

Industrial Relations in Australasian Professional Team Sports

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Abstract

The organisation and presentation of sporting competitions necessarily involves the interaction of players and administrators. While they may have common interests and objectives, they are nonetheless involved in an authority relationship concerning the administration of their sport; especially over matters pertaining to the remuneration and employment conditions of players. The paper provides information on the transition of industrial relations in Australasian professional team sports from one of employer domination to joint regulation by employers and representative player organisations — from monopsony to bilateral monopoly. The paper is divided into two sections. The first outlines the various labour market rules developed by leagues and briefly examines the generally negative attitude of common law courts, and other regulatory agencies, to such rules. The second section presents information on the emergence or rise of player associations and the trajectory of collective bargaining in various sports on both sides of the Tasman.

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The organisation and presentation of sporting competitions necessarily involves the interaction of players and administrators. While they may have common interests and objectives, such as sharing ‘a love of the game’, they are, nonetheless, involved in an authority relationship concerning the administration of their sport; especially over matters pertaining to the remuneration and employment conditions of players. There are five ways, or what industrial relations scholars like to describe as levels of bargaining, in which these authority relations can be played out.

The first is where an individual club/employer interacts with an individual player/employee. A club and a player will negotiate and enter into a contract of

employment. The club, in compensating a player for his or her services, will require a player to maintain themselves at an appropriate level of fitness, attend training and fitness sessions, make themselves available for games, visit designated medical practitioners when injured, observe (club) codes of conduct, attend various fund raising functions associated with club members and sponsors and so on.

The second is where clubs are organised collectively, determine league wide employment rules, and negotiate with players individually. The major reason why clubs act, or more correctly have acted, collectively is due to 'the peculiar economics of professional team sports' (Neale, 1964). Unlike other areas of economic life, sporting contests require the cooperation of competitors to create a product — namely, a game, or a series of games in a 'regular' competition. If nothing else, there needs to be some central co-ordinating body to establish a league, determine the rules of the game, a fixture, the timing of games, the appointment of umpires and other match officials and numerous other functions associated with the production and presentation of matches.

In addition to this, however, it has been argued that if a league is to generate interest, and enhance its income-earning potential, it needs to maximise the uncertainty of the sporting competition. Uncertainty excites fans, sponsors and broadcasters; predictability turns them away. In a seminal article Neale (1964, 2) said 'receipts depend upon competition among the ... teams, not upon business competition among the firms running the contenders, for the greater the economic collusion and the more the sporting competition, the greater the profits'. The major way in which clubs traditionally colluded was in the labour market. Various leagues, and their constituent clubs, developed employment rules which tied a player to the club he or she originally signed with and/or placed limits on their income (see below). Economists describe this situation, where a player can only negotiate with a single buyer, as monopsony.

With this second method the league corrals the clubs and/or the clubs act collectively in determining employment rules and the manner in which they will negotiate with individual players. In *Eastham v Newcastle United Football Club* ([1964] Ch 413, at 438), Mr. Justice Wilberforce described English soccer's retain and transfer system — where a player could not obtain employment with another club without obtaining the permission of his former club, even if his contract with that club had expired, as

An employers' system, set up in an industry where the employer has succeeded in establishing a monolithic front all over the world, and where it is clear that for the purposes of negotiation the employers are more strongly organised than the employees. No doubt the employers all over the world consider the system, a good system.

The third and fourth ways of determining authority contests are where players act collectively and form a players' association/union and negotiate with either the league as a whole or individual clubs. A players' association's essential role in negotiating collectively with a league is to change hitherto league/club determined rules of individual bargaining, to enhance the economic freedom of players to obtain higher incomes and associated benefits. Collective organisation on both sides of the labour market transforms the second method of determining employment conditions from one of monopsony to bilateral monopoly.

Associated with, and following the negotiation of a collective bargaining agreement, an individual club will find itself involved in negotiations with a players' association pursuing employment issues on behalf of players. Player associations become involved in processing grievance disputes for players. These are disputes over the interpretation of the collective bargaining agreement, contracts, and claims concerning the non-payment of wages and other entitlements, such as medical expenses and so on. Such disputes may extend to issues associated with freedom of association, where club delegates and/or players are threatened with dismissal, or dismissed, for pursuing grievances on behalf of themselves and other players, as occurred in Australian soccer in early 2000 (Dabscheck, 2000b).

Courts, industrial tribunals and other regulatory agencies — or, more generally, institutions that fall under the rubric of the state — are the fifth site of authority contests in professional team sports. The decisions of such state agencies, especially the decisions of common law judges, have played an important role in the transition of industrial relations in Australasian professional team sports from monopsony to bilateral monopoly.

A player, being paid, or what is known as professionalism, has a long history in both Australia and New Zealand. In making such a statement, however, it should be noted that it was not until August 1995, that rugby union became a professional code, and putting to one side the issue, or problems, associated with 'shamateurism',

on both sides of the Tasman. Despite this long history of professionalism, the overwhelming majority of players, up until the 1970s, received modest or low levels of income from playing in their respective sports. Players were invariably employed, and trained and played on a part-time basis, and, if not studying, required full-time secular employment to maintain themselves and their families. During these years players were subject to monopsonistic labour markets, received modest incomes and with, the odd exception, appear to have been reconciled to their employment lot.

In the latter decades of the twentieth century, players, both individually and collectively, were less inclined to tolerate employment rules imposed on them by their respective leagues. A number of players, some of whom received backing from clubs wishing to obtain their services, mounted legal challenges to such rules. Generally speaking, these challenges were successful, with courts finding such employment rules to be unreasonable restraints of trade. By the 1990s players, in a variety of sports, had formed player associations in trying to wrest back league imposed controls and/or enhance the economic position of members. Leagues, which believed labour market controls were necessary for their sport, found themselves 'embracing' player associations and having such rules included in collective bargaining agreements, as a means to insulate them from (future) legal attacks. Alternatively, player associations have utilised traditional industrial relations practices, such as availing themselves of industrial relations legislation/industrial tribunals, negotiations and threatened strike action, in negotiating collective bargaining deals.

This paper will provide information on the transition of industrial relations in Australasian professional team sports from one of employer domination to joint regulation by employers and representative player organisations — from monopsony to bilateral monopoly. It will draw on and update previous work of the author (Dabscheck, 1989, 1993, 1996, 1999, 2000a, 2000b, 2002, 2003a, 2003b, 2004; and Dabscheck and Opie, 2003). The first section will focus on monopsony. It will outline various labour market rules developed by leagues and briefly examine the reaction of the courts to such rules. The second section will be concerned with bilateral monopoly. It will provide an account of the emergence, or rise, of player associations and the trajectory of collective bargaining in various sports. The threads of the discussion will be drawn together in the paper's final section.

Monopsony

Leagues have developed a variety of rules which place limits on the economic freedom of players. Such rules may be in conflict with the common law doctrine of restraint of trade. In 1894 in *Nordenfelt v Maxim Nordenfelt Guns and Ammunition* ([1894] AC 535, at 565) Lord Macnaughten defined the restraint of trade doctrine as follows

The public have an interest in every person's carrying on his trade freely ; so has the individual. All interference with individual liberty of action in trading, and all restraints of trade of themselves, if there is nothing more, are contrary to public policy, and therefore, void. But there are exceptions. Restraints of trade and interference with individual liberty of action, may be justified by the special circumstances of a particular case. It is a sufficient justification, and indeed, it is the only justification, if the restriction is reasonable — reasonable, that is, in reference to the interests of the parties concerned and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public.

In *Buckley v Tutty* ([1971] 125 CLR 353, at 380) the High Court of Australia said

The law treats unreasonable restraints as unenforceable because it is contrary to the public welfare that a man should unreasonably be prevented from earning his living in whatever lawful way he chooses and that the public should unreasonably be deprived of the services of a man prepared to engage in employment.

Three major types of restrictive labour market rules developed by different leagues can be distinguished. They are the recruitment of players, the movement of players between clubs, and the use of maximum wages. Excluding situations where a player and a club negotiate an initial contract, two major types of recruitment can be identified. The first is zoning. With zoning, clubs are given exclusive rights to

the services of prospective players who reside in their particular allocated geographic area. Players have no choice in the initial club which might employ them. Zones usually operate in tandem with residential requirements of certain periods, to stop players from being able to take up employment with other clubs, by moving to another zone. It is difficult to draw lines on maps to create areas capable of 'producing' players of equal ability for all teams within a particular league.

The courts have found against zoning and residential rules on three occasions. The first involved an action by Peter Hall, before the Supreme Court of Victoria in 1977, against the then Victorian Football League (VFL), when he sought to play with a club to whom he was not residentially bound (*Hall v Victorian Football League* [1982] VR 64). The second occurred in 1991, again before the Supreme Court of Victoria, where cricketer Paul Nobes objected to residential requirements which restricted his ability to play with Victoria rather than South Australia (*Nobes v Australian Cricket Board*, Supreme Court of Victoria, no. 13613 of 1991, unreported). Finally, in 2003, the Supreme Court of South Australia ruled against a residential rule of the All Australia Netball Association, which required Natalie Avellino to be domiciled in the same state of a club that was willing to employ her (*Avellino v All Australia Netball Association* [2004] SASC 56).

The second method is the player draft. Under this arrangement, potential new players are notionally placed in a common pool and are chosen (drafted) by clubs in terms of their reverse order, or standing, in the competition in the previous year; with the process being repeated a number of times. Drafting, like zoning, denies players the ability to choose and/or negotiate with prospective clubs which might be prepared to employ them. In Australia this method of selecting new players is known as the *external* draft. Under the rules of the Australian Football League (AFL) clubs can trade draft 'picks' for currently contracted players.

The draft will have a limited impact on the attainment of sporting equality. This can be demonstrated by comparing the draft choices of the last and first placed teams in a 16 team competition, such as the AFL. It will be assumed that each team has five picks. The last placed team can choose players 1, 17, 33, 49 and 65. The premiers can choose players 16, 32, 48, 64 and 80. Assuming that the difference between players 16 and 17, 32 and 33 and so on are minor — the premiers actually obtain a slightly better player — the last placed team derives an advantage of one player (pick 1 versus pick 80). In addition, the overall quality of draftees will vary

from year to year, a top pick may find it difficult to fit in with coaching staff or may be forced out of the game due to injuries early in a career. The external draft has not been tested in the courts.

Once a player signs with a club, leagues have developed a variety of rules which enable clubs to maintain control over, and/or restrict the ability of players to obtain employment with other clubs. Four such rules will be examined here: the transfer system, the option clause, assignment and the *internal* draft.

Under the transfer, or retain and transfer system (see above), the most litigated of sport's employment rules, a player who signs with a club is bound to that club for the rest of their playing life. A player can only move to another club with the permission of the player's former club. The obtaining of such permission invariably involves the payment of a transfer fee to the former club, in compensation for the loss of the player concerned. The major problem with labour market rules, such as the transfer system, for sporting equality, is that rich clubs buy the best players from poorer clubs. Or, alternatively, poorer clubs find it difficult to obtain quality players because of the higher cost of acquiring such players resulting from the operation of the transfer system (for a seminal article see Rottenberg 1956).

With few exceptions, courts and other regulatory agencies, have struck down various transfer systems and/or found them to be unreasonable restraints of trade. They have reached such conclusions regardless of whether the movement of players is to take place within a given league (*Buckley v Tutty* [1971] 125 CLR 353 — also see *Tutty v Buckley* [1970] 3 NSW 463; *Hawick v Flegg* (1958) 75 The Weekly Notes 255; *Elford v Buckley* [1969] 2 NSW 170; *Foschini v Victorian Football League*, Supreme Court of Victoria, no. 9868 of 1982, unreported; *Walsh v Victorian Football League* (1983) 74 FLR 207; *Carfino v Australian Basketball Federation* (1988) ATPR 40–859; and *Media, Entertainment and Arts Alliance v Marconi Fairfield Soccer Club and Australian Soccer Federation*, Australian Industrial Relations Commission, M 2565, 9 June 1995), between domestic leagues (*Adamson v West Perth Football Club* (1979) 27 ALR 475), internationally (*Blackler v New Zealand Rugby Football League* [1968] NZLR 547 — also see *Blackler v New Zealand Rugby Football League* [1967] NZLR 705; and *Kemp v New Zealand Rugby Football League* [1989] 3 NZLR 463) or to take up employment in a competition not affiliated to, or under the control of an existing, or traditional league (*Hughes v Western Australian Cricket Association* (1986) ATPR 40–736; *McCarthy v Australian Rough Riders Association* (1988) ATPR 40–836; and

Barnard v Australian Soccer Federation (1988) ATPR 40 – 862).

The major exception to this was a decision by the High Court of New Zealand in 1997. It upheld a finding of the Commerce Commission that the introduction of a transfer system in New Zealand rugby union was not an unreasonable restraint of trade and was unlikely to lessen competition. The action was initiated by the New Zealand Rugby Players' Association (NZRPA), which at that point in time did not have any financial members, and, as a result, was unable to mount expert economic evidence to counter the position of the New Zealand Rugby Football Union, in either of the proceedings before the Commerce Commission or the High Court (*Rugby Union Players' Association v Commerce Commission (No 2)* [1997] 3 NZLR 301, especially p. 329. also see *Hoszowski v Brown*, Supreme Court of New South Wales, no. 1667 of 1978, unreported; and *Wickham v Canberra District Rugby League Football Club Limited* (1998) ATPR 41 – 664).

The option clause involves players signing a contract that grants a club a right — or option — to re-sign a player at the expiry of their contract; a similar right not being afforded to the player. It enables a club to have perpetual 'ownership' rights over the employment of players, and/or prevents them from obtaining employment with other clubs. In 1988 the Supreme Court of Victoria upheld the validity of an option clause in a case involving Gary Buckenara and the Hawthorn club of the VFL (*Buckenara v Hawthorn Football Club* [1988] VR 39; also see *Hawthorn Football Club v Harding* [1988] VR 49). Following this the Victorian Football League/Australian Football League Players' Association (AFLPA) negotiated the removal of an option clause from the standard player's contract. Clause 17 of the AFL/AFLPA collective bargaining agreement, 2003 to 2008, expressly states that an option clause will not be included in a player's contract.

Assignment enables clubs or leagues to move players to another club or league. It is difficult to see how assignment enhances sporting equality. It was utilised in the AFL in 1996 with the demise of Fitzroy. The AFL took over the Fitzroy players' contracts and some were assigned to other clubs. This denied such players the ability to act as free agents. Assignment hasn't been tested in the courts.

The *internal* draft is a uniquely Australian contribution to the labour market rules of professional team sports. It was introduced into the AFL in 1988, and had a brief life in rugby league in the early 1990s. Under the internal draft, current players who have not negotiated new contracts with their clubs, are placed into a common

pool and are selected by clubs in the same manner as the external draft. The comments above concerning the external draft, and its limited impact on sporting equality, equally apply to the internal draft. In 1991, the Full Court of the Federal Court, on appeal, following an action initiated by the Rugby League Players' Association (RLPA), found rugby league's internal draft to be an unreasonable restraint of trade. Mr Justice Wilcox, for example, said 'the right to choose between prospective employers is a fundamental element of a free society. It is the existence of that right which separates the free person from the serf' (*Adamson v New South Wales Rugby League* (1991) 31 FCR 242, at p.267; also see *Adamson v New South Wales Rugby League* (1990) 27 FCR 535).

Two types of wage maxima have operated in Australasian sport. The first is where limits are placed on the income that can be earned by individual players. A common limit may be placed on all players, or higher amounts are allowed per number of games played, or for captains, vice-captains and so on. Stewart (1982, pp. 86–90), for example, provides details on the operation of such rules in the VFL.

The second is a salary cap which may be imposed on total payments to players of a club, or the league as a whole. Salary caps can be constructed in different ways. One distinction is between 'hard' and 'soft' caps. A 'hard' cap is one which allows few exceptions to the total payments allowed to players of a club or league. A 'soft' cap allows extra payments for, among other things, veteran players, promotional appearances, intellectual property rights and the costs of replacing injured players. Salary caps may also be determined as a fixed monetary amount, as a percentage of defined revenue streams, or a combination of both. Enforcement of salary caps has been a recurrent problem with a number of clubs in both the AFL — which has a collectively bargained cap — and the National Rugby League (NRL) — with a league imposed cap — being fined for breaches. In 2002, before the end of the home and away season, Canterbury-Bankstown, of the NRL, was stripped of all its points, when it was found to have substantially breached its cap. It was moved from the top of the league ladder to the bottom ("Dogs" Board Quits in Disgrace', *The Sydney Morning Herald*, 24 August 2002, p.69). On the other hand, the NRL appeared to adopt a more benign view as to the strictness of its salary cap rules, in enabling the Newcastle Knights to re-sign star player Andrew Johns, and stopping him from switching to the New South Wales Waratahs of the Australian Rugby Union (ARU) ('Johns on verge of switch for \$2 m', *The Australian*, 24 June 2004, p.

40). This 'exception', in time, may lead to an unravelling of the NRL's salary cap. Neither form of wage maxima have been tested in the courts.

Bilateral Monopoly

Over the years different generations of players in a variety of competitions have attempted to form player unions or associations in attempting to enhance their economic position. Dating back to before World War I, Australian sport, at least, is littered with examples of failed attempts of organisation (Dabscheck, 2003c). Beginning in the 1970s, and especially in the 1990s, continuing into the new millennium, players across the spectrum of Australasian sport have been more successful in establishing and maintaining the operation of player associations. Nine such player bodies currently operate in Australasian professional team sports. They are the AFLPA (formed in 1973), RLPA (1979), the National Basketball League Players' Association (NBLPA) (1989), the Australian Professional Footballers' Association (PFA) (1993), the Rugby Union Players' Association (RUPA) (1995), the Australian Cricketers' Association (ACA) (1995), NZRPA (1996), the New Zealand Cricket Players' Association (NZCPA) (2002), and the Australian Netball Players' Association (ANPA) (2002). In recent years the NBLPA has been relatively inactive and the ANPA's development is embryonic. This section of the paper will examine industrial relations developments in the Australian sports of Australian rules football, rugby league, soccer, rugby union and cricket and rugby union and cricket in New Zealand.

The AFLPA formed in December 1973. For the first two decades of its existence, the AFLPA found it difficult to obtain concessions from the VFL/AFL. In late 1992, it attempted to negotiate a collective bargaining agreement with the AFL. The AFL refused and withdrew recognition of the AFLPA. The AFLPA responded by seeking an award from the Australian Industrial Relations Commission (AIRC). Deputy President Polites found that a dispute existed between the parties and the AIRC had jurisdiction to determine an award (*Anderson v Adelaide Football Club* (1993) 48 IR 440). The AFL unsuccessfully sought a stay of proceedings before a Full Bench of the AIRC, and was apparently prepared to mount a High Court challenge. Deputy President Polites recommended that the parties negotiate an agreement outside the AIRC.

Fear of intervention by the AIRC provided the motive for the AFL to negotiate a collective deal with the AFLPA. An agreement for the 1994 and 1995 seasons was completed. It established a minimum wage for players of \$7,500 per annum, with deductions for board and lodging, as well as various welfare, security and leave benefits and a grievance procedure. One of the terms of the agreement was 'the AFLPA and each and every AFL player it represents agrees that it and/or the AFL player will not individually or collectively' seek an award from an industrial tribunal unless it is reasonably believed that the AFL club or clubs have 'not or is not complying with the terms or a term of this Agreement', and were 'given written notice' of such a breach ([AFL-AFLPA] 1994/95 Collective Bargaining Agreement).

A second collective agreement was negotiated for the 1996-1998 seasons. It contained a similar 'tribunal avoidance' clause to that of the first agreement. In addition, the parties declared that the AFL's draft and salary cap rules were 'necessary and reasonable for the proper protection and legitimate interests of the AFL' ([AFL-AFLPA] 1995/98 Collective Bargaining Agreement). This clause was incorporated to try and head-off common law restraint of trade cases against the AFL's employment rules. Other changes in the second agreement included increases to various minima, rules for players' intellectual property rights, allocation of funds to second career training and a player advisory service.

The third collective bargaining agreement, for the period 1998-2003, dispensed with the 'tribunal avoidance' clause, but included the 'reasonable restraint' clause. It built on many provisions of the previous agreement. Player payments were increased by 57.5 per cent, over the life of the agreement. For the 2003 season, total player payments were \$95 million, with club salary caps slightly less than \$6 million. Several millions of dollars were earmarked, in each year of the agreement, for player education and welfare; such funds to be administered by the AFLPA (AFL and AFLPA Collective Bargaining Agreement, 1998-2003).

In 2003 the AFL and AFLPA negotiated a fourth collective agreement, from 2003 to 2008. It incorporated the 'reasonable restraint' clause of the two previous collective deals. It made a modest increase of three per cent to club salary caps for both 2004 and 2005 (to a level of \$6.3 million), no increase for 2006, and to enter into 'good faith' negotiations in 2006 to determine the salary caps for 2007 and 2008 (AFL and AFLPA Collective Bargaining Agreement, 2003-2008).

The RLPA was formed in 1979. In the first decade of its operation it had a

cordial, essentially passive relationship with the New South Wales Rugby League (NSW RL). Following the lead of the AFL, the NSWRL announced, in late 1988, it would introduce a salary cap. In May 1989 it announced that it would introduce both an internal and external draft. The RLPA mounted a successful challenge to the internal draft before the Federal Court (see above). The NSWRL subsequently abandoned both versions of the draft.

This was the first time in the history of Australian sport that a players' association had initiated court action against a league's employment rules; and the RLPA had been successful. It might be expected that such success would have helped to consolidate its position. This has not occurred. The RLPA failed in an attempt to negotiate a collective bargaining agreement in 1992. In 1993, in an apparent move to increase its organisational effectiveness, the RLPA merged with the Media, Entertainment and Arts Alliance (MEAA). The next three years witnessed several disputes over members between principals of the 'old' and 'new' unions (*Media, Entertainment and Arts Alliance v Balmain District Rugby League Football Club*, Australian Industrial Relations Commission, M 3828, 26 July 1995; and *New South Wales Rugby League Players' Union v Media, Entertainment and Arts Alliance*, Australian Industrial Relations Commission, M 6710, 2 November 1995). In addition to this, players were more concerned with taking advantage of the high incomes on offer associated with the war between the Australian Rugby League (ARL) and Super League, of the mid 1990 (see McCracken and Lane, 1996), than worrying about player associations.

In 1997, the RLPA negotiated a 'bare bones' consent award with the ARL, under the auspices of the AIRC. It contained a minimum wage of \$36,000 per annum for a club's first 17 players (*Australian Rugby League Players' Award 1997*, Australian Industrial Relations Commission, P 5383, 25 September 1997). In August 2000 this was increased to \$37,245, but only applied to ARL clubs in the now new merged NRL competition (*Australian Rugby League Players Award 2000*, Australian Industrial Relations Commission, ALJ 767363, 7 September 2000). In 2001, the RLPA severed its relationship with the MEAA in the course of obtaining recognition from the NRL.

Despite this recognition, the RLPA and NRL have, at the time of writing (July 2004) been unable to reach an agreement. In September 2003 the RLPA announced that players would not attend the NRL's annual Dally M awards for the best player.

The NRL decided to abandon the event. In February 2004 the RLPA was registered as a union under the *Workplace Relations Act 1996* (Cth) (*Rugby League Professional Association*, Australian Industrial Relations Commission, PR 943777, 17 February 2004). Such registration may provide it with leverage in attempting to establish and/or negotiate a collective deal with the NRL.

The PFA was formed in 1993. In September of that year it merged with the MEAA. Amongst other things this meant that the PFA, as an autonomous branch of the MEAA, could seek to make use of industrial tribunals in its dealings with Soccer Australia. During 1994 and 1995, the PFA proceeded with a case before the AIRC, seeking abolition of soccer's transfer system. In June 1995, the AIRC did not accede to this request. However, it did express concern over the operation of the transfer system. It gave the parties time to negotiate an alternative as part of a comprehensive collective bargaining agreement. The AIRC indicated that if the parties could not reach an agreement it would, in all probability, abolish the transfer system in arbitrating the dispute (*Media, Entertainment and Arts Alliance v Marconi Fairfield Soccer Club*, Australian Industrial Relations Commission, M 2565, 9 June 1995). This decision considerably strengthened the hand of the PFA and two comprehensive collective bargaining agreements have been negotiated (Ericsson Cup Collective Agreement, 1996 – 1999; Ericsson Cup Collective Agreement, 1999 – 2001). In 1998, the PFA and MEAA went their separate ways when the MEAA underwent rationalisation for financial reasons.

The second collective agreement, 1999 – 2001, was twice extended for an extra year, with minor additions to monetary clauses. During 2003 they were in dispute over a further one year extension to this agreement. The PFA commenced proceedings before the AIRC to establish a safety net award. Rule 13 A of the PFA empowers it to be appointed by members to act on their behalf in any industrial situation, industrial dispute or any matter pertaining to members' employment relationships. In doing so, the rule requires the PFA to notify members of such actions and that members have seven days, after receiving the notice, to withdraw their permission. In August 2003 the AIRC upheld the validity of this rule in finding that there was a dispute between the members of the PFA and Soccer Australia (*Australian Professional Footballers' Association v Adelaide Juventus Sports and Social Club*, Australian Industrial Relations Commission, PR 936521, 19 August 2003). Soccer Australia and the PFA subsequently agreed to a third one year extension of the second

collective bargaining agreement. The PFA has also been active in negotiating collective bargaining agreements on behalf of the Socceroos.

Since the early 1990s Australian soccer has been wracked with rumours concerning the administration of the sport (see Stewart Report, 1995). Between April 1995 and July 2003, Soccer Australia had six chairmen. It has been an impecunious organisation on the verge of insolvency (*International Entertainment Corporation v Soccer Australia* [2003] FCA 879). The National Soccer League was unstable, with a high turnover of clubs; clubs which have invariably operated at a loss (NSL Task Force, 2003). In August 2002, Senator Rod Kemp, the Minister for the Arts and Sport, announced the appointment of a review committee to examine soccer's governance, to be headed by insolvency expert David Crawford. The report, delivered in April 2003, concluded that the structure of Australian soccer was ineffective and that the current board should be replaced by independent persons without any conflicts of interest, combining a broad range of talents to enhance the sport's growth (Report, 2003).

The PFA found it difficult to obtain increased benefits for members because of the parlous state of soccer in Australia. Frustrated by the inability of Soccer Australia to grow the game/initiate reforms, the PFA established PFA Management Limited, in October 2001, to conduct market research to explore commercial opportunities for soccer. In April 2003 it released a report which outlined a business plan for soccer around the development of a new league (PFA Management Limited, 2002).

Following the adoption of the Crawford Report by Soccer Australia, and its transformation into the Australian Soccer Association (ASA), a task force was created to inquire into the structure of a new league. The Task Force released its report in December 2003. It essentially endorsed PFA Management Limited's model for a new league (Report, 2003). The ASA is in the process of creating a new soccer league. It will be interesting to observe how industrial relations will be conducted as Australian soccer enters this 'new age'.

When rugby union turned professional in 1995, the ARU was confronted by a rival organisation which sought the services of uncontracted, 'amateur' players. The ARU secured the services of players by agreeing that 95 per cent of its share of television revenue would be distributed in accordance with a yet to be formed players' association 'direction' (see Fitzsimons, 1996). In what can only be regarded

as freak occurrence in sports' industrial relations, RUPA received recognition before it was formed. The players signed with the ARU.

Following the players decision to sign with the ARU, RUPA experienced problems in enforcing its power of direction. It decided to test the contractual validity of its agreement with the ARU. At approximately the same time, the ARU indicated its preparedness to enter into a collective bargaining agreement. Tentative bargaining commenced. After RUPA achieved an initial victory on security for costs (*The Rugby Union Players Association v Australian Rugby Union*, Supreme Court of New South Wales, no. 50253 of 1996, 30 July 1997, unreported) bargaining proceeded in earnest. A three year agreement was concluded in October 1997; with a second agreement for 2001 – 2004 reached in April 2001 (Australian Rugby Collective Bargaining Agreement [1997 – 2001]; Australian Rugby Collective Bargaining Agreement [2001 – 204]).

In the 1997 collective agreement players received a stipulated monetary amount, or 25 per cent of 'player generated revenue', whichever was the greater. The 2001 agreement increased the stipulated monetary amount and 'player generated revenue' to 30 per cent, on a more generous definition of such revenue. It also introduced rules for the use of players' images and intellectual property rights, and \$550,000 per annum was allocated to vocational and second career education and player welfare.

The ACA was formed in September 1995. In the latter part of 1997, it threatened to take strike action in one-day internationals, in an attempt to obtain recognition from the Australian Cricket Board (ACB) and negotiate a collective agreement. The threat ultimately proved successful. The ACB granted recognition, with a collective deal concluded in September 1998. Under this agreement players received 20 per cent of 'Australian Cricket Revenue', up to \$60 million, per annum, and 25 per cent of any income over \$60 million (Memorandum of Understanding between Australian Cricket Board and Australian Cricketers' Association, 1997 – 1998 to 2000 – 2001). A second four year deal was concluded in May 2001. It provides players with a 25 per cent share, 'smoothed' over the life of the agreement. It also contains formulae for distributing intellectual property rights' revenues and a player retirement scheme (Memorandum of Understanding between Australian Cricket Board and Australian Cricketers' Association, 2001 – 2002 to 2004 – 2005).

In 1991 the New Zealand government introduced the *Employment Contracts Act 1991* (NZ), which 'removed the distinct legal status of trade unions' (Crawford,

Harbridge and Walsh, 2000, p. 292). The *Employment Contracts Act 1991* (NZ) was associated with a free fall in the percentage of the workforce who belonged to unions. Between May 1991 and December 1999, this figure fell from 41.5 per cent to 17.0 per cent (Crawford, Harbridge and Walsh, 2000, p. 296). The Labour Alliance Coalition passed the *Employment Relations Act 2000* (NZ). This Act promotes trade unionism and good faith bargaining as a means to 'address the inherent inequality of bargaining power in employment relationships' (Section 3 (a) (ii)). The *Employment Relations Act 2000* (NZ) has been associated with the formation of a relatively large number of small unions (for a critique see Barry and Reveley, 2002).

The NZRPA formed in 1996. It was unsuccessful in actions before the Commerce Commission and the New Zealand High Court to stop New Zealand Rugby introducing a transfer system (see above). In the context of the legal environment of the *Employment Contracts Act 1991* (NZ), it was unable to negotiate a collective bargaining agreement with New Zealand Rugby. The NZRPA registered under the *Employment Relations Act 2000* (NZ) in September 2000. It then entered into negotiations with New Zealand Rugby. At the end of 2001 the two sides reached an agreement, commencing in 2002, which established minimum salaries for Super 12 (NZ \$65,000) and All Blacks' (NZ \$85,000) players (Owen and Weatherston, 2002, p. 12).

The NZCPA was formed in 2001. It registered under the *Employment Relations Act 2000* (NZ) on 12 June 2001. In the first half of 2002, the cricketers' association and New Zealand Cricket commenced good faith collective bargaining negotiations. On 1 October 2002, the NZCPA announced that players would strike until a collective bargaining deal had been completed. Such strike action would occur in the off-season, would only involve players missing pre-season training and not impose any costs on New Zealand Cricket. The calling of a strike during a period when employers were not generating any income, or had no potential income to lose, suggests a lack of knowledge concerning the use of traditional industrial relations tactics by the NZCPA's leadership.

A series of meetings and discussions occurred between the parties in October and November 2002. The NZCPA were continually frustrated by New Zealand Cricket making pronouncements, via their web-site and to the media, rather than in negotiations across the bargaining table. It is arguable that New Zealand Cricket breached the 'good faith bargaining' provisions of the *Employment Relations Act 2000*

(NZ). The parties eventually reached an agreement. New Zealand Cricket moved from an initial offer of NZ \$4.7 million, for 74 contracted players, to NZ \$5.1 million, for 86 contracted players. Player associations in New Zealand do not appear to have achieved the same degree of verve and skill as their counterparts in Australia, with the obvious exception of the RLPA. In addition, collective agreements in New Zealand are less comprehensive and detailed than those that operate on the other side of the Tasman.

Conclusion

This paper has examined the transition of industrial relations in a number of Australasian team sports from monopsony to bilateral monopoly; from unilateral control by employers to collective bargaining or negotiations between leagues and player associations. For most of the twentieth century leagues and clubs developed different sets of labour market rules which severely restricted the economic rights and income earning potential of players. Their predominant position was challenged on two fronts. First, a number of individual players challenged these rules before common law courts (and other regulatory institutions) as unreasonable restraints of trade. With the obvious exception of the New Zealand High Court's 1997 decision, which upheld the introduction of a transfer system in New Zealand rugby, the courts have invariably struck down such rules.

The second challenge came from players, acting collectively, and forming player associations. Following unfavourable decisions in the courts, leagues had an incentive to negotiate collective deals with player associations as a possible means to protect (revised) labour market rules from legal attack. Alternatively, player associations have used other legal avenues, especially industrial relations legislation and/or the decisions of industrial tribunals plus threatened strike action to forge collective deals. The playing out of such negotiations has been a function of the relative distribution of bargaining skill and talent of the parties in the respective sports. Australian rules football, soccer, Australian rugby and Australian cricket have produced lengthy and comprehensive collective bargaining deals. Collective bargaining is more embryonic in cricket and rugby in New Zealand. Australian rugby league, despite the RLPA'S success in challenging the internal draft in the Federal Court in 1991, has been unable to conclude a collective agreement.

The trajectory of collective bargaining in Australasian—or more correctly, Australian—sport has been to first agree on rules for wage determination and broad employment conditions and/or the labour market rules which will govern the respective sports. Subsequent agreements have become more complex, including such issues as the distribution of revenues from intellectual property rights, player welfare and second career training. It is to be seen if future negotiations across different sports will be ‘steady state’, or if new issues, such as drug codes and the occupational health and safety of players, are brought to the bargaining table. Like the fan who anxiously awaits the results of each week’s games, followers of industrial relations in professional team sports, eagerly await future rounds of collective bargaining negotiations.

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