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Behind the Curtain of Baseball's Labor Relations: William Gould's *Bargaining with Baseball*

*Jack Newhouse**

The year 2011 was wrought with labor turmoil in major United States professional sports. The National Football League (NFL) locked its players out for 136 days only to be followed by the 149-day National Basketball Association (NBA) lockout.

Professional baseball, which had a strike or a lockout during each collective bargaining negotiation from 1972 through 1994, came out unscathed. On November 22, 2011, just over twenty days prior to the expiration of the collective bargaining agreement, Major League Baseball (MLB) and the Major League Baseball Players Association (MLBPA) announced a new agreement. By the end of the new five-year agreement, players and owners will have solidified twenty-one years of labor peace.

Labor peace within professional baseball comes as no surprise to William Gould. In his new book, *Bargaining with Baseball: Labor Relations in an Age of Prosperous Turmoil*, Gould writes, "the year 2011 marks a new era of peace ushered in by the NLRB's 1995 injunction. After thirty years of warfare, 2002 and 2006 give the parties and the public greater confidence in their ability to resolve these and other issues peaceably this time around."[1]

Bargaining with Baseball is a well-researched and highly detailed analysis of the storied history of labor relations in baseball and how that history has shaped the professional baseball we know and love today. In his book, Gould covers many major issues such as racial integration, development of

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1. WILLIAM B. GOULD IV, BARGAINING WITH BASEBALL: LABOR RELATIONS IN AN AGE OF PROSPEROUS TURMOIL 282 (2011).

Produced by The Berkeley Electronic Press, 2012

free agency, player salaries, the steroids controversy, globalization, changes on the field of play, and the many contentious collective bargaining negotiations of the past.

Gould is uniquely qualified to author such a book. William B. Gould IV is the Charles A. Beardsley Professor of Law, emeritus, at Stanford University Law School. From 1994 to 1998, Gould served as Chairman of the National Labor Relations Board (NLRB), where he cast the deciding vote that ended the 1994-1995 baseball strike. Gould also served as an arbitrator in salary disputes between the MLBPA and the Major League Baseball Player Relations Committee.

From the outset of the book, it is clear that Gould is not merely a labor scholar but also a baseball fanatic. He describes baseball as "the quintessentially beautiful game" because it is "[f]illed with pageantry, grace, grit, and drama."[2] Strewn throughout the book are personal anecdotes of players whom he admires, unforgettable moments in baseball history, and stories of his beloved Boston Red Sox. Gould's liberal use of exclamation points, especially when he writes about the Red Sox, is a sure sign of the excited fan within.[3]

Gould delves into the minutest details of the game, trivia only a fan would appreciate. These details include the speed of the game, knuckleballs,[4] the advent of the designated hitter[5], inter-league play,[6] base stealing,[7] the five-man pitching rotation,[8] the strike zone,[9] the hall of fame,[10] the baseball draft,[11] the cost of attending a game,[12] and a two-page analysis on bean balls.[13]

Like Gould, *Bargaining with Baseball* is a deft intermingling of a scholarly legal text and a fan's account of baseball, filled with fond memories, statistical breakdowns and opinions on the rules and controversies.

2. GOULD, *supra* note 1, at 7.
3. *Id.* at 30.
4. *Id.* at 181.
5. *Id.* at 164.
6. *Id.* at 146.
7. *Id.* at 186.
8. *Id.* at 173.
9. GOULD, *supra* note 1, at 189.
10. *Id.* at 227.
11. *Id.* at 257.
12. *Id.* at 117.
13. GOULD, *supra* note 1, at 168-69.

This book is a nostalgic trip down memory lane for an avid fan or a baseball historian. In just five paragraphs Gould manages to weave together stories featuring Bob Gibson, Don Drysdale, Carl Yastrzemski, George (Snuffy) Stirnweiss, Luis "El Maestro" Tiant, Mike Norris, Tom Gordon, Bert Blyleven, Sandy Koufax, Chavez Ravine, Orlando Cepada, Bill Rigney, Jim Leyland, and Tony LaRussa.[14]While many of the names mentioned above are familiar, Gould helps contextualize some of the actors that make up the history of baseball through the use of pictures. Some are personal pictures of Gould with players like Phil Rizzuto[15] or Cal Ripken Jr.,[16] while others of Ted Williams[17] and "Gentleman" Jim Lonborg[18] are more reminiscent of a traditional baseball card.

Aside from the use of narrative and photography, Gould also uses charts and graphs to articulate his arguments. In one example, it takes six charts for Gould to put forth a very convincing argument that there is more parity in the MLB than in the NFL, NBA, and NHL.[19]

All of Gould's analyses and musings on baseball are interesting, but they are not the primary focus of this book. Rather, this work is a study of the impact the law has had on the sport. Given Gould's background, it is not surprising that the book offers a comprehensive survey of the applicable labor laws and pertinent court and arbitration decisions that have shaped the game as we know it.

For instance, Alex Rodriguez would probably not have received two ten-year contracts, one worth $252 million and the other worth $275 million, had it not been for the advent of free agency. Gould explains that free agency "emerged through Arbitrator Peter Seitz's sweeping 1975 award that made all baseball players free agents able to bargain a new agreement with any team subsequent to playing out the so-called option year."[20] Subsequently, the 1976 collective bargaining agreement contained a "modified form of free

14. *Id*. at 164-65.
15. *Id.* at 110.
16. *Id*. at 109.
17. *Id*. at 8.
18. *Id*. at 157.
19. GOULD, *supra* note 1, at 135-40.
20. GOULD, *supra* note 1, at 12.

agency"[21] that has had a major effect on the game and its players ever since.

The antitrust exemption is yet another example of the law's influence on professional sports. During the recent NFL lockout, the NFLPA decertified to enable NFL players to bring an antitrust lawsuit. During the recent NBA collective bargaining negotiations, the NBPA also threatened decertification. Gould does an exceptional job explaining what the antitrust exemption is, how it came about, and why unions have to decertify in order for players to bring an antitrust lawsuit against the owners.[22]

Gould breaks down the *Federal Baseball*[23] case and its progeny, which immunized owners from major and minor league player litigation arising from their employment relationship.[24] These cases are significant because their rulings shielded owners from considerable treble-damage verdicts that are part of antitrust law remedies. However, in 1996, the Supreme Court in *Brown v. Pro Football, Inc.*[25] substantially diminished the impact of antitrust law in the NFL, NBA, and NHL by permitting antitrust litigation between players and owners only upon the decertification of the union. Gould explains that because of the impact *Brown* had on other professional sports, "baseball owners were willing to negotiate a promise to seek partial repeal of their antitrust exemption."[26] In 1998, the limited exception to the antitrust exemption carved out by the Supreme Court in *Brown* became applicable to Major League Baseball through the Curt Flood Act.[27]

Gould also addresses the legal and historical underpinnings of many other issues relating to baseball, including, but not limited to, the formation of the reserve system,[28] team relocations,[29] the luxury ("competitive

21. *Id.*
22. *Id.* at 118-23.
23. Fed. Baseball Club of Balt. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200 (1922).
24. GOULD, *supra* note 1, at 120.
25. 518 U.S. 231 (1996).
26. GOULD, *supra* note 1, at 120.
27. 15 U.S.C. § 26b (2012).
28. GOULD, *supra* note 1, at 82.
29. *Id.* at 126.

balance") tax,[30] drug law reform,[31] and the protocols for engaging Japanese players under contract with Japanese clubs.[32]

The legal analysis is so complete that this book can be utilized as a treatise on labor relations in baseball. Its thorough index makes it simple to find any person, subject, or case mentioned in the book. The book's eighteen pages of endnotes will guide the reader to any relevant resources.

The law and its history can get complex at times and is very dense, especially the law as it relates to the antitrust exemption. Though Gould does an excellent job at explaining the legal doctrines in plain English, readers who are not already familiar with the law will have to wrestle with the legal jargon. That said, a reader does not have to fully understand the legal doctrines in order to appreciate and enjoy this book.

Bargaining with Baseball has value for a multitude of readers. Whether old or young, avid or casual, familiar or unfamiliar with the law, as long as the reader is a fan of baseball and interested in its illustrious history, this book will both fascinate and educate.

Baseball's rich on-the-field history filled with underdog stories, statistical anomalies, late game heroics, fraud, and cheating is not all that baseball has to offer. *Bargaining with Baseball* brings to light the significant impact law has had and continues to have on the sport. In an era where the power of unions is on the decline and labor turmoil has infiltrated the NBA and NFL's collective bargaining negotiations, collective bargaining in baseball could not have been smoother. There are many lessons to be learned from baseball's labor history, and they can all be found in this book.

30. *Id*. at 134.
31. *Id*. at 216.
32. *Id*. at 268.