1999

Foreward: Discipline in Professional Sports

Alfred G. Feliu
FOREWORD: DISCIPLINE IN PROFESSIONAL SPORTS

Alfred G. Feliu*

I. INTRODUCTION

The following essays in this section are adapted from the panel discussion on Discipline In Professional Sports which took place at the Annual Meeting of the New York State Bar Association’s Labor and Employment Law Section, in Cooperstown, New York, in September of 1999. This illustrious panel addressed the timely topic of discipline in professional sports, in particular, in Major League Baseball. The panel focused its attention on the interesting question of the interplay between traditional labor law principles and the world of sports law.

II. THE DYNAMICS OF LABOR-MANAGEMENT RELATIONS IN SPORTS

The world of sports labor-management relations is in a different orbit than the traditional labor-management field. The “workers” are highly compensated; “management” is often dominated by large corporations or well-to-do business people looking to profit from their investment.

When thinking of labor relations in the world of sports, it is appropriate to invoke as a frame of reference the multiemployer collective

* Alfred G. Feliu is a partner in the New York City law firm of Vandenberg & Feliu, LLP. He represents clients in all aspects of employment law and serves as an arbitrator and mediator on the American Arbitration Association’s National Employment Disputes Panel. Mr. Feliu moderated the panel discussion from which the ensuing essays are taken.

129
bargaining context. Leagues, rather than teams, negotiate with players' unions. The players' unions, in contrast, most resemble unions that are in the entertainment industry where the membership consists of highly skilled professionals with needs not typically shared by the stereotypical blue collar worker. Further, the major issues in the sports collective bargaining context typically revolve around economics and free agency.

The issue of discipline in sports generally centers around player activities off the playing field. This may include bar room brawls, sexual misconduct, and drug or alcohol use and/or abuse. Misconduct on the field, on the other hand, is generally subject to the broad discretion of the Commissioner under the "best interests" of the league clause in a collective bargaining agreement.

Most legal issues arising in the sports context are contractual in nature. Criminal proceedings run a close second. Finally, civil proceedings are generally limited to review of the Commissioner's decisions, arbitrator's awards, or the ruling of quasi-public bodies, i.e. licensing boards.

III. TYPES OF DISCIPLINE

Discipline can be purely economic; for example, fines may be im-

6. See generally Flood v. Kuhn, 407 U.S. 258 (1972) (involving a challenge to baseball's reserve system where a professional baseball player brought an antitrust suit for being refused the right to make a contract with another team).
7. See generally Mike Lupica, Darryl Walks on Eggshells, NEWSDAY, Aug. 4, 1995, at A95 (commenting on the effect Darryl Strawberry's drug problem had on his career).
8. See generally Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 528 (7th Cir. 1978) (upholding the Commissioner's authority to nullify the sale of a player's contract); Kansas City Royals Baseball Corp. v. Major League Baseball Player's Ass'n, 532 F.2d 615 (8th Cir. 1976) (reviewing an arbitrator's award where an arbitration panel was established pursuant to a collective bargaining agreement); Atlanta Nat'l League Baseball Club, Inc. v. Kuhn, 432 F. Supp. 1213 (N.D. Ga. 1977) (upholding the Commissioner's authority to suspend the Chief Executive Officer of the Atlanta National League Baseball).
Discipline in Professional Sports

Discipline may also involve suspending a player, or at the other extreme, banning a player from participating in sports altogether. Regardless of the various methods of discipline in sports, disciplinary decisions in the first instance are typically the domain of the Commissioner or team management.

IV. DISPUTE RESOLUTION IN SPORTS

In sports dispute resolution, arbitration is the king. Mediation is at best a lowly prince. Arbitration related to disciplinary matters follow a general pattern of traditional labor-management relations. Arbitrators typically rule on the propriety of the disciplinary decision and, of course, have the authority to modify the discipline meted out. The standard to be applied by arbitrators in reviewing league-imposed discipline is still a subject of debate. Arbitration related to salary matters tends to be far more limited, i.e. baseball arbitration where the arbitrator's jurisdiction is limited to selecting either the team's or player's salary tendered number.

V. CONCLUSION: SPORTS DISCIPLINE AS SHAPER OF PUBLIC PERCEPTIONS

The battles between labor and management are in the most public of forums and are vulnerable to media intervention and the attention resulting from public opinion. The high visibility of disciplinary matters in sports are complicated by the traditional notion that sports figures are

10. See Pollack, supra note 5, at 1652 (discussing Judge Landis' suspension and subsequent lifetime ban of eight Chicago White Sox players after the 1919 World Series).
11. See Stiglitz, supra note 2, at 168 (“Moreover, in the case of baseball, there is an additional level of disciplinary authority.... Each league has a President, who exercises a certain amount of disciplinary authority.”).
12. See id. at 169. Collective bargaining agreements have “a grievance procedure which gives the player the right to have most disputes resolved by a neutral arbitrator.” Id.
13. See Pollack, supra note 5, at 1691, 1662-63 (stating that an arbitrator is responsible for interpreting a collective bargaining agreement such that a Commissioner no longer has the ability to rule without having to think about his authority being limited by an arbitrators interpretation).
14. See id. at 1691 (stating that an “arbitrator’s lack of deterrence to commissioner authority damages the integrity of professional baseball” as well as other sports).
15. See id. at 1663.
to be role models for our youth.\textsuperscript{17} Such concerns are rarely present in the traditional labor-management dispute. Despite these differences, there is much that the traditional labor-management practitioner can learn from the wild world of sports, such as earlier strategies that have succeeded or failed, i.e. Richie Phillips and the mass resignation of major league umpires,\textsuperscript{18} use of public opinion, etc. These lessons are best learned because the highly visible world of sports law and sport discipline are likely to be frames of reference for both sides of a dispute and the general public, in much the same way that the O.J. Simpson trial and the Thomas-Hill hearings influenced public opinion.

\textsuperscript{17} See Pollack, supra note 5, at 1668; see also Laurie Nicole Robinson, Comment, Professional Athletes—Held to a Higher Standard and Above the Law: A Comment on High-Profile Criminal Defendants and the Need for States to Establish High-Profile Courts, 73 IND. L.J. 1313, 1328 (1998).

\textsuperscript{18} Richie Phillips is head of the umpire's union. See Richard Wilner, Rebel Umps Pick Up Steam, N.Y. POST, Oct. 6, 1999, at 58.