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A BRIEF HISTORY OF SPORTS LABOR STOPPAGES: THE ISSUES, THE LABOR STOPPAGES AND THEIR EFFECTIVENESS (OR LACK THEREOF)

Genevieve F.E. Birren*

INTRODUCTION

Since the formation of the first players' union, both the unions and management have used a variety of strategies when dealing with one another. Labor stoppages have been used by both sides and the consequences of those approaches have been equally varied. The 1994 baseball strike that cancelled the World Series, the shortened National Basketball Association (NBA) season due to lock-out, and the entire 2004-2005 National Hockey League (NHL) season that was cancelled due to a lock-out are three of the more extreme and public examples of labor disputes in professional sports.

Patterns of behavior have appeared in labor relations in professional sports. The most known and extensive were the labor stoppages that occurred in Major League Baseball (MLB) after the expiration of every collective bargaining agreement (CBA) prior to 2002. Why labor stoppages and other issues repeatedly occur are questions that have no definitive answer, or, perhaps, just no solution. However, whether these stoppages have been effective is one that may be answerable.

Effectiveness

What does it mean to be effective? The Merriam-Webster dictionary defines effective as “producing a decided, decisive, or desired effect.”¹ The Business Dictionary defines it as “[T]he degree to which objectives are achieved and extent to which targeted problems are solved.”²

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At the most fundamental level, all of the work stoppages in sport have been effective as they have eventually led to a new CBA and a resumption of games and league operations. However, such a view of labor stoppages, as stand-alone events, is short-sighted and does not look at the broader history.

Money is the most common criteria that is used to measure a sport’s effectiveness—how much money are the players getting paid overall, how large are their salaries, how much revenue does the league bring in, etc. Based on salary, it appears that the National Basketball Players Association (NBPA) is the most effective union with the average player salary over $5 million a year.\textsuperscript{3} The National Football League Players Association (NFLPA) would appear to be the least effective under this comparison, as the average National Football League (NFL) player makes less than $2 million per year.\textsuperscript{4} However, this comparison is unreasonable since and NBA team has 15 players and an NFL has 54.

The NFL could easily be viewed as the most effective league, as it brings in the largest amount of revenue, $9.5 billion in 2012.\textsuperscript{5} Of the four being examined in this study, the league with the next highest revenue is MLB, with $6.36 billion in 2012.\textsuperscript{6} However, given the huge disparity in the number of games, total season attendance, and sponsorship and media deals, league revenue is also not the best measure of effectiveness.

Financial concerns are generally the primary issues involved in a labor stoppage, so instead of examining the exact numbers of each league, this study is instead concerned with whether labor stoppages led to resolutions of the problems that caused the stoppage. Specifically, do labor stoppages provide long-term issue resolution?

**Prior Research**

There are no studies or papers that examine the effectiveness of the various labor stoppages on issue resolution. There are numerous arti-

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icles that discuss specific labor stoppages and their outcomes or examine the labor history of a particular sport\(^7\), but none that look at the larger body of labor stoppages in American professional sport. Using studies involving non-sports labor stoppages to draw conclusions about sports unions is unreasonable, because the activities of non-sports unions and management are seldom as public as those of sports; their employees are not as highly-paid, as famous, or considered public role models. This puts sports in a unique position from other unions and they cannot be compared.\(^8\) Sports labor stoppages and their effectiveness have to be compared to each other.

The scope of this article is limited to the major four sports leagues and their respective unions. These unions have a far longer history than other sports unions and they have dealt with a wide array of issues and tried many different tactics, thus providing a diverse group. First, the labor history of each of these sports, then they will be examined for effectiveness. The final section discusses what other sports' unions can learn from the big four's experiences.

**THE HISTORY OF LABOR STOPPAGES BY SPORT**

**MLB/MLBPA History**

There is little question that baseball has the most documented and contentious labor history.\(^9\) Prior to the 2002 CBA, baseball had a labor stoppage during every CBA negotiation except the first. The 2002-2006 CBA was the first negotiated in over 30 years without a labor stoppage. The 2007-2011 and 2012-2016 CBAs were also reached without any stoppage. Whether this is a new trend in labor relations in professional baseball remains to be seen, but it is a significant departure from the contentious 35 years prior.

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The first CBA in baseball was in 1968 and was a two year agreement. As the first CBA in professional sports, it was a novelty and both sides were treading in unfamiliar waters. There was no work stoppage during this initial negotiation, the only time this would happen for the next 34 years.

Several issues were the focus of this CBA. The original focus of the MLBPA was to increase the players' minimum salary from $6,000.00 per year to $12,000.00 per year and eliminate the reserve system, although the MLBPA did not expect to achieve very much on the latter issue. The final agreement included the first-ever Uniform Player's Contract and a formal grievance procedure, as well as an increase in the minimum salary, although not for full amount.

Although the CBA was for two years, labor peace would not last that long in professional baseball. In 1966 the players and owners signed a three year agreement regarding only player pensions and insurance which was separate from the CBA. When the benefit plan came up for renegotiation, the owners were not cooperating, so the players voluntarily agreed not to sign their contracts for the upcoming season. This worked and a new three-year benefit plan was agreed to in early 1970 without an interruption to the baseball season.

The 1972 CBA negotiation and strike was the unmistakable point of baseball's deteriorating labor relations. The only issue up for negotiation in 1972 was the benefit plan. The players wanted a $500,000 per year increase in the owners' contribution toward health insurance, to which the owners initially agreed. What the owners refused to agree to was an increase retirement benefits at the same rate as cost of living benefits. Later, the owners also lowered their offer on their health insurance contribution.

Negotiations failed to progress and throughout a series of meetings with the teams, the players took a preliminary vote of 663-10 in favor of a striking if necessary. A final vote of 47-0 of the team representa-
tives made the strike official.20 The strike, the first in professional sports, lasted only thirteen days, resulted in the cancellation of 86 games and ultimately gained the owners agreement to both of the players requests.21 The 1973 CBA came quietly after the strike. The players’ won the right to impartial salary arbitration,22 which was an improvement from just having impartial grievance arbitration in the 1970 CBA.

The next CBA negotiation was in 1976, which resulted in the first lock-out in professional sports. The major issue was free-agency.23 The players had won free-agency after one year through arbitration, a decision the owners tried to ignore and something that even MLBPA management agreed was not the best scenario.24 The owners’ response was to offer the following free agency proposal:

... [I]n order for a player to be eligible for free agency he would have to be in the majors for nine years. If no agreement could be reached after an additional year (his tenth season – the option year), that player would become a free agent, unless the club offered him a contract of $30,000 or more. The $30,000 would apply to all players, including superstars, and would remain unchanged over the next four years. In addition, the club that acquired the free agent would have to pay a large cash settlement to the departing player’s team.25

The MLBPA refused this offer and a stalemate began. The owners ended up locking the players out of spring training for seventeen days, although the negotiations took longer.26 A final agreement was reached four months later, granting players free agency after six years, the right to demand a trade after five years, and the right to designate up to six teams they did not want to be traded to.27 The owners were not happy with the agreement and labor relations between MLB and the MLBPA deteriorated over the course of the agreement.28

In 1980 the CBA was again up for renegotiation. Free agency was the primary issue: the owners wanted it ended, claiming that it was the cause of teams losing money due to high salaries and a loss of competitive balance.29 The union refused, and combined with the already de-

20. MILLER, supra note 9, at 212.
21. Id. at 221-222.
22. Id. at 109.
23. Id. at 255.
24. Id. at 254-258.
25. MILLER, supra note 9, at 256.
26. Id. at 264.
27. Id. at 267.
28. Id. at 275-285.
29. Id. at 287-288.
teriorating labor relations that had developed over the previous four years, there was an immediate standstill. No agreement was reached, but there did appear to progress for awhile, so baseball continued with no CBA in place. However, nothing was accomplished and the owners declared an impasse and implemented their last offer.\textsuperscript{30} The result is that the players struck.

The strike lasted 50 days and the union was the victor. The settlement resulted in the creation of the player pool and no team compensation for free agents.\textsuperscript{31} Because the CBA took so long to negotiate and the strike had damaged the season, the players did agree to extend the agreement and benefit plan through 1984, a year longer than originally intended.\textsuperscript{32}

The 1985 CBA resulted in the first failure by the MLBPA. Salary arbitration eligibility was increased from two years of service to three and the union agreed to less then one-third of national broadcast revenue for the pension plan for the first time ever.\textsuperscript{33} There was a walkout, but it lacked player support and lasted only two days.\textsuperscript{34}

Following the 1985 negotiations, the owners instituted collusion. Although the players had some free agency, it was rendered useless because the owners agreed among themselves not to bid on each other's free agents. The result was that although a player had the right to go another team and offer his services, there were no takers. Only one player switched teams due to his free agency during this time. This lasted through at least 1988.\textsuperscript{35}

Free agency became the main issue of contention during the 1990 CBA negotiations, although a number of other issues were brought up as well: salary caps, revenue sharing, salary arbitration and pay-for-performance.\textsuperscript{36} The final CBA did not include a salary cap, greater limitations on free agency or revenue sharing, although did include a compromise on salary arbitration.\textsuperscript{37} During the negotiation, the owners locked the players out of spring training for 32 days.

Four years later came the longest work stoppage in baseball history, and at the time in professional sports. The 1994-1995 strike lasted 232 days and resulted in the cancellation of the World Series. The primary issues were a salary cap of fifty percent of the national broadcast deal,
the length of service before free agency eligibility (the owners wanted it lowered from six years to four) and salary arbitration.\(^\text{38}\) The union refused to have a salary cap and the result was a strike.\(^\text{39}\) Although the labor stoppage was ended to allow the 1995 season to progress, the new CBA, a six-year agreement was not signed until 1996.

In 2002 the CBA expired and it appeared that there would be a ninth work stoppage in as many negotiations. However, hours before the walk-out deadline, a deal was reached in a four-year CBA.\(^\text{40}\) The main issues were revenue sharing and the luxury tax.\(^\text{41}\)

The players wanted no luxury tax in the final year of the deal— they did not get it.\(^\text{42}\) There was a fairly even compromise on the revenue sharing, with the players wanting a four-year phase-in of revenue sharing with full sharing the fourth year only and the owners wanted no phase-in with full sharing in all years.\(^\text{43}\) The result was a partial phase-in and the last two years at full revenue sharing.\(^\text{44}\)

The 2002 CBA negotiations were the first time the MLB and the MLBPA actually compromised and did not stick to their respective win-at-all-costs mentality. This appears to have become a pattern since the 2007 and 2012 CBAs were also achieved without a labor stoppage.\(^\text{45}\) This CBA was also noted by commentators as not having any "revolutionary" changes to it and it was basically a continuation of the previous agreement.\(^\text{46}\) There were minor changes to agreement in the minimum salary, the free agency date, the competitive balance tax and revenue sharing funds.\(^\text{47}\) No changes were significant and no new features were added to these topics.

\(^{38}\) Devine, supra note 9, at 59-60.

\(^{39}\) Id. at 60-61.


\(^{41}\) Id.

\(^{42}\) Id.

\(^{43}\) Id.

\(^{44}\) Id.


\(^{46}\) Id.; MLB Labor Deal Includes Changes to Tax Rate, Minimum Salary, Sports Bus. Daily, October 26, 2006, located at http://www.sportsbusinessdaily.com/index.cfm?fuseaction=article.main&articleId=106867&keyword=MLBPA.

\(^{47}\) MLB Labor Deal, supra note 46.
Prior to 1998, the NBA was the only sport to not lose a regular season game to a labor dispute, having had only one prior significant labor stoppage—a three month lockout during the 1995 pre-season. This lockout, although not disruptive to the regular season, was important to the future labor relations between the NBA and the NBPA.

The NBPA, in 1983, was the first of the major professional sports unions to agree to some type of salary cap and revenue sharing scheme. After eleven years of labor peace, the CBA expired in June of 1994. In October of 1994 both sides made a no-lockout, no-strike agreement that allowed the 1994-1995 seasons to conclude uninterrupted, and was later extended through June of 1995.

A deal was announced in late June of 1995 but the players refused to ratify it. Some players even explored decertifying the union. The owners locked-out the players and the union agreed to decertify if a deal was not struck by August 8th, 1995. On the August 8th a tentative deal was announced and the players subsequently voted not do decertify the union and voted to approve the six year CBA in September.

In 1998, less then three full years into the six year CBA agreed to in 1995, the owners decided to exercise their right to reopen the CBA at the end of the season. Negotiations failed and on July 1st the owners locked-out the players. The lockout lasted six months and five days, causing the 1998-1999 season to be shortened by several months.

Only one issue was the cause of the reopening of the CBA and the lockout – the salary cap. The owners wanted to further limit salary

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48. On July 10, 1996 there was an additional lockout that lasted a matter of hours.
51. Id.
52. Id.
53. Id.
54. Id.
55. NBA Labor Chronology, supra note 50.
56. Id; see also; Key Dates in NBA Labor Battle, CHICAGO SUN-TIMES, September 13, 1995, Sports, pg. 125.
57. Key Dates, supra note 51.
58. Id.
59. Id.
increases and the players did not. Eventually the owners did get an amendment to the CBA with a stricter salary cap.

In 2005, the NBA and NBPA came to the precipice of another labor stoppage. They managed to agree to a new deal before the owners instituted another lockout. The primary issues were the same as previous years – the salary cap and free agency. The cap ultimately went up and maximum contract lengths were reduced to six years, which means that players are free agents sooner. Drug testing was also at issue and a testing regime was agreed to, which was probably the result of MLB's steroids scandal. A minimum age limit was also established, which was most likely instigated by the Maurice Claret case against the NFL.

Many people feel that the NBA and NBPA came to an agreement without a labor stoppage because of the situation that was occurring at the same time with the NHL. Although NBPA Executive Director Billy Hunter stated that hockey's situation would have no impact on their [the NBPA] negotiations, it was difficult to believe that this was true, given that Mr. Hunter also stated that he did not see any reason why the union would agree to an age limit, which they did.

The expiration of the 2005 CBA in 2011 led to another labor stoppage in the NBA, again a lockout. The primary issues of contention in this lockout involved the owner/player split of basketball related income (BRI), a hard salary cap, reduced compensation, and the elimination of guaranteed contracts. These issues were resolved with a reduced player share of BRI from 57% to 49-51%, an increase in the luxury tax penalty for going over the soft cap, an increase in the salary floor from 75% of the cap to 85-90%, and a reduction of the maximum length of contract from 6/5 years to 5/4 years. This lockout
lasted 149 days reduced the 2011-2012 season to 66 games, from the usual 82.\textsuperscript{70} The resulting CBA lasts through 2021.

**NFL/NFLPA History**

The labor relations between the NFL and NFLPA have a long and contentious history, involving methods taken by no other professional sports union. The relations between the NFL and the NFLPA, although at some points very similar to the labor relations in baseball, differ in one very important way: the NFL is subject to the antitrust laws.\textsuperscript{71} The result of this is that the players in the NFL have the courts as recourse for their grievances, which professional baseball players have never really had due to the baseball antitrust exemption.\textsuperscript{72} This ability to sue in court is the main element that results in the very different methods used by the NFLPA and the MLBPA and their successes.

The first CBA was signed in 1968. There was a brief labor stoppage during training camp over pension contributions, but it did not last long and the CBA was agreed ratified.\textsuperscript{73} In 1970 there was seventeen day lockout by the owners followed by a two day strike by the players.\textsuperscript{74} The primary issues were compensation, the reserve system and grievance procedures, although a number of other issues were addressed in the CBA. The final agreement was four years and included a raise in the minimum salary, increased pensions and health coverage, impartial grievance arbitration, player representation on the Retirement Board and the right to use agents.\textsuperscript{75} However, there was no change in the reserve system.

The 1974 negotiations marked the first major labor relations conflict in professional football. There were a number of issues of importance to the players. These included: “[e]limination of the option clause and Rozelle Rule, which limited free agency; [i]mpartial arbitration of all disputes; [e]limination of the draft; [e]limination of the


\textsuperscript{72} Federal Base Ball Club of Baltimore, Inc. c Nat’l. League of Prof. Base Ball Clubs, 259 U.S. 200 (1922).


\textsuperscript{74} NFLPA Website, located at http://www.nflpa.org/

\textsuperscript{75} Id.
waiver system; [a] new, individual contract to protect players, including guaranteed payment of salaries.\(^7\)\(^6\)

The Rozelle Rule involved an automatic one-year option clause in the Standard Player Contract that permitted the owner to option their own players for one year at 90% their previous salary. The result was that players were coerced to sign new contracts and get paid more money then work under the option and get less. Furthermore, Commissioner Rozelle required that in order to play on an NFL team, every player must sign the Standard Player Agreement containing this clause. The result was that there was not free agency.

The owners refused to bargain and the players went on strike, which lasted 41 days.\(^7\)\(^7\) At that point the players realized that the owners were not going to bargain, called off the strike, and filed antitrust and labor lawsuits.\(^7\)\(^8\)

The NFLPA won these lawsuits and a new CBA was signed in 1977 after three years of working without one.\(^7\)\(^9\) Although the players did not win all of their demands, they won some, most importantly the elimination of the Rozelle Rule, as well as increased benefits, impartial arbitration of non-injury grievances, and reforms to the waiver system and the option clause.\(^8\)\(^0\)

However, free agency was not a success because the owners did not bid on free agents for a number of reasons. The price – a first-round draft pick – was too high for most free agents and the revenue sharing that the owners had instituted themselves meant that they made a profit whether their team was successful on the field or not, so there was little incentive to bid on players.\(^8\)\(^1\) So when the CBA ended in 1981, the NFLPA tried a different approach.

In 1982 the NFLPA suggested that there be a salary cap of 55% of league-wide revenues and that player salaries would be determined by team and player performance, years of service and playing time, not on when the player was drafted.\(^8\)\(^2\) The owners summarily rejected this, claiming they did not want the players as a partner, so the players struck and the owners responded by locking them out of team properties.\(^8\)\(^3\) This stalemate lasted two months before a new agreement was reached.

\(76.\) Id.
\(77.\) Id.
\(78.\) Id.
\(79.\) NFLPA WEBSITE, supra note 74.
\(80.\) Id.
\(81.\) Id.
\(82.\) Id.
\(83.\) Id.
The agreement was the result of the realization that with failure the entire season would be cancelled and because the owners finally agreed to a significantly increased salary and benefit package that amounted to over 50% of league revenue. The players ultimately got most of what they were looking for, albeit not in the terms they wanted, along with expanded medical rights, other monetary benefits and the owners' agreement that they would not negotiate with any agent not certified by the NFLPA.

Up to this point the NFLPA had had success, but had not gotten everything they wanted and some of the agreements had not worked as the players though they would. In 1987 free agency was the single most important issue to the players. Previous restricted free agency schemes had produced virtually no player movement, and were clearly not working as the players wanted. Again the owners rejected the players' demands and again the players struck.

This time the owners decided to use replacement players instead of allowing games to go unplayed. It became apparent that the strike was not going to work and was called-off after only a month. Instead, the NFLPA filed an antitrust suit, which they won at the District Court level. The owners appealed and won in the Eighth Circuit, with the court stating that so long as the union represented the players, they had no standing to sue under the antitrust laws. So on December 5th, 1989 the players did something never done before in professional sports – they decertified their union.

The NFLPA became a professional association, specifically prohibited from collective bargaining, but with the purpose to represent the players in their lawsuits against the NFL. In the spring of 1990 the NFLPA filed the McNeil case. Over two years later the case went to trial and after fifty days of trial proceedings and two days of deliberation, the jury came back in favor of the players. This did not win free agency, just prohibited a specific restriction by the owners. However a number of other cases were won by the NFLPA and others were filed

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84. NFLPA WEBSITE, supra note 74.
85. Id.
86. Id.
87. Id.
88. Id.
89. NFLPA WEBSITE, supra note 74.
90. Id.
91. Id.
92. Id.
93. Id.
94. NFLPA WEBSITE, supra note 74.
95. Id.
and the NFL began to get concerned over the financial costs. In November of 1992 settlement talks began.

The owners wanted a salary cap, which ironically the players had essentially offered and the owners had rejected ten years earlier. The players wanted free agency. So they compromised; free agency in exchange for a salary cap. The cap was 64% of league revenue, with a minimum of 58% and the last year of the CBA was an uncapped year. Case settlement costs were also paid by the NFL.

In March of 1993 the players voted to recertify their union, after functioning for over three years with no union. For the first time in almost six years an official CBA was then negotiated, which incorporated the settlement as well as many other issues. The other important feature of the 1993 CBA was that along with the last year being uncapped, that year also extends free agency eligibility from four years to six. This provides both the NFL and the NFLPA with an incentive to renegotiate the CBA before the last year is reached. The players are hurt by the restriction on free agency and the owners are at financial risk because without a cap, huge bidding wars could break out over the available players. Both sides did not want these things to happen, so it was believed that both had sufficient incentive to return to the negotiating table and make a new deal prior to the expiration. That worked for awhile, but failed to do so in 2011.

1993-2011: Those eighteen years of continuous labor peace in football had been the longest in professional sports. However, when the CBA expired in 2011, the NFL locked the players out, a lockout that lasted 132 days, and one pre-season game, the Hall of Fame game was cancelled as a result. The NFLPA decertified the union as it had done in 1989 and the players filed an antitrust action in federal court. The lockout was resolved before the court had to rule on the merits of the claim and the case was dismissed when the new agreement was reached, in addition to the re-certification of the NFLPA.

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96. Id.
97. Id.
98. Id.
99. NFLPA Website, supra note 74.
100. Id.
101. Id.
102. Id.
103. Id.
104. NFLPA Website, supra note 74.
105. Carpenter, supra note 68.
The main issues in this dispute were revenue sharing between the players and owners, free agency, the salary cap (and floor), and contract lengths. Under the new agreement, the players' portion of shared revenue dropped from 50% to 47%. The salary cap was increased to $120m, increasing 10-12% each subsequent year, with a floor of 89%. Minimum contract lengths were reduced for drafted rookies, but instituted for the first time for undrafted rookies. Additionally, a rookie pay scale was established.

NHL/NHLPA History

The labor relations in hockey have been the least written about and documented of the four major professional sports leagues. This appears to be due to the fact that, prior to the 1990s, there was no real arms length bargaining between the NHLPA and the NHL. The Executive Director of the NHLPA from 1967 to 1991 was Alan Eagleson. During his time as Executive Director, he was well liked by the players, management, and the press. Eagleson maintained labor peace and collective bargaining was merely a formality, and for years people thought that he was doing an excellent job. In 1989 allegations emerged that Eagleson had conspired with NHL executives to suppress player salaries, embezzled from the NHLPA and generally failed to represent the interests of the players.

The players filed civil lawsuits against him and both the United States and Canada filed criminal charges against him. Some players won their suits, others did not. He was charged by the Royal Canadian Mounted Police for fraud. He was indicted in Massachusetts on thirty-four charges of racketeering, fraud and embezzlement. After four years of avoiding United States jurisdiction by remaining in Canada, he pled guilty in January of 1998 in Boston.

The result of this is that for almost twenty-five years the players in the NHL were not adequately represented. No labor disputes oc-

107. Id.
108. Id.
110. Mary Ormsby, Ex-NHL Head Cited in Lawsuit; Trio Conspired to Restrict Salaries, Players Allege, TORONTO STAR, November 9, 1995, at B1.
112. Id.
113. Id.
urred because there was not a genuine adversarial relationship. The players were kept relatively uninformed about labor issues, including the salaries of other hockey players. After Bob Goodenow became Executive Director, the players became more informed and labor disputes arose.\footnote{114}{Sports Union Conflicts; Labor Wars, \textit{Houston Chronicle}, Oct.23, 1994, § 2, at 25.}

In the 21 years since Eagleson left the NHLPA there have been four labor stoppages. The first was in 1992 and lasted 10 days during the Stanley Cup playoffs.\footnote{115}{Bob McKenzie, \textit{Buying Time for a Face Off: Owners, Players have until Oct. 15}, \textit{Toronto Star}, Oct. 27, 1994, at 1A.} The players stopped the strike but no agreement was reached.

Two years later there was still no new CBA since the expiration of the previous one in September of 1992. In October of 1994, Gary Bettman locked the players out and postponed the start of the 1994 season.\footnote{116}{Sports Unions Conflicts, supra note 114.}

The issues during both labor stoppages were the same since it was the same dispute. Player salaries had doubled since 1992 and the owners wanted some kind of salary cap or luxury tax to try to control salaries.\footnote{117}{Id.} Players also wanted a change to the salary arbitration system, making it more like MLB's, and increased free agency.\footnote{118}{Id.} There were also revenue sharing issues.\footnote{119}{Id.} Hockey managed to survive this tumultuous time and prospered over the next nine years — then the longest work stoppage in the history of professional sports occurred.

In 2004 the NHL became the first professional sports league to lose an entire season to a labor dispute. The owners again locked out the players, this time for 310 days.\footnote{120}{Helene Elliott, \textit{New Game for the NHL: Bettman Declares an end to the 310-day Lockout, but Rule Changes Figure to make the Biggest Splash when the League Resumes in October}, \textit{Los Angeles Times}, July 23, 2005, D1.} The primary focus of the dispute was financial, with several teams claiming that they were losing millions of dollars each season. Player salaries had continued to rise, the league had lost its basic television deal and its deal with ESPN was precarious at best and not very lucrative. The result is that the owners wanted a salary cap and the players did not. The owners also explored revenue sharing options, which they ultimately agreed to.\footnote{121}{Id.}

The final result has been heralded as a complete victory for the owners. Existing contracts were slashed by 24\% (something initially
proposed by the players); a hard rookie salary cap was instituted, as well as a hard team cap, although with in a revenue sharing plan that allots the players a certain percentage of league revenue.\footnote{Id.} All bonuses counted against the salary cap and free agents who were not signed by December 1st of a given year could not play that season, which was an attempt to end player holdouts.\footnote{Id.}

When the 2005 agreement expired in 2012 the NHL again locked the players out. This lockout lasted 119 days and reduced the 2012-2013 from the customary 82 games to 48 games per team.\footnote{Doug Kyed, NHL Lockout Officially Over as League, Players Sign Memorandum of Understanding, NESN, January 12, 2013, located at http://nesn.com/2013/01/report-nhl-lockout-officially-over-as-league-players-sign-memorandum-of-understanding/} The primary items at issues were revenue sharing, contract lengths, signing bonuses and salary payments, and free agency.\footnote{Sources: NHL makes First CBA Offer, ESPN.com, July 14, 2012, located at http://espn.go.com/nhl/story/_/id/8169038/nhl-first-cba-offer-nhlpaphotographed-features-big-givebacks} The final agreement, set to expire in 2023, reduced the players’ share of revenue from 57\% to 50\% and will use this number to determine the salary cap, with the midpoint based on the shared revenue and the cap 15\% higher than the midpoint and the floor 15\% lower (for 2013-2014 these numbers are $44m, $54.15, and $64.3).\footnote{NHL/NHLPA PROPOSED CBA – SUMMARY OF TERMS, January 12, 2013, located at http://www.nhl.com/nhl/en/v3/ext/CBA2012/NHL_NHLPA_Proposed_CBA_-_Summary_of_Terms_FINAL_-_Jan._12,_2013%20(1).pdf} Contract lengths were capped at seven years (eight if a team was re-signing its own player).\footnote{Id.} Additionally salary arbitration awards under $3.5 million require mandatory acceptance.\footnote{Id.}

**Comparison of Labor Stoppages**

The following chart shows how many of each type of stoppage (lockout or strike) occurred in each sport.
There have been a total of 21 labor stoppages in the history of these four professional sports leagues. 11 have been lockouts and 10 have been strikes.

The NBPA has been the least likely of all the parties to instigate a labor stoppage. All of the labor stoppages in professional basketball have been lockouts—the players have never gone out on strike. Each of the 264 days lost to labor stoppages have been instigated by the league, not the union. Depending on one’s view, the NBPA is either the union least willing to use hard labor tactics and is thus the weakest, or it is the most willing to continue working through labor disputes.

The NHL has the highest stoppage rate at 100%, but this actually seems reasonable. After three decades under Alan Eagleson, the union was very weak and the NHL was accustomed to having its way. The only way that the NHLPA was going to assert itself was using harder tactics. However, the union has only struck once, for 10 days, the first of the labor stoppages. All subsequent labor stoppages have been lockouts by the owners, resulting in approximately 530 days or 1.45 years worth of lockout days.

Baseball has the next highest labor stoppage rate, but given the long history of genuine bargaining, this is much less understandable. The players have struck five times and the owners have locked out the players three times, so both sides are responsible for interruptions in baseball.

What is surprising about the repeated labor stoppages in professional baseball is that neither side appears to learn from the previous

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129. There was a fourth lockout in 1996 over $50 million of television revenue, but it only lasted a couple hours and was not a result of a CBA dispute, so it is not included here.

130. In 1968 the owners locked the players out so they struck in return. So there have been only five labor stoppages, time-wise.

131. This includes all.

132. Since there was not actual arms-length negotiating between the NHL and NHLPA during Alan Eagleson’s tenure, these CBAs are not included because they are not representative of true collective bargaining.
stoppages. For the union this may be because often they won most to everything that they were demanding, so stoppages were effective for them and compromising was perhaps viewed as a failure. The following quotes are evidence of the professional baseball’s unwillingness to consider the history of their labor relations when involved with new negotiations.

"Through history, how many people have learned by their mistakes? If people learned by their mistakes, there would be no more wars. But most people don’t like history. In our schools, history isn’t a popular subject."

-Dusty Baker, Giants manager

"If history repeats itself, we’ll go on strike."

-Eric Chavez, A’s 3rd baseman

However, baseball currently has the longest streak of labor peace, at eighteen years, and has negotiated three consecutive CBAs without a labor stoppage, so perhaps baseball has learned from its past.

An NFLPA strike has been the cause of a labor stoppage in 66.67% of all NFL labor disputes. However, there has been no strike by the NFLPA since 1987 and only one labor stoppage since then.

What this shows us that both sides have been responsible for labor stoppages. When time is taken into consideration however, we see that the recent labor stoppages have been instigated by the owners, not the players. The last player strike was in 1994-1995 by the MLBPA. Since then, all of the six labor stoppages have been lockouts.

**Bargaining Issues across All Four Sports**

The same issues appear repeatedly within each of the sports and across all four. The table below shows which issues arose in each sport and how often. Some CBA negotiations involved multiple issues whereas others focused on only one or two.

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133. Chass, supra note 61.
134. Id.
The table below breaks down the labor issues by decade. The large increase in the 1990s is due to the fact that the first three decades only include baseball and football. The 2000s are lower because only hockey had a labor stoppage during that decade.

### Table 3
**Labor Dispute Issue by Decade**

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The salary cap is the most consistent issue across all four of the leagues. Each sport has had the salary cap as one of its primary labor issues in at least two CBA negotiations. Free agency and revenue sharing are the only other issues that have come up in every sport. Free agency has been an issue in 57.14% of the labor disputes and salary caps have been involved in 52.38%, whereas revenue sharing was involved in 38.1%.

What has changed over time is what issues are at the forefront. Free agency and the salary cap, although common, did not appear as a labor issue until the mid-1970's. The earliest appearance is of either of these issues is in 1974, when the NFLPA challenged the Rozelle Rule,
which involved a perpetual reserve system and thus, free agency was virtually nonexistent. The MLBPA raised the free agency issue two years later, although they had raised the reserve system as a labor issue way back in 1968, but not pursued it as a major issue.

The salary cap is a much newer issue in professional sports. The NFLPA again was the first union to raise this issue and was actually the party suggesting the institution of a salary cap and 55% of league revenues in 1982.\textsuperscript{135} Although the salary cap was an issue in the 1990 baseball dispute, it did not become a serious issue in any other sport until the mid-1990's. The best explanation for this is the creation of the NFL salary cap in 1992. Once one of the professional leagues had received a salary cap from its union the other leagues began to push for them as well. The salary cap was an issue in all four hockey and three basketball labor stoppages and was a primary issue during the 1994-1995 baseball strike.\textsuperscript{136}

Revenue sharing is a much newer issue, at least for some sports. It first appeared in football disputes in 1982, baseball in 1990, hockey in 1992, and basketball in 2011. It was an issue in all of the last six labor stoppages (all lockouts).

Due to the differences in league structures, for example, some have luxury taxes and some do not, no one sport has had all of these issues come up. Hockey and basketball have had much more limited reasons for their labor stoppages. This appears to be a product of timing. Certain issues are more prevalent during certain periods of time. Since the labor stoppages in basketball and hockey did not start until the 1990s it makes sense that their labor disputes would involved the issues of that time, not issues of earlier times. Other issues, such as the reserve system and pensions and benefits, become less relevant. This is due to court cases that changed the systems and CBAs with terms that both sides were able to deal with for an extended period of time.

The reverse is that many issues do not appear for decades. This may be due to the disappearance of other issues. As issues get resolved – either by collective bargaining or by court cases, the owners often looked for new ways maintain a system similar to the one they lost. This involved creating new payment and control mechanisms, which the players in turn challenged and endeavored to negotiate, such as eliminating reserve systems, but then having salary caps and free agency systems instead. The salary cap systems eventually led to

\textsuperscript{135} NFLPA Website, supra note 74.
\textsuperscript{136} Devine, supra note 9.
the issues about revenue sharing since caps are often linked to shared revenue.

The 1980s was clearly the transitional decade, with a wide variety of issues coming up. This is interesting because it only involves two sports – baseball and football. After the 1980s some issues were permanently resolved, became irrelevant or were absorbed into other issues.

Interestingly, when basketball and hockey joined the fray in the 1990s, they did not start with the issues that baseball and football started with, but picked-up where baseball and football were. This could be due to these sports learning from observing the labor problems in baseball and football. However, it is more likely an aspect of the times. Certain issues are simply outdated. Basketball and hockey were going to be dealing with the current sports labor issues of the day, regardless of what they had or had not dealt with before.

This trend appears fairly consistent across professional sports. The question remains whether this trend will hold true within each sport.

**Bargaining Issues by Sport**

**Baseball**

The following table shows baseball’s labor issues by year of labor stoppage.

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There is very little issue resolution in baseball. Although grievance arbitration has not been a primary issue since the 1960’s, it has continued to be included and altered in every CBA. The reserve system was resolved, although not ultimately through collective bargaining. In-
stead federal legislation, the Curt Flood Act, placed limits on baseball's reserve system. The minimum salary and luxury tax issues have not been resolved so much as they have been absorbed into the salary cap issue.

Most of the collective bargaining issues in baseball have not been resolved. Pension and benefits issues arose repeatedly over a 16 year period, free agency over 18 years and salary arbitration for over two decades. Even the newer issue of revenue sharing lasted over a decade.

This approach, repeating the same issues during each negotiation, is generally unproductive. Each CBA becomes a temporary fix instead of a long term solution. The risk of re-hashing the same issues is that new issues may also be ignored because their importance is not fully considered. All issues, new and old, carry with them other non-negotiated but equally important issues. These are issues such as public image, fan contentment and broadcasting deals.

The most recent example of this in baseball is drug testing. Although drug testing had been discussed during several CBA negotiations and some minor agreements had been made, neither side really pushed the issue as an important one. When players began admitting to steroid use and refusing to take tests, baseball was faced with a public image problem that it had not anticipated and was unprepared to deal with.

By failing to recognize the importance of one issue, the public image of baseball was harmed and the fans began to question the legitimacy of the game and its results. The result was that both sides had to scramble to appease the fans, the press and the government.

Furthermore, their failure to deal with the drug testing issue could have had a very significant impact on the other professional sports. Had the federal government passed a law requiring drug testing, it would have covered all sports, not just baseball. The other sports, some of which have governed themselves fairly well regarding drug testing, were not pleased with the prospect of being regulated because of the actions of another league.

Baseball does appear to have moved on from this cycle. The last couple of CBAs have been negotiated without a labor stoppage, so although the same issues some up, they are not severe enough to warrant either side declaring impasse. So whatever agreement was reach in 1995 seems to have provided the long term solutions that have evaded baseball negotiations for so long. Whether this will continue

remains to be seen, but by the time the current CBA expires, baseball will have had 22 years of labor peace. The prosperity that is likely to come with that will hopefully induce both sides to continue this trend.

**Football**

The following table shows football's labor issues by year of labor stoppages.

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Football has a very different pattern from baseball. The NFL and NFLPA appear to be better at creating long term solutions to their differences. This does not mean that those issues are not renegotiated, but that they cease to be the core issues that lead to a labor stoppage. The reserve system was ultimately ended by a court decision and pension and benefit issues, although still relevant, have not been a central issue in over three decades.

The lockout in 1982 resulted in more resolved issues then any CBA negotiation before. The realization that the season could be lost caused both sides to be more reasonable and agree to compromises that they had previously refused. In 1982, many topics were proposed that eventually became the basis of the CBA that the NFLPA and NFL have had for over 20 years, albeit with many alterations in that time.

In 1982 the union got most of the things that it wanted, just not at the levels that it had originally asked for. This was a compromise of a sort – it was not a trade, this-for-that, but it was the union lightening their demands in return for the owners being willing to give them something in all the areas. However, free agency still was not resolved to either side’s satisfaction.
It was the decertification of the union in 1987 and the subsequent CBA in 1992 that changed the pattern of collective bargaining in football. The owners realized the value of being able to collectively bargain with the players and the players learned the costs, particularly financial, of going it alone on their contracts. After several years of court battles the union was running out of money and the league was losing most of the cases. Both sides were willing to compromise.

The resulting compromise was the most even trade in sports collective bargaining: a salary cap for free agency.

The 2011 lockout was the result of some of the same issues from 1982 and 1987. After several decades of simply making adjustments to the CBA, there were finally enough large changes that the NFL desired to warrant a more serious move. The NFLPA and NFL had been able to deal with issues internally, without the need for a labor stoppage, partially based on the personal relationship between NFL Commissioner Paul Tagliabue and NFLPA Executive Director Gene Upshaw. The current Commissioner, Roger Goodell, and Executive Director, DeMaurice Smith, have no such history and this was the first CBA negotiation for both of them, so that may have influenced how it played out. Perhaps there would have been more labor stoppages had not the relationship between Upshaw and Tagliabue existed.

**Basketball**

The following table shows basketball’s labor issues by year of labor stoppages.

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138. NFLPA Website, supra note 74.
Basketball has had a salary cap longer than the other three leagues. The result of this is that the salary cap is a, if not the, primary labor issue. The NBPA and NBA seem to have made a similar deal as the NFL and NLFPA—a salary cap for free agency. The labor difference between basketball and football is that in basketball the players' contracts have been guaranteed. This is not the case in football.

The consequence of the guaranteed contracts is that although there is a salary cap, the owners must pay players even if they are no longer on the team. This affects how much money the owners have available to pay the players actually playing on their team. This is why it is in the owners' interest to lower the number of years a player must serve before being eligible for free agency. It removes the owners' obligations earlier. If there were not guaranteed contracts, then the service time necessary for free agency could be longer without having a real detrimental effect on the owners' abilities to pay current players. It also explains why the issue of contract length became a pertinent one in 2011.

The other reason that the salary cap is a primary labor issue is that it is a soft cap. Unlike a hard cap, such as the cap used in the NFL, which limits athlete salaries to a percentage of league revenue, a soft salary cap is more flexible. There have been numerous exceptions to the soft salary cap, such as the Larry Bird Rule140 and different caps based on the number of years a player has been in the league.141 There has been constant tweaking of the system and every change and alteration has to be collectively bargained. The owners want a harder cap and the players want a softer one, so every change becomes a serious issue.

The tie-in between the salary cap and free agency is the primary reason that these are the two issues that cause labor disputes in basketball. This has also led to the rise of revenue sharing as an issue because salary caps are generally tied to shared revenues. The repeat issue of the salary cap, particularly the maximum is the catalyst for the other issues involved. As long as a soft cap with a luxury tax system remains, it seems unlikely that this trend will change in the future.

Hockey

The following table shows hockey's labor issues by year of labor stoppages.

140. The Larry Bird Rule allows teams to exceed the salary cap to retain their own free agents. This can reduce player movement by allowing teams to match or beat any offer presented by another team.
141. Chass, supra note 61.
Hockey has had a much wider range of bargaining issues, which is reasonable given that there was no arms-length CBA prior to 1992. So 1992 is really the beginning of collective bargaining in hockey.

Over the two years from 1992 to 1994 that the CBA was being negotiated many issues were resolved. The number of issues discussed was due to the nature of the negotiations – everything was open for discussion because the entire nature of hockey labor relations was changing. The major sticking points were free agency and the salary cap. Revenue sharing was an issue, but not as significant as it would become.

Ten years later financial issues were again the cause of a labor stoppage. The owners were willing to cancel an entire season because they claimed that many of the clubs were losing money. This may very well have been true given that the NHL’s television contracts had gone down,142 and eventually were non-existent, and player salaries had continued to go up. Owners wanted “cost certainty”, i.e. a salary cap, and the players did not feel that it was their responsibility to bail the owners out of their spending problems.143

Although the attitudes on the part of both sides was reasonable, it is another example of the union and owners failing to partner on what is best for the overall welfare of the sport. The union did put forth some effort to make the public aware that it was a lockout, not a strike, and that the owners were responsible for the cancellation of the season, they failed to get the public on their side. Instead the public sentiment was against both – fans just wanted them to solve it and start playing.

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or admit that the NHL was dead. More significantly, a lot of sports fans simply did not care.

The fan apathy at the cancellation of the 2004-2005 season seemed to affect the players more than the owners and may have had something to with their eventual agreement to terms that they had previously rejected. Also, as many players stated, they just wanted to play hockey. In the end the players showed more commitment to the good of the game and the fans then the owners did, who were prepared to cancel another season if necessary. The NHLPA ultimately helped the public image of its members.

However, even after all of that the NHL and NHLPA still appeared unable to work together on league-wide initiatives. The players complained that the league’s ad campaign did not feature any actual players but actors and that the league does not promote its athletes. This did not bode well for future cooperation between the league and the union, and indeed another labor stoppage came to fruition.

Once the 2005 CBA expired, the same issues resulted in another lockout, with the addition of contract length. This issue tied in with the salary cap and revenue sharing issues as longer contracts make it more difficult to remain under the cap and the cap amount is tied to revenue sharing.

Given that the NHL and NHLPA are 4-for-4 in having labor stoppages when there is a CBA renegotiation, there is little reason to believe that this trend will change in the future. There is a parallel to the early MLB/MLBPA relationship. Baseball had repeated labor stoppages over almost four decades, both during and after a period of time when the players were at a significant disadvantage (the antitrust exemption, the reserve clause, etc.). Hockey today is no different. The NHLPA is only two decades removed from the fraudulent leadership of Alan Eagleson. It took baseball almost twice that long to have longer term dispute resolution and it is probable that hockey will require a similar amount of time.

**Conclusion**

*So... Have Labor Stoppages been Effective?*

As mentioned previously, if ending the labor stoppage is the goal of the CBA negotiations is the measure of effectiveness, then all of the labor stoppages have been effective, as there are currently no labor stoppages in any of these sports, and will not be until 2016 at the earli-

est, when the next CBA, baseball's, expires. However, with baseball's new trend of renegotiating without a labor stoppage continues, than we may not see a labor stoppage until the next decade. This indeed seems like these disputes have been effective.

If, however, having long term resolution to the issues at the root of the labor stoppages is the measure of effectiveness, then the results do not look so rosy. Certain issues continue to re-appear, particularly the salary cap, revenue sharing, and free agency. Every CBA creates new structures and formulas for addressing these issues, but most of the time those do not end up being satisfactory to both parties. Until solutions for these issues can be devised that account for changing financial conditions, such as increased facility or personnel costs (not players), it does seem that any of the compromises reached in an individual CBA will be sustaining. And so the labor stoppages will likely continue.

What Other Sports Unions Can Learn

There are several things that other sports unions, and the four discussed here, can learn from almost 40 years of sports collective bargaining.

The first is money. Without a steady flow of revenue labor disputes arise. When there is more money, everyone seems more willing to compromise and disputes are more limited to who gets how much. But both sides often seem less willing to go to the extreme of a labor stoppage because that would damage the revenue streams both in that year and in the future.

The second is the role of partnership outside of the collective bargaining process. The relationship between Gene Upshaw and Paul Tagliabue helped create almost two decades of labor peace in football. In contrast, hockey players have felt that the NHL is not supportive of them and their involvement with the league, even when they have a CBA in place. Building those partnerships may help create an environment where both sides are motivated to work with the other because, although they disagree, they both perceive the other as having the best interest of the sport at heart.

The third is public image and fan attitudes. Both sides often fail to understand the importance that public image can have. Both often seem to believe that the fans will come back and generally that has been true.

But it took baseball a decade to reach its pre-1994 attendance figures and it has yet to regain the same type of national television deal that it had. Hockey is selling out a lot of its games right now, but
is on cable and suffering lackluster television ratings. Even the NBA has seen declines in television ratings for its premiere games. Only the NFL has managed to remain consistent in both its television ratings and its attendance.

Newer, less established and popular sports may be unable to recover from a labor stoppage and could very well collapse. The fan belief that the players and owners value them and will not abandon them is important and effects how a sport recovers after a work stoppage.

The fourth and final lesson is: Do not rewrite the CBA every time. CBAs are only a few years long and rewriting them after only that short time is ineffective and tedious. It may take a system many years to accomplish the goals that were intended. Often leagues and unions seem unwilling to let this happen. They want instant fixes and when they do not happen, they go back to drawing board.

If a system as been moving in the intended direction, then let it continue. Make changes, address parts of the system that have been ineffective and alter them, but to completely overhaul the system and institute a new one results in set backs. The same issues arise repeatedly and new ideas fail to be solutions and become only band-aids.

As sports collective bargaining continues into the future, both sides would be smart to listen to a very old adage that might get them to cooperate and will win them public support: “It’s not whether you win or lose, but how you play the game.”