

Written by Pete Toms
Monday, 15 June 2009 15:04



Last Week In Bizball by Pete Toms

This week in LWIB, why hasn't the amateur draft been abolished? Donald Fehr comments on the controversy over escalating signing bonuses in the amateur draft and miscellaneous updates concerning MiLB. **WHITHER THE AMATEUR DRAFT?**

[LWIB](#) last week reviewed the issues being debated in light of the (then) impending Rule 4 amateur draft. Amongst them, speculation concerning the size of Stephen Strasburg's soon to be demands, the merits of allowing the trading of draft picks, the ineffectiveness of slot recommendations, why clubs are increasing investments in young talent and the public dissatisfaction expressed by some veteran players over the growing compensation being awarded to new draftees.

This past week saw a continuance of the debate. [Ed Price](#), in a column titled "How to Fix the Draft? Eliminate it" wrote.

Unfortunately, there are still problems with it. And unfortunately, I believe the best way to fix the problems isn't a worldwide draft or a draft with tradable picks.

It's no draft at all.

[David Pinto](#) made the case for the abolition of the amateur draft.

International players are free agents, and that seems to work just fine. Let teams sign whomever they like in a fixed period of time. The Yankees can't sign everybody. Teams like Washington might be able to sign two or three very good players for the price a better team pays for Straburg. That's what teams like Pittsburgh and Washington need, a way to get many good players onto their roster.

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Abolish the draft, and let these amateurs sign for what the market will bear. Then we can stop having these idiotic discussions about what's wrong with the draft. The draft is just wrong, period.

[Rob Neyer](#) responded to Mr. Pinto's post.

The real problem is that nobody really knows what would happen if the draft were abolished... Humans are conservative by nature, and baseball men are really conservative. They like the draft, in part, because it's what they know.

But is it only "conservative baseball men" who support the amateur draft? The draft is often criticized for unfairly limiting the bargaining power of the drafted players. [Kevin Goldstein](#) speculated LWIB that if Stephen Strasburg were a free agent he would command at least \$100 million instead of the \$20 – \$30 million Mr. Goldstein believes Strasburg will eventually settle for. So, if the amateur draft (in all of the "big 4" leagues) is anti competitive, a restraint of trade, violates antitrust laws and restricts labour movement, why don't the PAs challenge the practice in the courts? After all, didn't MLB lose it's right to employ the reserve clause over thirty years ago? Andrew Zimbalist explains in [May the Best Team Win](#)

Labor unions by their very nature are combinations in restraint of trade: a union forces an employer to bargain with a group of workers rather than with individual workers. Labor unions thus would violate the Sherman Act of 1890. The Clayton Act of 1914, however, explicitly exempts labor unions from the provisions of the Sherman Act. This is known as the statutory exemption. The so-called non-statutory exemption evolved not from legislation but from court decisions. It holds that trade unions can exchange (in arm's- length bargaining) free labor market rights for other benefits. Thus, by union shop precepts, a trade union can bargain over general conditions for entering the shop. Player drafts fit this category. Under the non-statutory exemption, a player's union can bargain away competition among teams over amateurs entering the major leagues directly in exchange for other desiderata in the collective bargaining contract.

[Joel Maxcy](#) , at his "Sports Labor Relations" blog, recently reflected on Maurice Clarett's failed

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challenge to the NFL's rule that restricts the draft to players at least three years removed from high school. The NFLPA sided with the league in the case (draft eligibility requirements are set in collaboration with players unions) which was concluded by a ruling that is widely perceived to be strongly pro labour.

In the instance of sports leagues, players represented by the union, and club owners represented by the management negotiating team, forgo individual antitrust protection for the sake of advancing the collective bargaining process. Conventional features negotiated under current sport league collective bargaining agreements, including restrictions on open labor markets such as rookie drafts and salary caps, are typically decreed anticompetitive and proscribed by antitrust law. Yet these restrictions are legal under labor law, and are exactly the issues around which labor negotiations in sports center. The negotiation process is doubtless better facilitated by their removal from antitrust scrutiny.

President Obama's nominee to the Supreme Court, [Sonia Sotomayor](#), is one of three judges who ruled on the Clarett case. Judge Sotomayor supported her ruling in favour of the NFL; "That's what unions do every day — protect people in the union from those not in the union," "Why is this case different?"

Professor [Victor Matheson](#) argued at *The Sports Economist* blog that the non-statutory exemption contributes significantly to the goal of competitive balance in pro sports leagues.

It is certainly the case that the non-statutory labor exemption to the antitrust laws places rookies and draft picks at a huge disadvantage when it comes to salary negotiations. While we are fond of talking about how the reserve clause in the major sports leagues died with the advent of free agency, in fact the reserve clause is alive and well today. It's just that it is only applied to players in the first few years of their career. Of course, given the relatively short careers of most professional athletes, the current reserve clause rules may cover a typical athlete's entire career.

That being said, let's not be too hard on the non-statutory labor exemption. Without this judicial understanding of the labor laws, most of the league rules put in place to promote competitive balance would be under constant threat of antitrust litigation. Without a union's consent, the reverse order draft, salary caps, luxury tax, roster limits, etc., all of which are the result of individual teams coming together and conspiring to limit player compensation, would clearly be, if not per se violations of the antitrust laws, at least subject to significant scrutiny under the rule

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of reason.

Without the ability to negotiate in good faith without the threat of impending antitrust action, it is unclear how modern sports leagues would be able to function efficiently, at least in terms of promoting competitive balance.

Again from The Sports Economist, Professor [Phil Miller](#) blogs about an Eriq Gardner piece in Slate that argues the NFLPA is to blame (or praise?) for preserving the NFL draft.

[John Palmer \(Eclectecon\)](#) sends this [fascinating Slate piece by Eriq Gardner about the history of NFL draft along](#)

In 1968, the Washington Redskins used their first-round pick (12th overall) on Smith, an All-American defensive back from the University of Oregon. The rookie signed with the team for \$50,000, and his unremarkable first season culminated in a career-ending neck injury during Week 14. Smith seemed destined for quick obscurity. Then he sued the NFL.

Two years after his retirement, Smith went before a judge and asserted that the draft constituted an unreasonable restraint of trade in violation of the [Sherman Antitrust Act](#). Had it not been for the draft, he argued, he would have been able to negotiate a more lucrative contract for his one year as a professional. And he demanded that the NFL make up the difference.

The case succeeded at the district court, securing \$276,000 in treble damages for Smith, and he won again when the league appealed. In 1977, the U.S. Court of Appeals for the District of Columbia Circuit [ruled](#) the "draft inescapably forces each seller of football services to deal with one, and only one buyer, robbing the seller, as in any monopsonistic market, of any real bargaining power."

Gardner notes that it looked like the Smith had the case won. But the NFL knew that it could effectively get an exemption from the Sherman Act if the players' union would agree to it. How did it get the union to agree to it?

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Keep in mind that any collective bargaining relationship is composed of three groups: the employer, the unionized workers, and the union leadership. One of the interesting things about the NFLPA is that the leadership is largely composed of senior union workers, and Gardner argues that it is this arrangement that has led to the draft being kept.

The union's leadership is determined by seniority, with the upper echelon composed of veterans whose financial stakes conflict with those of the rookies. For example, take the way that draftees are paid by their assigned teams. According to the current collective-bargaining agreement, each club is allotted a set amount of "rookie pool money" to sign its draft picks. ([He re's last year's breakdown of pool money](#) .) It benefits the veteran players who run the union to keep that pool small: Since the NFL maintains a hard cap on the total amount of money distributed to players throughout the league, less money for rookies means more for the old-timers.

AND

...In other words, those who wish to challenge the NFL draft in the post-Yazoo Smith era should think hard about their target. It's not the league. It's the union.

Finally, should MLB get out of the business of minor league baseball? Is there a more efficient model for recruiting and developing players for MLB? MLB is concerned about rapidly escalating inflation in both the international free agent market and amateur draft. In January, [The Biz of Baseball](#) reported that clubs are investing, on average, \$20 million a year on player development. Meanwhile, as discussed in the aforementioned Biz of Baseball report, business in minor league baseball (both affiliated and independent) has been booming. The last words to Andrew Zimbalist, again from "May the Best Team Win."

Further, if minor leaguers did not "belong" to a particular major league club, then it is likely that competitive balance among major league teams would improve. Major league clubs would draft players out of the minors, not out of college or high school. These players would be more developed and their potential talent level more knowable. The reverse-order draft would confer a larger advantage on the low-finishing teams than does the present amateur draft.

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Select [Read More](#) to see comments by Donald Fehr on "Vets vs. Kids", as well as Minor League News including an increase in attendance

DONALD FEHR COMMENTS ON VETS VS. KIDS

[LWIB last week reported](#) that some veteran players (Ryan Howard, Jayson Werth, Torii Hunter) had publicly expressed their concerns over the escalating signing bonuses being awarded in the amateur draft. The saturation coverage of Stephen Strasburg bringing much attention to the subject. LWIB saw some baseball pundits siding with the veteran players over these concerns.

[Michael Rosenberg](#) :

But having a slotting system should mean more to the owners than not having one means to the players. We're talking about competitive balance and the fate of a dozen or so small-market teams. How much will the major leaguers fight so that unproven amateurs can get big money?

[Jeff Fletcher](#) :

One of these days the major league players in the union are going to realize: "Hey, all that money going to amateur kids could be going to us!"

And that would be good for the big-league teams and for the current big-league players.

[Liz Mullen](#) reported that NFLPA Executive Director DeMaurice Smith and his MLBPA peer Donald Fehr both recently addressed the increasingly high profile topic of rookie compensation.

While there is growing pressure from the NFL, as well as some in the sports media, for the NFL Players Association to accept a rookie wage scale, new NFLPA Executive Director DeMaurice

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Smith questioned last week why the players were being asked about the issue when it was one created by the owners.

"The owners sign the checks," Smith said, in a speech before the Sports Lawyers Association in Chicago last week. "The owners decide how much [players] are going to be paid. ..."

AND

MLB Players Association Executive Director Don Fehr, speaking immediately after Smith on the rookie wage scale issue, said, "One of the things you have to be wary of, when you talk about the issues that were just raised, is in collective bargaining generally, and sports is certainly no exception to this, very often people will look, on the other side, will look for wedge issues."

Fehr said the "classic example of a wedge issue" is one in which one group in a union is told another group is getting too much money "and you should all go and squabble with one another."

"Now I don't know if that is involved in this circumstance here, but on this side of the table we are all very conscious of such issues and where the instigation of raising such an issue comes from. If it comes from the players' side, you don't have to worry about it, because it will come with a proposed solution."

MISCELLANEOUS NEWS FROM MiLB

Despite the recession, [MiLB](#) reports that attendance in May was very strong, practically on par with last season's record setting figures.

[Brian Borawski](#) commented,

"I've talked about this before, but I thought Minor League Baseball would hold steady despite the rough economic times. People are looking for bargains for the whole family, and you can't get a better one than a minor league game."

LWIB has not seen 09 attendance figures for the independent minor leagues but a May report in

[Baseball America](#)

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speculated that this could be a challenging season.

"I've been around this industry for 30 years and I've not run across people worrying this much," Frontier League commissioner Bill Lee said.

AND

"I think this in many ways could be the toughest year for independent baseball," Can-Am League and American Association commissioner Miles Wolff said.

Longer term, in March [Will Lingo](#) wrote about the end of the new ballpark construction boom (120 new baseball stadiums in the past 25 years) and how it might impact on the business of minor league baseball.

"What will be interesting to watch is how both the economic and construction slowdown will affect attendance. New markets and new ballparks have driven minor league attendance to records year after year, with more than 43 million fans overall last season."

The owner of the Winston-Salem Dash is asking for more public money to complete construction of a new, unfinished stadium scheduled to open next season. [Laura Graff](#), "Billy Prim, the owner of the single-A Winston-Salem Dash, said yesterday that the collapse of his business partnership with team co-owner Andrew "Flip" Filipowski and the global credit crisis have made it impossible for him to borrow enough money from private sources to finish the stadium."

[Josh Levanthal](#) provided some context.

If the Winston-Salem city council approves Billy Prim's request for \$15.7 million to complete

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construction on a 5,500-seat downtown ballpark, the overall price tag for project will rise to \$40.1 million.

That would make it the most expensive Class A facility ever built. The current Class A leader is Great Lakes' Dow Diamond, which opened in 2007 for \$34 million.

AND

Six teams opened new ballparks this season, with only three topping the \$40 million mark (all Triple-A facilities):

Triple-A Columbus (\$56 million), Triple-A Gwinnett (estimated \$40 million, likely total \$60 million), Triple-A Reno (\$50 million), high Class A Charlotte (\$27 million), low Class A Bowling Green (\$28 million), low Class A Fort Wayne (\$30.6 million).

It's important to remember that Triple-A ballparks usually seat around 10,000 fans; Double-A facilities 6-7,000; Class A between 4-5,500.

For many years the Buffalo Bisons benefited from being the AAA affiliate of the Cleveland Indians. The Indians consistently fielded very competitive teams in Buffalo and attendance was consistently robust. This off season the Indians were enticed to move their AAA affiliate to Columbus where a brand new stadium awaited. The Mets eagerly moved their AAA affiliate from New Orleans to Buffalo and both affiliate and parent club had high expectations for the 09 season. [Mike Harrington](#) reported LWIB that the new partnership has so far yielded disappointing results, with attendance *"..down 1,400 tickets per game compared with last year."* More from Mr. Harrington's report.

The Bisons unveiled a new logo, new uniforms, a new name for the ballpark and an expanded statewide television schedule that includes 37 games—highlighted by five that will receive

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national exposure on SportsNet New York, the Mets' flagship station. The Buffalo franchise once sold a million tickets in six straight seasons, yet an excitement that had not existed in many years followed the franchise all offseason.

But then the season began.

A city that had grown accustomed to winning baseball has endured an utter disaster in the Mets' first year as the parent club. The Bisons lost 11 of their first 12 games, started 2-17 and were fighting to avoid having the worst record in the minor leagues.

They're also trying to avoid losing 100 games—a rare feat in a 144-game schedule—for the first time since 1931.

AND

The top affiliate of the Indians since 1995, Buffalo fans had grown accustomed to winning. Cleveland stocked nine playoff teams in its 14 years as parent organization, and the Bisons won the final American Association championship in 1997, as well as International League titles in 1998 and 2004.

In fact, the only losing season Cleveland had in Buffalo was its 66-77 mark in 2008. Even then, the Indians had one foot out the door as they looked forward to their new partnership with Columbus.

Mets officials are quoted in the piece acknowledging the disappointing performance of their AAA affiliate and have responded by recently signing veterans Wily Mo Pena, Javier Valentin and Mike Lamb to boost the club's on (and off) field performance.

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