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BASEBALL, HOT DOGS, APPLE PIE, AND STRIKES: HOW BASEBALL COULD HAVE AVOIDED THEIR LATEST STRIKE BY STUDYING SPORTS LAW FROM BRITISH FOOTBALL

I. INTRODUCTION

At the end of the 1994 Major League Baseball Season, the New York Yankees and the Montreal Expos had the best records in the American and National Leagues, respectively.¹ However, neither team made it to the World Series.² Impossible, you say? Not during the 1994 season, which ended abruptly in August due to a players' strike.³ As the players and owners disputed over financial matters, fans were deprived of a World Series for the second time in the history of the game.⁴ America's favorite pastime was in peril.

Like baseball, British football has had its share of labor-manage-

1. When the final standings of the 1994 baseball season were tabulated, the New York Yankees had the highest winning percentage in the American League with .619, six and a half games ahead of the competition in their division. The Montreal Expos also had a six game lead over other teams in the National League East, leading the National League with a .649 winning percentage. *Baseball: The Final Out! What Might Have Happened*, ORANGE COUNTY REG. (Cal.), Sept. 15, 1994, at D1.

2. Some talk did arise, however, of the Yankees and Expos playing a "World Series" for charity, a proposal made by a former limited partner of the Expos. Nevertheless, the proposal never amounted to more than a mere laugh by all those involved in baseball. Bob Hertz, *Yanks-Expos Series An Unlikely Prospect*, THE RECORD (N. N.J.), Sept. 22, 1994, at S6.

3. *Strike Update*, USA TODAY, Sept. 9, 1994, at 8C.

4. The first canceled World Series occurred in 1904, which would have been the second World Series played. New York Giants manager John McGraw refused to let his National League champions play the Boston Pilgrims, the American League leaders, due to his personal feud with American League officials. Simon C. Gonzalez, *There's Always Next Year . . . Maybe: Rest of Season, Rest of Series, Victims of Baseball Strike*, FT. WORTH STAR-TELEGRAM, Sept. 15, 1994, at 1.

ment problems. Known to Americans as soccer, the sport attracts large numbers of fans throughout Britain. The popularity of British football has led to diligent attempts by those involved in the sport to keep its labor-management wars under control.

As this comment will explore, the current ills that led to the 1994 baseball strike have already passed through the sport of British football. With that in mind, American baseball owners and players should have taken their history lesson from British football experiences and avoided their latest altercation. What Major League Baseball (MLB) participants failed to realize is that the proposed methods of curbing outrageous expenses they intended to use in the new collective bargaining agreement were previously tried in British football.⁵ In the British football system, those methods did not yield positive results.⁶ Had MLB participants learned from the British football model, already imprinted and unused 1994 World Series balls may not have been on sale in the New York Times newspaper.⁷

II. REASONS FOR THE 1994 BASEBALL STRIKE

It was no surprise to anyone that the 1994 strike centered around financial matters. Accordingly, many baseball fans formed opinions as to who was at fault for the money-focused strike.⁸ However, it may be assumed that many people were unaware of exactly what those financial matters were.

In order to fully explain the reasons for the strike, a history of the events leading up to the strike must be developed. On September 7, 1992, Fay Vincent submitted what many people considered to be his "forced" resignation as Commissioner of Major League Baseball.⁹ Since then, Bud Selig has been operating as the Acting Commissioner of Baseball until the job vacancy is permanently filled.¹⁰ Soon after

5. See discussion *infra* sec. III.

6. See discussion *infra* sec. III.

7. As a promotional sale, and to get rid of unused balls, the New York Times displayed an ad for 1994 World Series balls. See Pat Hickey, *One Man's Tax is Another Man's Salary Cap*, MONTREAL GAZETTE, Dec. 18, 1994, at D2.

8. The baseball strike was the subject of several opinion polls during 1994 and 1995. Near the beginning of the strike, thirty-nine percent of those polled thought the owners were "more right" regarding their position in the strike, while twenty-two percent thought the players had the correct stance. *Baseball Strike Poll* (CBS News broadcast, Aug. 19, 1994). When the striking issues were finally put on the back burner to start the 1995 season, it was an even split at 27% siding with the owners and the same percentage siding with the players. *Baseball Strike Poll* (Gallup Org. Apr. 4, 1995).

9. *Baseball Needs a Leader*, S.F. CHRON., Sept. 13, 1994, at A18. Vincent was presumed to have resigned because many in MLB were dissatisfied with Vincent's involvement in negotiations with the players' union during the 1990 Spring Training lockout.

10. Bruce Jenkins, *Day Dark-Our Pastime in Ruins*, S.F. CHRON., Sept. 15, 1994, at A1.

Selig took on the acting role, he opened negotiations in December of 1992 regarding a new collective bargaining agreement.¹¹ The collective bargaining agreement in force at the time was due to expire on December 31, 1993.¹² However it was not until June of 1994, in the midst of what many deem baseball's greatest season in decades,¹³ that Selig put forth the proposal for the new agreement which included a salary cap provision.¹⁴

A. Salary Cap

The salary cap was intended to work as its name states: an imposed league standard maximum salary that no team was allowed to exceed.¹⁵ The proposal was brought about by the owners who complained that high costs of players' salaries have led to economic difficulties.¹⁶ The salary cap proposal was put on the table in an effort to combat the owners' rising costs contention.¹⁷

The proposal did not receive a warm reception in the players' camp.¹⁸ Instead, the players insisted that other measures should be used

Interestingly enough, Mr. Selig is also an owner of a Major League Club: the Milwaukee Brewers. *Id.*

11. *Id.*

12. See generally Major League Baseball & Major League Baseball Players Ass'n., Basic Agreement, 1990 [hereinafter Basic Agreement, 1990]. See also Ronald Blum, *No Lockout-Baseball Finally Back/Abbreviated Season Starts on April 26*, S.F. CHRON., Apr. 3, 1995, at A1.

13. *Baseball: The Final Out/What Might Have Happened*, supra note 1, at D1. At the time of the strike, San Diego's Tony Gwynn was batting .394 and could have become baseball's first .400 hitter since Ted Williams in 1941; Triple Crown possibilities were Frank Thomas of the Chicago White Sox and Albert Belle of the Cleveland Indians, a feat not accomplished since 1967; Ken Griffey, Jr. of the Seattle Mariners and San Francisco's Matt Williams were eyeing Roger Maris' 61 home runs in a season record; Greg Maddux of the Atlanta Braves, with a 1.56 ERA, was chasing his third consecutive Cy Young award; and most shocking, the Cleveland Indians were actually contenders for their first post season berth in forty years. *Id.*

14. Jenkins, supra note 10, at A1.

15. Steve Halvonik, *Strike Starts to Threaten Sale of Bucs*, PITT. POST-GAZETTE, Sept. 11, 1994, at E1. A minimum salary was also part of the salary cap proposal of the owners. See Jerry Crasnick, *Rockies Don't Have to Share*, DEN. POST, Sept. 3, 1994, at D2.

16. Glenn Dickey, *Going, Going, Gone . . . That's All for Baseball in 1994*, S.F. CHRON., Sept. 15, 1994, at B1.

17. This contention should be considered with the following facts in mind. Baseball generated \$1.8 billion in revenue in 1993, as compared to 1983 when the revenue was \$521 million. The record price for a baseball team in 1983 was \$43 million but jumped to \$173 million in 1993. Yet it also should be noted that the average players salary in 1983 was \$289,000 as compared to the 1993 league average of \$1.1 million. John Helyar, *Sports: Why Can't Athletes and Owners Learn to Play Nice Together?*, WALL ST. J., Sept. 6, 1994, at B1.

18. As Chicago Cubs first baseman Mark Grace was quoted saying, all that needed to be done was take the salary cap proposal off of the table and the strike would be over in an hour. Phil Rogers, *Baseball Owners Warm to Revenue Sharing Without Cap*, CIN. ENQUIRER, Sept.

to fight baseball's rising costs.¹⁹ As a result, when the owners refused to take the salary cap proposal off of the negotiating table, the 1994 baseball strike ensued.²⁰

B. Revenue Sharing

As mentioned above, the players offered their own plan in an attempt to aid the owners with their contention of rising costs. Instead of the salary cap, the Players' Association proposal called for the owners to share revenue.²¹ For instance, teams that amass great revenue, like the New York Yankees, would share with those teams that are not so lucrative, like the San Diego Padres.²²

The owners of the big clubs that generate more revenue were not totally opposed to the revenue sharing suggestion.²³ However, as a prerequisite for such revenue sharing, the owners still wanted a salary cap.²⁴ Yet, as mentioned above, the players were starkly opposed to any kind of agreement that contained a salary cap provision.²⁵ The strike rolled on.

C. Back To The Beginning

Negotiations between the sides continued sporadically during the off season.²⁶ On December 22, 1994, when the owners saw no agree-

6, 1994, at D5.

19. The players proposed a revenue sharing program, which will be discussed at length below. *Id.* Much later, in negotiation talks, a tax on the higher revenue producing clubs, to be redistributed to lower income clubs, was proposed. Tim Sullivan, *For Baseball, It May Be Now or Never*, CIN. ENQUIRER, Sept. 8, 1994, at C1. Again, this point will be discussed later.

20. One commentator has suggested that the strike was not about a salary cap, but about control of the game that the owners want back. He suggests that the owners want out of the arbitration system under which baseball currently operates and a chance to make all the profits they can. Bob Smizik, *Strike All About Control of Game*, PITT. POST-GAZETTE, Sept. 8, 1994, at D1. However, many did feel that the central issue in the strike was the owners' demands for a salary cap. *E.g.*, Blum, *supra* note 12, at A1.

21. John Lowe, *Commentary Optimism? Deadline Not Enforced*, CIN. ENQUIRER, Sept. 10, 1994, at D1.

22. *Baseball Needs A Leader*, *supra* note 9, at A18.

23. Helyar, *supra* note 17, at B1. While many owners were willing to do whatever they could to control rising costs, none wanted to institute any plan without their sought after salary cap proposal. *See also* Lowe, *supra* note 21, at D1.

24. Lowe, *supra* note 21, at D1.

25. Rogers, *supra* note 18, at D5. As San Francisco managing partner Peter Magowan noted, "They keep saying they'll never accept a salary cap. It seems like they've said everything they've got, they're going to keep, and have some other goodies added to it." Larry Stone, *Owners' Strategy A Grim Surprise Facing Players, They Didn't Waver Baseball: It's Over*, S.F. EXAMINER, Sept. 15, 1994, at A1.

26. *See Play ball? The Next 48 Hours Will Tell*, SAN DIEGO UNION & TRIB., Apr. 1, 1995, at B6.

ment in sight, they attempted to declare an impasse in negotiations.²⁷ According to the collective bargaining agreement under which the players and owners were operating before the strike began,²⁸ if a considerable amount of negotiation took place with no new agreement, an impasse could be declared.²⁹ If an impasse were to be declared, the owners would then be free to adopt the last offer they presented to the players in negotiation by unilaterally changing provisions of the existing agreement.³⁰ This last offer would be the salary cap proposal.

However, this was avoided when the National Labor Relations Board (NLRB) stepped in on behalf of the players before an impasse could be declared.³¹ The NLRB cited the owners with attempting to declare an illegal impasse,³² which is a violation of the duty to bargain collectively under the National Labor Relations Act.³³ On February 3, 1995, the owners avoided sanctions from this violation by agreeing to withdraw the impasse declaration and to restore the terms and conditions of the prior agreement that had expired.³⁴

On February 6, 1995, the owners' Player Relations Committee said that it would be the exclusive bargaining agent for all the clubs.³⁵ The players stated that this move eliminated the salary arbitration, free-agency bidding, and anti-collusion clause, all of which the owners had agreed to restore three days before the committee became the exclusive agent.³⁶ The NLRB once again stepped in and brought new charges of unfair labor practices against the owners and sought an injunction to force the owners to restore the above mentioned provisions.³⁷

U.S. District Court Judge Sonia Sotomayor's ruling on March 31, 1995, granted the injunction ordering the owners to restore the expired collective bargaining agreement of December 1993.³⁸ Sotomayor stated that the injunction would remain in effect until either a new agree-

27. Ross Newhan, *Baseball Players End Their Strike/ Owners Plan Meeting to Decide on Lockout*, S.F. CHRON., Apr. 1, 1995, at A1.

28. Basic Agreement, 1990, *supra* note 12.

29. An impasse would mean that the sides negotiated to a stalemate position. *Silverman v. Major League Baseball Player Relations Comm.*, 880 F. Supp. 246, 253 (S.D.N.Y. 1995); *see generally* Basic Agreement, 1990, *supra* note 12.

30. *See Silverman*, 880 F. Supp. at 253-54.

31. Newhan, *supra* note 27, at A1.

32. *Id.*

33. National Labor Relations Act § 8(d), 29 U.S.C. § 158(d) (1988); *see also Silverman*, 880 F. Supp. at 253.

34. Newhan, *supra* note 27, at A1.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Silverman v. Major League Baseball Player Relations Comm.*, 880 F. Supp. 246, 261 (S.D.N.Y. 1995).

ment was reached, a final disposition of the NLRB case on unfair labor practice was made, or a finding by the court that an impasse in good faith bargaining had occurred, which would then dissolve the injunction and allow owners to make changes in conditions that are normally mandatory subjects of collective bargaining.³⁹

With the injunction being upheld, the players called off their strike and play resumed almost as if the strike had never occurred.⁴⁰ However, the sides are still incurably divided on the salary cap issue.⁴¹ Thus, a resolution of this problem does not seem to be in sight.

III. SIMILAR SITUATIONS IN BRITISH FOOTBALL

Although the British football system may not have the answers to properly and prosperously settle the MLB dispute, they have implemented both the salary cap and revenue sharing plans in the past. History has shown that neither plan worked well for British football.⁴²

A. *Maximum Wage*

British football began in the public schools of Britain. It was taught by the headmasters to encourage "diligence" among students.⁴³ Soon thereafter, representatives of a small number of clubs formed the

39. *Id.*

40. An attempted appeal by the owners to stay the injunction also proved fruitless. *Owners Whiffed By Court; Season To Start April 26*, CHI. SUN-TIMES, Apr. 4, 1995, at 2.

41. Blum, *supra* note 12, at A1.

42. It should be noted at this juncture, interesting similarities between the two sports make this comparison quite appropriate. First, baseball became an organized sport in the United States in the mid to late 1800s. *See generally*, Kevin A. Rings, Note, *Baseball Free Agency and Salary Arbitration*, 3 OHIO ST. J. ON DISP. RESOL. 243, 244 (1987). British football also organized in the mid to late 1800s, around the same time as baseball. *See generally*, TONY MASON, ASSOCIATION FOOTBALL AND ENGLISH SOCIETY 1863-1915, at 15 (1980). This close proximity of development of the two sports would seem to suggest that both were likely to experience the same type of labor-management problems around the same time.

Secondly, because Britain operates under the Common Law system, there are no such laws as anti-trust laws. Although it has come under scrutiny because of the 1994 strike, a precedent of Supreme Court decisions has made baseball the only professional sport in the United States that enjoys an exemption from the anti-trust laws. *E.g.*, *Flood v. Kuhn*, 407 U.S. 258 (1972). Thus, neither sport operates under any anti-trust law provisions. Many have proposed that all of baseball's labor-management problems could be solved if such an exemption was lifted. *E.g.*, James Kilpatrick, *There's a Logical Way to End Baseball Strikes Forever*, STATE J.-REG.(Ill.), Sept. 20, 1994, at 4. While this point clearly has merit, this paper seeks to find another solution to baseball's problems by working within the legal framework under which baseball has operated since 1922. *See Federal Baseball Club v. National League*, 259 U.S. 200 (1922).

43. STEPHEN WAGG, *THE FOOTBALL WORLD* 3 (1984). For an excellent discussion regarding the beginnings of British football, as well as baseball in the United States, see Peter N. Katz, *A History of Free Agency in the United States and Great Britain: Who's Leading the Charge?*, 15 COMP. LAB. L.J. 371, 397 (1994).

Football Association (FA).⁴⁴ The FA was organized basically as an agreement to compete under one set of laws.⁴⁵ It oversaw the laws of the game and became the ultimate authority for all British football.⁴⁶

In due time, the sport entered the professional realm and developed many leagues under the supervision of the FA.⁴⁷ In 1888, the Football League was established.⁴⁸ The Football League was made up of four divisions with objectives similar to the FA.⁴⁹ However, the Football League concerned itself more with the commercial aspects of the game than the rule developing aspect of the game with which the FA was concerned.⁵⁰ The FA became somewhat of a "parent" organization to the Football League, but encompassed other leagues as well.⁵¹ In most respects, the Football League and the FA operate in the same manner today.⁵²

Once the Football League was developed, owners began to feel the effects that go along with owning professional teams, including wage demands by full-time professional players.⁵³ To curb higher wages, the owners attempted to institute a Maximum Wage beyond which no players were to be paid.⁵⁴ For several seasons, the issue of the Maximum Wage was proposed to the owners but never received the three-quarter majority it needed to pass.⁵⁵ In 1900, the FA began their own action to adopt a Maximum Wage.⁵⁶ Rule 32 of the Football Associa-

44. MASON, *supra* note 42, at 15. The FA was formed in 1863. *Id.*

45. *Id.*

46. Katz, *supra* note 43, at 398 (citing MASON, *supra* note 42, at 16).

47. *Id.* at 398-99.

48. *Id.* at 400. Mason also notes that the league idea was probably borrowed from American baseball. MASON, *supra* note 42, at 17.

49. See *Eastham v. Newcastle United Football, Ltd.*, [1964] 1 Ch. 413, 417.

50. *Id.* at 417.

51. *Id.*

52. One might relate the set up of the FA and the Football League with the FA being the equivalent of Major League Baseball and the National (or American) League being equated to the Football League. Major League Baseball sets certain rules under which each team in the league is required to operate. Furthermore, the National League may then develop their own rules, like requiring pitchers to bat, as the American League requires designated hitters. Although the setup of the FA and Football League are not exactly the same as the analogy set forth here, it provides a basis to understanding the FA and the Football League.

53. MASON, *supra* note 42, at 96.

54. *Id.* at 98.

55. *Id.*

56. *Id.* at 98-99.

Rule 32 of the F.A. set out [that] . . . Clubs shall not pay any player a bonus of more than Ten Pounds as a consideration for his signing a professional form. A bonus cannot be paid to a player on his resigning from his old club. The maximum wages which may be paid to any player shall be Four Pounds per week or £208 per annum, and the payment of bonuses dependent on the

tion instituted a Maximum Wage that the Football League was to honor, beginning in the 1901-02 season.⁵⁷

The Maximum Wage was intended to strengthen a competitive balance in the league so that the wealthier clubs were not hoarding all of the talented athletes.⁵⁸ Many in Britain felt that if wages were not regulated in the sport, "it would spell ruin in many cases."⁵⁹

B. *Maximum Wage Failure*

Shortly after the Maximum Wage was instituted, many argued for its termination.⁶⁰ From the beginning, the wealthier clubs, who believed they were getting the raw end of the deal, began to campaign for the repeal of the law.⁶¹ The affluent clubs stated that a Maximum Wage interfered with their ability to undertake their business in a laissez-faire economy.⁶² However, some owners who favored the Maximum Wage system argued that such fixing was "common in commercial life" and was justified in order to keep the football market competitive.⁶³

From its inception, the Maximum Wage system was hard to regulate due to a misappropriation of funds to certain players.⁶⁴ Several clubs were rumored to have been paying players more than the Maximum Wage and secretly providing players with bonuses for playing well.⁶⁵ To investigate the matter, from 1903 to 1904, the Football Association Council had their Rules Revision Committee probe into the allegations of impropriety in the Football League.⁶⁶ After the big clubs in the League realized that the allegations would turn up positive results, they agreed to an "amnesty proposal" by the Football Association.⁶⁷ The proposal exonerated clubs that broke the rule as long as

result of any match shall not be allowed. A player may be allowed a benefit after five years service with a club, in case of accident or when he is giving up playing. A player shall not be allowed more than one benefit. The consent of the Council of this Association must be obtained before a player is promised or receives a benefit.

Id. at 99 (quoting rule 32 of the Football Association).

57. *Id.*

58. STEVEN TISCHLER, *FOOTBALLERS AND BUSINESSMEN: THE ORIGINS OF PROFESSIONAL SOCCER IN ENGLAND* 63 (1981).

59. *Id.* (citing CRICKET AND FOOTBALL FIELD, Mar. 20, 1909, at 1).

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 64 (citing ATHLETIC NEWS, Oct. 24, 1904, at 7).

64. MASON, *supra* note 42, at 99-100.

65. *Id.*

66. *Id.* at 100.

67. TISCHLER, *supra* note 58, at 64.

such clubs promised thereafter to honor the £4 wage limit.⁶⁸ The amnesty agreement was signed by the Football League clubs in 1909.⁶⁹

Not surprisingly, the players were never content with the Maximum Wage.⁷⁰ After the amnesty agreement was signed, the players began to realize that teams would be unwilling to break the Maximum Wage Rule.⁷¹ The players, who created the Players' Union in 1907, threatened to strike during the summer of 1909 if such unfair treatment were not stopped.⁷² The night before the opening of the 1909 season, the owners offered the players an agreement.⁷³ The owners assured the players that their basic grievances, which included the Maximum Wage standard, "would be considered in the course of a negotiations schedule"⁷⁴ with League and union representation. The owners stated that they would "continue to press for the removal of the financial arrangements from the rules."⁷⁵ Finally, the owners determined that not only were the players opposed to the Maximum Wage, but that it also did not provide owners with the amount of control they wanted over the sport.⁷⁶ Those in the Football League stated that they "did not consider the maximum wage limit restriction was in the interest of the good government of the game."⁷⁷ However, the FA was not yet ready to agree.

The Maximum Wage remained a law on the Football Association books for quite some time following the above incident.⁷⁸ It seemed that the only change in decades regarding the law was the amount of the Maximum Wage.⁷⁹ In 1960, a newly appointed chairman to the Players' Union strove to eliminate, among other FA policies, the Maxi-

68. *Id.*

69. *Id.* The owners began to see that adhering to the rule would save them £2-£3 per week and again began to support the rule. *Id.*

70. *See id.*

71. *See id.* at 111.

72. *Id.* at 105. In addition to the imposition of the Maximum Wage standard, the substance of the strike also involved several other matters dealing with the Football Association. *Id.* at 120.

73. *Id.* at 119-20.

74. *Id.* at 120.

75. *Id.* (citing Football Ass'n Minutes, 1909).

76. Katz, *supra* note 43, at 401.

77. MASON, *supra* note 42, at 100 (citing BIRMINGHAM GAZ. AND EXPRESS, June 27, 1908). The owners did not like the fact that they could not punish players for bad play or reward them for good play. Also, the wealthier clubs felt they should be able to purchase better players by offering higher wages. Katz, *supra* note 43, at 401.

78. *See Eastham v. Newcastle United Football, Ltd.*, [1964] 1 Ch. 413, 417-18.

79. *Id.* at 417. During the 1960 season, the Maximum Wage was £20 per week and £17 per week during the off season.

imum Wage system.⁸⁰ The chairman, Jimmy Hill, gained massive support from the players in the union, who then threatened to strike in his support.⁸¹ Fearing such industrial action, the FA agreed to abolish the Maximum Wage system in 1961.⁸² The first attempted players' strike in the history of the FA was averted by eliminating the Maximum Wage system.⁸³ Thus, the Maximum Wage fell to its final death in 1961.⁸⁴

C. Revenue Sharing

In order to understand the revenue sharing controversy that occurred in British football, it is important to understand how the sport is organized. The Football League is based on a system of promotion and relegation.⁸⁵ The Football League, as it appeared at the beginning of its revenue sharing problems, contained ninety-two teams organized into four divisions.⁸⁶ Under this system, the most competitive teams were placed in division one, and those teams whose competitive level was lower were placed in divisions two through four.⁸⁷ Thus, each division consisted of teams that were in the same level of competition. Through the promotion system, teams whose competitive level increases move up a division.⁸⁸ The opposite occurs when a team's competitive level declines; it can be relegated to a lower division.⁸⁹

The ninety-two teams in the League shared the revenue that was generated by all.⁹⁰ Although it was the twenty in the top division that generated the most revenue, a portion of their proceeds filtered down into the other three divisions.⁹¹ The rationale behind this plan was simple. A club that had more money could use the increased revenue to buy better players and improve their competitive level, eventually resulting in a promotion to a higher division.⁹²

80. See WAGG, *supra* note 43, at 115.

81. *Id.* at 116-17.

82. *Id.* at 117.

83. *Id.*

84. *Id.*

85. *Accountancy Magazine Has Looked at the Funding of Football Clubs*, ACCOUNTANCY-U.K., Sept. 7, 1988, at 77.

86. *Id.* The four divisions were mentioned previously as the original setup of the League.

87. *Id.*

88. *Id.*

89. *Id.*

90. Telephone interview with Mark Herbert, Chief Sub-Editor, THE TIMES (London), Sports Section (Sept. 13, 1995).

91. See *Top Clubs Pressing Ahead with Television Deal*, REUTER, July 11, 1988, available in WESTLAW, Int-News file.

92. See generally *id.*

D. Revenue Sharing War Beginning

The beginning of the revenue sharing debate centered around television broadcasting rights.⁹³ In 1988, the contract for exclusive rights to the Football League was up for bid.⁹⁴ The British Broadcasting Corporation (BBC) previously held the television rights to broadcast all Football League games.⁹⁵ Under the BBC agreement with the League, teams in the first division, which attracted more fans and generated most of the sports television revenue, shared in this contract revenue with all teams in the other divisions.⁹⁶

When the contract with the BBC was set to expire, other television stations, including Independent Television (ITV) and British Satellite Broadcasting (BSB), approached the Football League with proposals for coverage.⁹⁷ The proposals set forth by ITV and BSB not only differed as to amount of money offered,⁹⁸ but also as to content. ITV initially offered only to broadcast ten major clubs in the first division and provide those clubs with a greater share of the revenue instead of filtering much of the revenue to the lower divisions.⁹⁹

The debate seemed to signal to many the end of the Football League as it then stood, with teams in the top division leaving the League to form their own.¹⁰⁰ The offer to the ten top clubs to share the revenue only amongst themselves, instead of with the entire ninety-two, threatened to make a separation from the League, "in its centenary year, unavoidable."¹⁰¹ However, the offer changed and stated that it would encompass all of the Football League teams.¹⁰² ITV offered £11 million per year¹⁰³ and, when BBC withdrew their offer, secured the contract with the League.¹⁰⁴

93. *£10M ITV Bid To Show Top Soccer Clubs*, DAILY TELEGRAPH-U.K., June 28, 1988, at 2.

94. *Id.*

95. *See id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *BBC Announces Joint £47M Deal with BSB Guaranteeing Exclusive Coverage of Football*, INDEPENDENT (London), July 6, 1988, at 32.

100. *Compromise Deal in Sight in Televising Football Conflict*, INDEPENDENT (London), July 14, 1988, at 36.

101. *Top Clubs Pressing Ahead with Television Deal*, *supra* note 91.

102. *The Independent Reports on the Latest Stage of the Battle to Televis Football*, INDEPENDENT (London), Aug. 4, 1988, at 32.

103. *Football League Confirms ITV Deal* (BBC Broadcast, Aug. 12, 1988). This amount was to be linked to the price index and could rise over four years.

104. *Id.* During the negotiations BBC joined with BSB to make an offer to the League. However, the two withdrew their joint bid and went on to sign a £30 million deal with the Football Association.

Nonetheless, arguments continued regarding how the revenue would be shared between the divisions.¹⁰⁵ The top clubs in the first division wanted a greater share than they previously enjoyed under the BBC contract.¹⁰⁶ The first division was asking for eighty percent of the £11 million per year contract, which the League's lower divisions found unacceptable.¹⁰⁷

Finally, a compromise was achieved. Under Football League rules, ten percent of all television money was to go to the Professional Footballers' Association (PFA).¹⁰⁸ In order to expedite the negotiations between the divisions, the PFA secretary offered to take only five percent of the television contract for PFA funds.¹⁰⁹ With that offer in mind, the first division clubs were then persuaded to take only seventy-five percent of the ITV contract.¹¹⁰ The second division would then share twelve and one-half percent of the contract, with divisions three and four sharing the rest.¹¹¹ In spite of the agreement, the Football League revenue sharing problems were just beginning.

E. Revenue Sharing Failure

As soon as the revenue sharing agreement was made, many felt that the "deal create[d] a super league in everything but name."¹¹² The top clubs began to recognize their powerful bargaining tool of being able to draw the major amount of revenue for the League, and talk began about the formation of a premier division of the League.¹¹³ In June of 1991, clubs in the first division attempted to leave the Football League and form their own league, the Premier League, starting the next season.¹¹⁴

105. *PFA Secretary Called in as Mediator in Football League Negotiations*, INDEPENDENT (London), Aug. 9, 1988, at 30.

106. *Id.*

107. *Id.*

108. *Id.* The PFA is a players union and, therefore, all funds that the PFA receives goes to benefit the players in the form of pensions, financial support for clubs, and Football in the community programs, among other activities. See Peter Ball, *Players' Strike Over TV Deal Looks Inevitable*, THE TIMES (London), Mar. 28, 1992, at S.

109. *PFA Secretary Called in as Mediator in Football League Negotiations*, *supra* note 105. The PFA Secretary, Gordon Taylor, sacrificed more than £500,000 to which his union was entitled, by intervening in this situation with this offer. *Id.*

110. *Id.*

111. *Football League Confirms ITV Deal*, *supra* note 103, at 2.

112. *The Independent Examines the Implications of the ITV Deal with the Football League*, INDEPENDENT (London), Aug. 4, 1988, at 30 (quoting Geoff Wilcock, of Jordan Information Service, who compiles annual football finance dossiers).

113. *Compromise Deal in Sight in Televising Football Conflict*, *supra* note 100, at 36.

114. David Miller, *Leading Clubs Ready to Serve Notice on Football League*, THE TIMES (London), June 12, 1991.

The FA set into motion the formation of a new league because it believed, as many suggested, that such a league would bring it more revenue.¹¹⁵ The Football League opposed such a split, since the lower division clubs would be left to fend for themselves, and threatened court action if the FA went ahead with their plans.¹¹⁶ A court action ensued, and the Football League contended that under League guidelines, a team must give the League three seasons notice to quit.¹¹⁷ Yet, the FA maintained that its older rule should govern which requires a team to give only six months notice to exit a league.¹¹⁸

Deciding that the FA rule should govern, the court allowed those teams in the first division to go ahead with initiating their action to form the Premier League.¹¹⁹ Before the Football League could appeal, the League clubs voted by an overwhelming majority to remove the three year rule.¹²⁰ It was announced in February of 1992 that twenty-two clubs in the first division would form the FA Premier League beginning in August of 1992.¹²¹ Thus, the increased revenue that a new "superleague" guaranteed to the owners in the top division clubs, and to the players as well, enticed those teams to break away from the other divisions in the Football League.¹²²

F. Problems Continue

Before the Premier League could get off the ground, the threat of a players' strike loomed.¹²³ Under the agreement the PFA had with the Football League, it was entitled to ten percent of television revenues.¹²⁴ In 1988, during the dispute over what the first division teams would take in revenue, the PFA offered to take only five percent to halt the threat of any breakaway league.¹²⁵ With a breakup already in progress, the PFA attempted to reinstate its guaranteed ten percent

115. See David Lacey, *Football Association Seeks High Court Judgement on Right to Form Premier League*, GUARDIAN (U.K.), June 13, 1991, at 16.

116. *Id.*

117. *Id.*

118. *Id.*

119. David Lacey, *Football Clubs Vote to Dismantle Premier League Obstacle*, GUARDIAN (London), Sept. 24, 1991, at 14.

120. *Id.*

121. Peter Ball, *Football Premier League Arrives*, THE TIMES (London), Feb. 21, 1992.

122. See Lacey, *supra* note 115, at 16. For allowing the first division to form the Premier League, divisions two through four settled for £3 million a year for five years following the breakup. *Premier League Given Go-Ahead*, REUTER, Sept. 23, 1991, available in WESTLAW, Int-News file.

123. Peter Ball, *PFA Issues Warning of Strike Vote*, THE TIMES (London), Mar. 16, 1992.

124. See PFA Secretary Called in as Mediator in Football League Negotiations, *supra* note 105, at 30.

125. *Id.*

entitled revenue under the Football League contract and apply it to the Premier League.¹²⁶ The PFA reasoned that its basis for taking the five percent cut, which was to keep the Football League in tact, no longer existed.¹²⁷

The chairman of the Premier League asserted that they did not intend to honor any contract made with the Football League.¹²⁸ The PFA then threatened to strike if this issue was not resolved.¹²⁹ Nearly 600 first division players voted in what turned out to be a 91.1 percent backing of the strike.¹³⁰ Upon hearing of this, the Premier League engaged in further negotiations with the PFA in an attempt to avert the strike.¹³¹ An agreement was finally reached allowing the PFA to receive ten percent of the first £10 million of television income, and then five percent of the remaining balance.¹³²

With the above controversy settled, the new Premier League played its first game on August 15, 1992.¹³³ However, it left many teams in the Football League behind to suffer.¹³⁴ It is interesting to note that the breakup of the FA and creation of the Premier League all began over the issue of television revenue sharing.

IV. LESSON TO BE LEARNED FROM BRITISH FOOTBALL

A. *Maximum Wage Equals Salary Cap*

As shown through its history in British football, the Maximum Wage did not work as it was designed. From its beginning, the Maximum Wage "was honoured more in the breach than in the observance."¹³⁵ If MLB were to impose a salary cap system, the same would be true. Owners who could afford to pay players more would either find loopholes around the law or break it outright.¹³⁶ Thus the

126. Peter Ball, *Strike Looms as PFA Calls First Division Ballot*, THE TIMES (London), Mar. 18, 1992, at S.

127. *Id.*

128. *Id.*

129. *See Soccer Players Back Strike as Union Ponders New Deal*, GUARDIAN (London), Apr. 7, 1992, at 18.

130. *Id.*

131. *Id.*

132. *English Soccer Players' Strike Avoided*, REUTER, Apr. 27, 1992, available in WESTLAW, Int-News file. It was noted that during the first television contract, the PFA would receive at least £1.5 million per annum.

133. Alan Baldwin, *Norwich Manager Blessed with Foresight*, REUTER, Aug. 15, 1992, available in WESTLAW, Int-News file.

134. Clive White, *Mixed Reaction Likely to Football Association's Plan for Future of the Game*, THE TIMES (London), June 19, 1991. The Football League revenues have dramatically decreased as a result of the breakaway.

135. MASON, *supra* note 42, at 99.

136. Mason notes that when the Maximum Wage was imposed, it was those teams in the

gap between the "haves" and "have-nots" in baseball would further increase, frustrating the reason for the rule. The system would do nothing for the future of baseball except cause more disputes.

B. Revenue Sharing

The revenue sharing plan, as it functioned in British football, sought to give all divisions within the League an "equal" stance when it came to monetary concerns. However, as the formation of the Premier League illustrated, the revenue sharing plan contributed to the split of the most prosperous clubs in the League.¹³⁷

If American baseball were to implement such a system, it too would ultimately fall prey to a breakaway league. Although more equality among talent throughout the teams possibly could occur if owners were to agree to the proposed revenue sharing plan, owners of profiting franchises, like the Los Angeles Dodgers, may become discontent with the scheme once they see their rewards going to pay the salaries of top players on other teams. It is conceivable that a Super League among the MLB could form consisting of those teams who can accumulate a wealth of profits on their own, as the Premier League did in Britain.¹³⁸ Thus, as witnessed in British football, the only results of a revenue sharing plan would be a break up of MLB as we know it today. This outcome would not be in the best interest of the owners, the players, or the fans of the game of baseball.

V. PROPOSAL FOR A PROSPEROUS FUTURE OF MAJOR LEAGUE BASEBALL

Considering that baseball had eight work stoppages since 1972,¹³⁹ a plan needs to be developed to avert the constant labor-management problems that seem to plague the industry. The plan offered below would, in theory, resolve the owners' complaint regarding soaring costs in the industry, as well as answer the players' concerns regarding the salary cap.

First Division who were especially breaking the rules. *Id.* Not ironic at all, it was those teams in the First Division who took in the most money.

137. See John Duncan, *No Plaques to Mark the Day that Football Nearly Died*, *GUARDIAN* (London), May 29, 1995, at 3.

138. This thought is not totally absurd, given that at the beginning of professional baseball, other leagues attempted to form. See Katz, *supra* note 43, at 373-76, for an excellent discussion of this matter.

139. Ronald Blum, *Union, Owners Meet, Deadline Looms as Talks Resume*, *RECORD* (N. N.J.), Sept. 8, 1994, at S1.

A. *Players' Tax Proposal*

During strike negotiations, some talk arose regarding a surtax on those teams who spent a certain percentage of revenue above the league average on salaries.¹⁴⁰ The plan suggested that the money generated from the tax would be redistributed to other teams whose revenue was low.¹⁴¹ While the tax provides a basis for a solution to the current financial problems affecting baseball, its immediate redistribution to lower revenue producing clubs is not prudent.

B. *Real Solution*

The taxing concept that was introduced late in the negotiation process does have merit. A tax should be in place for those teams generating the greatest revenue. However, the tax should be set in the following manner. Initially, a base average needs to be calculated in order to determine what the average club generates in revenue. At that point, a decision needs to be made as to how much above that average a team would have to generate in revenue in order to be taxed. Once that amount is decided, the percentage of the tax needs to be defined. Keeping in mind how the Maximum Wage failed in British football because owners repeatedly broke the rule,¹⁴² the question then posed is who would ensure adherence to these rules?

C. *Board Of Directors*

As a possible solution, a Board of Directors of Major League Baseball could be installed in the MLB organization to guarantee compliance with the tax laws.¹⁴³ More importantly, the Board would be in charge of voting to determine what amount of excess revenue generated would be taxed and what that tax rate would be.

The proposed Board would consist of nine people¹⁴⁴ having no

140. *Id.* The basic version of the plan stated that teams would be forced to spend at least eighty-four percent of the league average in minor league systems and player salaries. Teams that spent more than 110 percent of their average would then be taxed on the amount by which they exceeded the average. Dickey, *supra* note 16, at B1.

141. Sullivan, *supra* note 19, at C1. It was also noted that the tax plan emerged late in the negotiation process, and the owners never really responded because of their hope of an impasse declaration. Dickey, *supra* note 16, at B1. The owners have also begun talks regarding a payroll tax. Ross Newhan, *Baseball Players Offer To End 232-Day Strike*, L.A. TIMES, Apr. 1, 1995, at 1.

142. See MASON, *supra* note 42, at 99.

143. Some might see a similarity between the proposed Board and how the Football Association (FA) operates in conjunction with the Football League. Although a similarity may exist, the role of the Board would be quite different than the role of the FA because the Board would be dealing strictly with financial matters, as the FA deals with rules regarding the playing of the game in the British football system.

144. Since this is also the number of justices on the Supreme Court and it seems to have

financial connection with the baseball world. These individuals would run for Board positions in the same manner as a trustee election is held for colleges and universities. The Board would be comprised of members whose reputations, preferably in the business world, have gained them respect and prestige. Those seeking membership would campaign for the post as in any other election.

Any promises or monetary commitments made to any owner or player would be grounds for immediate disqualification from the election and from the Board. Board members would not be permitted to accept any items, monetary or otherwise, from either players or owners. Strict adherence to these guidelines would be required.

The Board would be elected in the following manner. Each owner of an MLB team and one player representative from each team would be allowed to cast a vote for Board members. The player representative would be elected by a majority vote of the players on the team. If, by some chance, a player is traded or retires after being voted to be a representative of the team, he would lose his position as a voter and a new player would immediately be elected.

To ensure impartiality, the Board would sit for a three year term, and members could be re-elected to the position only once. Elections would take place once every three years. The nine people who receive a majority of the votes would be sworn in as Board members. If any Board member leaves the Board before their term expires, an emergency election would take place. Board members would receive only nominal fees because the prestige of such a position would not require much payment.

D. Board's Function

After the taxes are levied against the teams as described above, the money would be placed in a high interest generating account. Such money would be collected at the end of each season, but must be paid by November 15 of each year. The Board's main functions would be carried on during the off-season, but the Board would remain on call and have at least one meeting per month during the baseball season.

From November 15 until November 30 of each year, each Major League team would be allowed to submit a proposal to the Board asking for a specific amount of money to be drawn out of the tax generated revenue pool. Using proceeds from the revenue tax directly for player's salaries would be strictly prohibited. If it is discovered that the team is using the money for salaries, they would incur a tremendous fine. Teams could petition for money to be used for stadium maintenance, promotional events, uniforms, bats and balls, and other incident-

tals.

Once a proposal is submitted, the Board would review it and make a decision. The Board would be required to notify all petitioning teams of the status of their proposal by January 30 of each year. The Board would have the power to deny or approve any proposal and allocate funds accordingly. If such a proposal is approved, the Board would distribute the proceeds to the team by February 15 of that year. The Board has the discretion to deplete the entire revenue account every year or to only use a portion of it and allow the remainder to accumulate into the following year's proposed budget. Also, the Board has the discretion to only give a team a portion of the money that they request. Furthermore, a team would be required to show proof of the expenses they incurred for the project for which the money in the proposal was sought.¹⁴⁵

All teams may submit a proposal each year, even those teams who are actually being taxed. All teams' proposals would be given the same standard of consideration.

E. Players' And Owners' Concerns Both Remedied By Board

Although the proposal set out above for a Board is not foolproof, it does provide a beginning for solving both the players' and owners' current concerns. First, no salary cap can be read into this proposal. While it is true that higher revenue generating clubs would be taxed, it would still be in their discretion as to what percentage they would want to spend on players salaries.

As for the owners concerns, those teams with low revenue would be able to petition for extra money. The extra money would then be granted to the team if it was shown that the money was needed for good cause, as previously outlined. For example, even though the San Diego Padres may not make as much money as the New York Yankees, they could petition the Board for money for promotional events to draw more people to the stadium. They could then use the money they have already earned for players' salaries or whatever else they may need.

Finally, the above plan would also alleviate concerns that owners have about players' salaries skyrocketing. Those teams generating high amounts of revenue would have to pay some of that revenue in taxes. Thus, even those teams who do produce high revenue would have somewhat of a limit on the amount of money they could spend on salaries, and the players would be aware of this.

145. This could be done through receipts and contracts, etc.

VI. CONCLUSION

Major League Baseball could have saved the 1994 World Series if it had taken a history lesson in sports law from British football. If it had done so, it would have realized that the salary cap and revenue sharing proposals the baseball players and owners were advancing had caused nothing but more turmoil when implemented in British football. The proposed MLB Board of Directors would serve to better cope with the problems facing the baseball industry in a more efficient manner.

On a final note, fortunately the MLB owners and players were not as adamant about solving their labor dispute as was the Ukraine Soccer League. Players on the Ukraine team were demanding that their apartments, provided by the clubs, be privatized in their names.¹⁴⁶ Upon learning of the demand, the president of the league punched out the strike leader, leaving the leader unemployed and ceasing any talk of a strike.¹⁴⁷ Luckily for all baseball fans, Major League Baseball has not resorted to these types of measures-yet.

Natalie M. Gurdak

146. *UK: Soccer-Notebook*, REUTER, Feb. 21, 1994, available in WESTLAW, Int-News file.

147. The president was Podillya Khmelnytsky and the player involved was Volodymyr Batalov. *Id.*

