sports would help to remedy the problem. The United States can no longer afford to take a hands-off approach with respect to professional sports. The negative impact of work stoppages is too great. Instead, we need to create an overarching government body to regulate professional sports. The body should have features of European national governing bodies, such as a policymaking agenda and public commentary on sports, as well as features of international governing bodies, such as an internal legislative body and a means for dealing with labor disputes. With so many other industries being closely regulated by the U.S. government, it makes sense to regulate this industry as well, as it has a significant effect on the American way of life.

The fundamental issue here is how we look at sports. To some, sports may seem like an unnecessary luxury, and a work stoppage may seem like a minor annoyance. But sports are so much more than that.

They are a fundamental part of our country. They are essential to our national economy and to the local economies of cities that host professional teams. Further, sports give us less tangible benefits, such as a sense of community, belonging, and personal well-being. Sports are an important part of our history. We need to ensure that they continue to be a part of our present and future.

