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Trust and Antitrust: The Failure of the First National Hockey League Players' Association, 1957–1958

J. Andrew Ross

Based on National Hockey League club and league correspondence, congressional transcripts, newspapers, and government documents, this essay examines the first attempt to organize a National Hockey League Players' Association. For just over a year, the NHLPA struggled to overcome the resistance of NHL owners, the uncertainty of its own members, and the confusing legal environment created by overlapping transnational, interstate, and inter-provincial jurisdictions. These issues make the NHLPA a compelling case study of the way in which the borders between business and sport began to shift in the 1950s, a time when new forces—technological (television), legal (congressional investigation and judicial decisions), and social (player activism)—were preparing the way for the struggle for free agency.

In its *Federal Baseball Club v. National League* decision (1922), the United States Supreme Court concluded that professional baseball was exempt from antitrust legislation because it was not engaged in interstate commerce.[1] This decision and its implicit extension to other "major league" North American sports—football, basketball, and hockey—has attracted the attention of many scholars who have noted its profound effects on the

[1] Federal Base Ball Club of Baltimore, Inc. v. National League of Professional Base Ball Clubs et al., 259 U.S. 200 (1922). The argument was that baseball was not interstate commerce, a requirement for the application of the Sherman Antitrust Act (1890). For a recent commentary on this decision, see Samuel A. Alito, Jr., "The Origins of the Baseball Antitrust Exemption: Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs," *Baseball Research Journal* 38 (Fall 2009): 86.

J. Andrew Ross <jaross@uoguelph.ca> is a postdoctoral fellow in the Historical Data Research Unit at the University of Guelph.

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organization of major league sports markets.[2] Others have made general analyses of the impact of so-called cultural formations on the ability of business to control labor.[3] This essay aims to analyze the ambiguous status of a major league sport—hockey—as one such cultural formation. Using National Hockey League (NHL) club and league correspondence, congressional transcripts, and court documents, I examine the 1957 attempt to organize a National Hockey League Players' Association (NHLPA). For just over a year, the association struggled to overcome the resistance of NHL owners, the uncertainty of its own members, and a confusing legal environment created by overlapping transnational, interstate, and inter-provincial jurisdictions. These issues and others make the NHLPA story a compelling case study of the way in which the borders between business and sport began to shift in the 1950s, a time when new forces—technological (television), legal (congressional investigation and judicial decisions), and social (player activism)—were laying the ground for the 1970s period of free agency that changed the face of major league sports.[4]

The Rise and Fall of the NHLPA

On February 11, 1957, after months of secret organizing, the National Hockey League Players' Association announced its existence.[5] In forming the association, the NHL players had been inspired by increasing activism among professional athletes in the 1950s, which itself came at the end of a longer trend of union membership growth in the wider North American

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[2] Gary R. Roberts, "Professional Sports and the Antitrust Laws," in *The Business of Professional Sports,* ed. Paul Staudohar and James A. Mangan (Urbana, Ill., 1991), 135-51.

[3] See the discussion in Naomi Lamoreaux, Daniel G. Raff, and Peter Temin, "Beyond Markets and Hierarchies: Toward a New Synthesis of American Business History," *American Historical Review* 108 (April 2003): 419-20.

[4] Staudohar writes that labor issues were "not important" until the 1970s. Paul D. Staudohar, *Playing for Dollars: Labor Relations and the Sports Business* (Ithaca, N.Y., 1996), 3.

[5] "See TV as Spark for NHL Players' Union," *Toronto Daily Star*, 12 Feb. 1957, p. 12. The meeting had representatives from all six clubs (including two from New York) and was also attended by James P. Durante, a Lewis & Mound associate. Four club representatives brought the $100 membership fees from each player with the other two to send them in later. Officers were elected, a banker and lawyer appointed, and resolutions passed on pension premium reduction, money from TV and radio to increase pensions, and reimbursement of traveling expenses for the club representatives. Summary of Evidence of Milton N. Mound, OLRB hearing, 23 Nov. 1957, Archives of Ontario [hereafter, AO], F223-3-1-98 (Conn Smythe fonds). N.B.: This source and the Summary of Evidence of Tod Sloane [*sic*] (note 28, below) are not official OLRB reports, but rather the notes of Maple Leaf Gardens lawyer Ian Johnston taken at the time of their testimony and should be treated with due care.

economy.[6] The late arrival of athlete laborers to unionization resulted primarily from the special status of the sports industry. The *Federal Baseball* decision had essentially provided a "cultural" exemption for baseball, and that had been implicitly extended to other "major league" sports—football, basketball, and hockey. Leagues in these sports were free to enter into cartel arrangements, exert monopoly and monopsony power, and engage in other anticompetitive activities. This included great latitude in the control of laborers, who continued to be seen through a cultural prism—as "players" of a "game"—and not an industrial one—as workers in an industry. This cultural formation came under scrutiny only after the Second World War, when athletes' questions about the beneficence of the paternalistic labor-management relationship and new technologies like television brought pressure for change. But as long as the ambiguous identity of the leagues and clubs remained just that—ambiguous as to whether or not they were really businesses at all—then the identity of sports labor organizations as unions was also called into question, and the drive to organize athletes for effective collective bargaining would struggle.

The formation of the NHLPA followed the creation of the Major League Ball Players Association (MLBPA) (1953), the National Basketball Players Association (1954), and a concurrent drive to organize a National Football League Players Association.[7] The hockey players looked to baseball as their model. In August 1956 the MLBPA had renegotiated the pension agreement, convincing the owners to have it fully funded from All-Star Game and World Series revenues.[8] Since the NHL had just signed its own national contract with CBS-TV, NHL players wanted to see if they also

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[6] In a larger context the athlete organizational activities took place during the waning of the so-called golden age of the American labor movement, a period from 1936 to 1956 in which union membership grew (in Canada as well) to record numbers as a result of the economic exigencies of the Depression and the Second World War. From 1956, union membership began to drop in both countries. For a comparative discussion of Canadian and American unionization in this period, see Seymour Martin Lipset and Noah M. Meltz, *The Paradox of American Unionism: Why Americans Like Unions More than Canadians Do, but Join Much Less* (Ithaca, N.Y., 2004), 41-44.

[7] The basketball players threatened to unionize in January 1957 but agreed to hold off for three months until the NBA president could institute a grievance mechanism. They were not formally recognized as a bargaining unit until 1964. "NBPA History," National Basketball Players Association, viewed 23 March 2006. URL: http://www.nbpa.com/history.php. The football owners refused to recognize the football association until NFL Commissioner Bert Bell recommended it under the threat of a $4.2 million dollar lawsuit from the players' association. David Condon, "Pro Football Minimum Wage Deal Approved," *Chicago Daily Tribune*, 3 Dec. 1957, C2.

[8] "Player Pensions Rise in Baseball," *New York Times*, 21 Aug. 1956, p. 23.

could get a share.[9] Ted Lindsay of the Detroit Red Wings spoke to Cleveland Indians pitcher Bob Feller, who introduced him to the MLBPA's agents, the Lewis & Mound law firm of New York. With Norman Lewis involved with baseball, partner Milton Mound took up the case, noting that hockey players had "substantial grievances" and should have "the same achievements which have been announced in connection with baseball."[10]

At the February 1957 announcement of the NHLPA, Lindsay, the organization's new president, emphasized that the group was not out "to make trouble" and had no complaints like those of professional football players.[11] He was emphatic that the group was not a trade union and therefore would not negotiate individual salaries; rather, it had been formed simply to request information about the player pension scheme and to negotiate certain changes to the Standard Player's Contract.[12] Aside from the pension, the players wanted: provision for $35 salaries during training and a meal allowance of $10 per day; a no-trade clause after six years of service; remuneration for and restrictions on exhibition games; a

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[9] "CBS to Televise Ten NHL Games; Dates Announced," *Globe and Mail* (Toronto), 3 July 1956, p. 22. Lindsay was in the plastics business with Red Wings teammates Marty Pavelich and Gordie Howe. David Cruise and Allison Griffiths, *Net Worth: Exploding the Myths of Pro Hockey* (Toronto, 1991), 76. Many NHL players had off-season business interests.

[10] Summary of Evidence of Milton N. Mound. Mound's account to the OLRB differs somewhat from that in Cruise and Griffiths, who claim that Lindsay met with Lewis first several times over the course of the fall. After speaking with Lindsay, Lewis characterized the hockey situation as "plain and simple indentured servitude" and recommended the services of his partner Milton Mound to help organize the players to press for changes. Cruise and Griffiths, *Net Worth*, 88. *Net Worth* has been the main account of the NHLPA to date, and, though it provides some interesting insight from interviews with several actors, the book tends to be quite tendentious in its interpretation of events.

[11] "NHL Players' Association Formed, Wings' Ted Lindsay Is President," *Globe and Mail* (Toronto), 12 Feb. 1957, p. 21. The executive claimed to have signed all 112 NHL players to the association, save one unnamed player, who was widely understood to be Ted Kennedy of Toronto. Kennedy released a statement confirming he was the holdout, but stated that he would "write out a cheque immediately," if he could be assured that "the money will go to the promotion of hockey and not to outside interests." "Ted Kennedy Reveals He's Lone NHL Player Not in New Association," *Globe and Mail* (Toronto), 12 Feb. 1957, p. 21.

[12] On the players' reaction to the word "union," see Cruise and Griffiths, *Net Worth*, 89-90, 92. This was not just a hockey player concern; the word did not "come easily to the vocabulary" of baseball players, either. Charles P. Korr, *The End of Baseball as We Knew It: The Players Union, 1960-81* (Urbana, Ill., 2002), 1.

minimum wage; and no compulsion to sign contracts after arbitration by NHL President Clarence Campbell.[13]

Taken by surprise by the new group, Campbell was measured in his reaction. He told the press that "there was nothing which the players of the NHL could accomplish through a union or association which could not just as easily be secured by direct, informal representations to the League or its member clubs."[14] Others in management were less balanced: the Detroit general manager, Jack Adams, confronted his players in the dressing room and dared them to voice their support for the Association. Then he invited the local sportswriters into his office and denounced Lindsay in particular as "a cancer" and "the ruination of the team," implying he made a salary of $25,000 ($13,000 more than the actual figure).[15] Conn Smythe, the Toronto Maple Leafs owner, was polite in public—"The players on the executive have done a lot for hockey, and hockey has done a lot for them. It's been an even deal up to date"—but behind closed doors he interrogated players individually about their grievances and consulted his dictionary for the definition of "communist" and "communism."[16]

Campbell and the owners immediately set to work seeking legal counsel, but they carefully avoided acknowledging the existence of the NHLPA so as not to give any legitimacy to the association (and in so doing legitimize it as the a collective bargaining representative for the players).[17] Mound tried to use the power of American statutes such as the Wagner Act to push the NHL into formal recognition, threatening to lay charges before

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[13] They also asked that the Montreal club pay room and board during training and that no new contracts be offered after 1 September. Summary of Evidence of Milton N. Mound.

[14] "Brass Reacts to NHL Group With Surprise and Caution," *Globe and Mail* (Toronto), 12 Feb. 1957, p. 21.

[15] Cruise and Griffiths, *Net Worth*, 94. The authors quote Bill Brennan of the Detroit *News*.

[16] Cruise and Griffiths write that Smythe personally harangued Jim Thomson, calling him a "traitor," a "quisling," and a "communist," and laying into him about the intrusion of "New York lawyers" and "Jews" into the NHL's business. Cruise and Griffiths, *Net Worth*, 95. However, the meeting at which this supposedly happened could not have taken place at the time they describe (immediately upon Thomson's return from New York), because Smythe was still in Florida. The meeting may have taken place on February 15, after Smythe's return and the day after the Leafs played in Montreal.

[17] The league obtained advice from its U.S. counsel, Arthur Friedlund, who was also secretary of the New York Yankees, that the individual clubs should not acknowledge any communication from Mound or the NHLPA solicitors, for fear that the NHL files could then be subpoenaed by "any [congressional] committee investigating the Anti-Trust Laws." Ian Johnston to Conn Smythe, 23 April 1957, AO, F223-3-1-92.

the U.S. National Labor Relations Board (NLRB).[18] But as a transnational entity comprising six separate employers (clubs) in two countries, the NHL was well aware of the jurisdictional ambiguities.[19] Given that the head office and two clubs of the NHL were in Canada, what application did American law really have to NHL affairs?

The NHL was not, however, immune to American legal developments, especially when they threatened the basic antitrust exemption of major league sports. The Antitrust Subcommittee of the U.S. House of Representatives Committee on the Judiciary, known as the Celler Committee after its chairman, Rep. Emanuel Celler (D-NY), was investigating the applicability of the antitrust laws to major league sports, with a view to passing legislation that treated them all equally. Several recent court decisions concerning player rights, television contracts, and the applicability of *Federal Baseball* to sports other than baseball had pressured Congress to investigate and try to resolve the outstanding issues.[20] Mound not so subtly implied to Campbell that the NHLPA's cooperation might be useful to support any NHL arguments that hockey should benefit from antitrust exemption.[21]

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[18] "Brass Reacts to NHL Group with Surprise and Caution," *Globe and Mail* (Toronto), 12 Feb. 1957, p. 21; memorandum [to Smythe], 12 Feb. 1957, AO, F223-3-1-92.

[19] The NHL had used its unusual status to obtain advantages during the Second World War. See James Andrew Ross, "Hockey Capital: Commerce, Culture and the National Hockey League, 1917–1967" (PhD diss., University of Western Ontario, 2008), chap. 6.

[20] In Toolson v. New York Yankees, 346 U.S. 356 (1953), "without re-examination of the underlying issues," the Supreme Court had adhered to *Federal Baseball*, "so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal anti-trust laws." The boxing operations of Jim Norris and Arthur Wirtz, the owners of the Chicago NHL team and arena, were right in the midst of this contest over the scope of antitrust. In the absence of legislation, after the 1953 *Toolson* decision, Norris and Wirtz appealed the decision against them and the district court reversed it. However, on appeal the Supreme Court sent the issue back to trial: U.S. v. International Boxing Club of New York, et al., 348 U.S. 236 (1955). In 1959, the matter was again in appeal before the Supreme Court, which upheld the district court's decision to order Norris and Wirtz to divest their Garden holdings: International Boxing Club of New York, et al. v. U.S., 358 U.S. 242 (1959). In the *Radovich* majority opinion, Justice Clark wrote that: "[i]f this ruling is unrealistic, inconsistent, or illogical, it is sufficient to answer, aside from the distinctions between the businesses, that were we considering the question of baseball for the first time upon a clean slate we would have no doubts [that baseball *should* be subject to antitrust laws]." Radovich v. National Football League, 352 U.S. 445 (1957).

[21] Campbell to Johnston, 1 April 1957, AO, F223-3-1-92.

In August, Campbell went to Washington to testify before the Celler committee. The NHLPA was also invited.[22] Campbell defended the hockey business model, while Mound's associate, James Durante, attacked it. Among other points, Durante noted that hockey's reserve clause was even more restrictive than baseball's, and he argued that playoff broadcast revenues should be funnelled into the pension fund. Lindsay and Doug Harvey, the vice-president of the NHLPA, supported these points, but they put a generous interpretation on the motives of the NHL owners. When Lindsay was asked whether he thought NHL owners had an "over-paternalistic view toward their players," Lindsay explained how players come up at a young age and some owners took a sincere interest:

> [b]ut then you reach a certain age where you have to start making decisions for yourself. You have to prepare for the future. . . . We want to be a little bit independent, you might say, but they still kind of want to hold you under that web, you might say. They would like to.[23]

After the hearing, Durante was eager to strike while the iron was hot, but if he thought the congressional appearance had made the league any more amenable to recognition, he was soon corrected. The NHLPA was already being actively undermined by the owners: two of the player representatives, Lindsay and Jim Thomson of the Leafs were traded to Chicago. So the association carried out its threat and in September filed charges of unfair labor practices with the NLRB in New York.[24] Then, on October 10, the association filed suit against the NHL and its member clubs in U.S. District Court, alleging violations of the Sherman and Clayton Anti-Trust Acts.[25] In addition to throwing down the antitrust gauntlet, the

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[22] The committee was first interested in hearing about the complicated NHL ownership interests of Jim Norris. The previous weeks had seen testimony from baseball, football, and basketball people, including Norman Lewis, Milton Mound's partner, who had testified that "no one with intelligence" could say baseball was not a business. Hearings Before the Antitrust Subcommittee of the House Committee on the Judiciary, 85th Cong., 1st session, June-August 1957 (Washington, D.C., 1957) [hereafter, Celler Hearings], 1249, 1931-32.

[23] Celler Hearings, 3004.

[24] Ivan C. McLeod, Regional Director of the Second Region of the NLRB, to Respondents in case No. 2-CA-5558, 18 Nov. 1957, AO, F223-3-1-100.

[25] Specifically, the antitrust complaint alleged that, prior to and in the year 1926, the "defendants entered into an agreement, combination, and conspiracy to dominate, control, and manipulate for their private profit, the professional hockey industry in New York, New England, Michigan, Illinois, and the Provinces of Quebec and Ontario, and to extend that control and monopoly to the remainder of the United States and Canada." Complaint, National Hockey League Players' Association v. Boston Professional Hockey Association, Inc., Chicago National Hockey Team, Inc., Detroit Hockey Club, Inc., Club de Hockey Canadien, Inc., Madison Square Garden Corporation, Maple Leaf Gardens, Ltd., Walter A.

association pursued legal accreditation as a collective bargaining unit in Ontario, New York, and Massachusetts.[26] By Christmas 1957, the NHLPA would have five legal actions in play.[27]

In November, after Maple Leaf Gardens, the owner of the Maple Leafs, was officially notified of the NHLPA petition for certification in Ontario, the main battle between the NHL and NHLPA was joined. The Ontario Labour Relations Board (OLRB) certification process was to legitimize the status of the NHLPA as a collective bargaining representative for Toronto Maple Leafs players. In any other context, such a representative was commonly known as a trade union. Yet, though they pursued a common trade—hockey playing—the players were paid different salaries and bonuses, and by virtue of their working conditions were treated more as independent contractors than as employees. The players had clearly seen the value in acting collectively for pension rights and general employment conditions, but they did not want the association to negotiate their salaries, which were performance-based and individual. Not surprisingly, this distinction had not been envisioned by the OLRB enacting legislation; in Ontario, a union was a union with full rights to bargain on *any* issue for its members. This lack of flexibility was ruthlessly exploited by the management of the Toronto Maple Leafs in making their case to the players.

At a dressing room meeting, Conn Smythe made his case in person, proclaiming that the association was "a trade union," which, if certified, would prevent the players from negotiating their own salaries.[28] After the meeting, Tod Sloan, the new Leafs player representative, called Mound in New York to report, telling him that the "boys were confused." Mound said he would come to Toronto immediately but, before he did, he called reporter Jim Vipond of the *Globe and Mail* to refute Smythe's allegations: "When Smythe told the players they were forming a union, that was an untruth."[29]

Brown, James D. Norris, Bruce Norris, Frank J. Selke, John Reed Kilpatrick, Conn Smythe, National Hockey League, Clarence S. Campbell, AO, F223-3-1-96.

[26] "Players File Certification Application," *Globe and Mail* (Toronto), 5 Nov. 1957, p. 16; Ben Aaronson, Examiner of NYSLRB, Southern Regional Office, New York City, [to Respondents], 5 Dec. 1957, AO, F223-3-1-94; Petition for Certification, Boston Professional Hockey Associates, Inc., and National Hockey League Players' Association, Massachusetts Archives, series LA5 430, Labor Relations Case Files, 1950-1967, box 6, file CR2546.

[27] There were also rumors of a Quebec certification application. "Players File Certification Application"; Campbell to Walter Brown, 20 Dec. 1957, AO, F223-3-1-98.

[28] Summary of Evidence of Tod Sloane [*sic*], OLRB hearing, 23 Nov. 1957, AO, F223-3-1-98.

[29] Jim Vipond, "Intimidation by Smythe Is Charged," *Globe and Mail* (Toronto), 5 Nov. 1957, p. 16.

The next day in the Maple Leafs dressing room, the players showed their confusion. Some players thought the association *would* negotiate individual salaries, and some objected to the association being called a "trade union," the term used in the OLRB application but just denied by Mound in his interview with Vipond, which was published in that morning's paper.[30] Mound arrived to clarify and mollify, then turned over the floor to Ian Johnston, the Gardens lawyer. Johnston spoke for over an hour, emphasizing the suspicious character of the NHLPA's origins and the owners' clear concern for the welfare of their players.[31] He explained that the governors were "convinced that many of their players did not want to be organized into a Union and that they did not consider membership in the Association as being membership in a Union." As a result, the governors did not want to recognize the association as a union and in so doing "[commit] their players to becoming members of a Union whether they wished it or not." He reiterated that the OLRB application was in fact seeking accreditation as a trade union, and since all Leafs were members of the association, this would make them union members. The association was trying "to trick" them by denying that it would negotiate salaries for the players; Johnston also planted the idea that Leafs management would require union permission every time it wanted to pay a bonus. Did the players want their opponents controlling their bonuses? Did they want to strike to support the grievance of a player on another team? Or respect other union picket lines? Johnston ended his peroration with a recitation of all that the owners had done and would do for their players. The implied question was: who did the players trust more, the owners or the New York lawyers? In all, Johnston used the word "union" twenty-five times.[32]

Johnston was unaware that Mound had already admitted in his own talk that under Ontario law the association would indeed be considered a trade union, but he argued that the players would still be able to bargain above the minimum salary and could ask the OLRB for the right to do so.[33] Some of the subtleties may have been lost on the players, but they were unanimous that no one would negotiate salaries on their behalf. When Mound assured them that the OLRB certification could accommodate the need to negotiate individual salaries, all the players signed a copy of the

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[30] "Maple Leafs to Vote on Group," *Globe and Mail* (Toronto), 5 Nov. 1957, p. 16.

[31] "Re: National Hockey League Players' Association," AO, F223-3-1-97.

[32] Ibid.

[33] This was disputed at the meeting by a lawyer brought along by one of the Leafs players. The lawyer told the players that, while it was true that if the association were certified "it would still be possible to negotiate salaries as a minimum and also salaries in excess of the minimum wage," limited certification "could not be given." Summary of Evidence of Milton N. Mound; Johnston to Smythe, 12 November 1957, AO, F223-3-1-97; Johnston to Smythe, 13 March 1958, AO, F223-3-1-93.

application, and Mound wrote a letter to the board saying that it was the "unalterable intention" of the association not to negotiate salaries.[34]

If the players could not be convinced they did not want a union, then perhaps the OLRB could be convinced that a union could not be had. In its reply to the application for certification, the Gardens denied the NHLPA could be a trade union because the hockey business was "a competitive sport only and that for that reason is not an appropriate field for collective bargaining."[35] The question for the board to consider was whether the NHLPA could be a union if hockey was not a business.

Gardens lawyers were making an argument arising from the difficulty of placing hockey in the standard labor relations model, but this line of reasoning was not simply legal discrimination; it had been internalized by both owners and players themselves. Conn Smythe believed a business had employees, but a sport had independent contractors with no collective rights.[36] Even Lindsay, the most militant of the hockey players, had acknowledged some beneficence in the system before Congress, indicating that the players had also internalized the idea that they were not regular employees.

Over the course of the fall and into January, the importance of certification to the survival of the NHLPA became apparent. In mid-November, Detroit's Jack Adams succeeded in berating the now Lindsay-less Red Wings into withdrawing from the association.[37] Then the NLRB refused to assume jurisdiction of the unfair labor practices charge and asked the association to withdraw it.[38] Just after the new year, there was

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[34] Ibid.; Summary of Evidence of Tod Sloane.

[35] Reply to Application for Certification, AO, F223-3-1-98.

[36] In many respects athletes *were* different from wage- or salary-earning employees. They did not expect long careers with the same firm (or even the same trade); they did not get paid a standard wage; they could be hired and fired at will; and, not least, they played a game for a living. That said, this ambiguous status was used by Smythe and others to support the paternalist labor relations. While professing to have the players' best interests at heart, NHL owners treated their players as juveniles and refused them basic rights that would have been available to a real independent contractor—for example: the right to quit, to be represented in negotiations by others, to retain copies of all contracts signed, and even to fraternize with members of other teams. Smythe claimed that he was training his players for a future career in business, and apprenticeship might be a better description of the status of NHL hockey players. For Smythe's views on the subject, not always consistent, see: Smythe to John R. Robinson, 9 Jan. 1958, AO, F223-3-1-97; Smythe to John Bassett, 29 Nov. 1957, AO, F223-3-1-98; Smythe to Mrs. Frank Williamson, 17 Dec. 1957, AO, F223-2-3-36.

[37] "Red Wings Quit Players Group," *Globe and Mail* (Toronto), 13 Nov. 1957, p. 19. Cruise and Griffiths describe the meeting of Adams, owner Bruce Norris, and the Red Wings players in *Net Worth*, 108-9.

[38] Mound's version for press consumption was that the NHLPA did not want to expose the club owners to the stigma of being declared guilty of unfair labor

another blow: Montreal management met with Canadiens players to sound out their grievances and satisfied the players to the extent that, in Doug Harvey's words, "we were all out of the union."[39] By the time the OLRB hearing resumed on January 7, the existence of the NHLPA seemed even more in doubt.

Harvey had actually instructed Mound to drop the OLRB application, but, rather than do so, Mound had so impressed the board with the urgency of the matter that the members decided to sit into the evening.[40] Over the two-day session, the board heard arguments about the appropriate size of the appropriate bargaining unit, and also whether or not the NHLPA was indeed a union that could be certified.[41] It determined an answer to the first question (all professional hockey players in the employ of the Gardens) but reserved judgment on the second. That answer would be in its written report, expected in late January.

After attending all the OLRB sessions, Garden lawyer Ian Johnston concluded it was "too much to hope" that the board would dismiss the application, but he advised Conn Smythe that any vote for certification would result in court challenges, meaning that the fight would not have be relinquished for a very long time. The best strategy, however, was still to push the players to break from Mound and the NHLPA as their representatives. With Detroit and Montreal out, Lindsay agreed to meet with Chicago Blackhawks owner J. D. Norris, and agreed to let him broker a meeting between the owners and one or two player representatives from each team.[42] The best date for such a meeting would be during the league's winter meeting in Palm Beach, Florida, February 3-4, but that was a problem because the OLRB was likely to report before then. Campbell convinced Doug Harvey and Bert Olmstead of the Canadiens, together

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practices, but the withdrawal was not voluntary. "Unfair Labor Practice Charge Withdrawn by Hockey Players," *New York Times*, 20 Nov. 1957, p. 47; Hulse Hays to Campbell, 21 Nov. 1957, AO, F223-3-1-100.

[39] William Brown, *Doug: The Doug Harvey Story* (Montreal, 2002), 159-60. Cruise and Griffiths suggest that Harvey started making phone calls from Campbell's office to persuade the other club representatives to drop the antitrust suit. Later, Lindsay did not recall this, but concluded that it would not have affected the ultimate outcome. Cruise and Griffiths, *Net Worth*, 110; Brown, *Doug*, 162.

[40] Johnston to Campbell, 9 Jan. 1958, AO, F223-3-1-97.

[41] The argument that the NHLPA was not a union "seemed to have traction with the board's labour representative, but Johnston said that he had been overruled by his fellow board members." Ibid.

[42] Lindsay to Norris, 17 Jan. 1958, AO, F223-3-1-97. This meeting was to be "entirely without prejudice to litigation or labour petitions presently in existence." Lindsay believed that the players and owners could "discuss unofficially our problems to mutual advantage."

with Tod Sloan, to get Lindsay to ask for a delay in the publication of the OLRB decision until after the conference with the owners was over.[43]

The players and owners met in the swanky boardroom of the Biltmore Hotel in Palm Beach, just after the regular NHL winter meetings. All the owners attended, as did two player representatives from each team, but no lawyers were allowed, which meant that neither Campbell nor Mound was at the table.[44] Over the course of a thirteen-hour meeting that ended after midnight, the owners agreed to concessions: a new minimum salary of $7,000; matching player pension contributions dollar-for-dollar so that at age 65 a player received $5,100 annually; increasing the playoff money pool so that Stanley Cup–winning players received $4,000 each; increasing hospitalization benefits; limiting the number of exhibition games; providing moving expenses; promising to conduct an independent survey of the pension plan with a view to improving it; and agreeing that a player would be the sole judge of his own fitness to play.[45] Most important, the owners agreed to form an Owner-Player Council for mutual consultation. In return, the players agreed to drop all pending union certification applications and the antitrust litigation.[46]

Afterward, Mound said that the meeting "was an encouraging step in the right direction" but he must have realized that the association was on ice.[47] With Campbell's help, Lindsay undertook to end the Ontario, New York, and Massachusetts certification petitions, as well as the antitrust suit. By May, all the legal actions had been dropped.[48] The owners also held up their part of the bargain, but in truth the compromises were relatively few. The creation of the Owner-Player Council was hardly a concession at all if

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[43] Madeleine McDonald to Smythe, 16 Jan. 1958, AO, F223-2-4-27. McDonald was Smythe's secretary.

[44] "Drop All Hockey Litigation," *Toronto Daily Star*, 5 Feb. 1958, pp. 16, 19. All the owners attended, and the players were represented by two representatives from each team, plus Lindsay. "Joint Statement Issued on Results of Owner-Player Conference at Palm Beach . . . ," 4 Feb. 1958, AO, F223-3-1-93.

[45] "NHL Players Agree to Withdraw Lawsuits," *Montreal Daily Star*, 5 Feb. 1958, p. 34.

[46] "Joint Statement Issued on Results of Owner-Player Conference at Palm Beach...," 4 Feb. 1958. In a familiar pattern, the Owner-Player Council had been borrowed from baseball.

[47] "Drop All Hockey Litigation." Mound kept up the façade for the press, insisting that the meeting did not signal the end of the NHLPA, but that the players were "all determined to keep the association functioning as it is now."

[48] The MSLRB dismissed the application at Mound's request in March. Mound to Labor Relations Commission, 28 Feb. 1958; and Harry P. Grages, Chairman of MSLRB, to Boston Professional Hockey Associates, Inc., 3 March 1958; both in Massachusetts Archives, series LA5 430, Labor Relations Case Files, 1950-1967, box 6, file CR2546. The U.S. antitrust action was dismissed in May, as was the NYSLRB application.

it killed the NHLPA, and most of the apparent concessions were no more than confirmations of existing practices. For example, the $7,000 minimum salary demanded by the players was already an unwritten policy of the league.[49] The players wanted all player fines paid directly to the Players' Emergency Fund, instead of into general league revenues, but the payouts from the fund had always exceeded the amount of fines, and the league had made up the difference.[50] Furthermore, the pension concessions—which addressed the initial *casus belli*—were still not direct costs to the clubs, but were funded by the All-Star Game and playoff surcharges. The league was liable only for a top-up to match the player contributions dollar-for-dollar. The changes made to the existing Standard Player's Contract were all relatively minor.[51] The Owner-Player Council, while creating a new forum for discussion, had no binding authority over league or club policies. And broadcasting revenues, which had really been at the heart of the affair, were left in the owners' pockets, untouched.[52]

Conclusion

In the end, the players had little to show for their rebellion. A few cosmetic changes were made, but even the communication problem did not seem to have been solved. Over the ensuing seasons the Owner-Player Council did not even meet regularly, and paternalism prevailed. It was not until 1967

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[49] This may have been admitted during the meeting itself. Baz O'Meara, "The Passing Sport Show" and "NHL Players Agree to Withdraw Lawsuits," both in *Montreal Daily Star*, 5 Feb. 1958, p. 34. Afterward, Campbell revealed to Smythe that there were in fact no players making less than $7,000, and only nineteen players under $8,000. Campbell to Smythe, 8 Feb. 1958, AO, F223-3-1-93. Staudohar notes that hockey's minimum salary was $500 above baseball's at the time. Staudohar, *Playing for Dollars*, 148.

[50] The league did not really profit from the fines, as Emergency Fund payments were made from the interest on $20,000 worth of bonds initially paid for by the league. By the late 1950s, the interest seems to have been insufficient to cover the payouts and needed to be topped up from general league revenues. Re: Players Emergency Fund, Statement of Revenue and Expenditures for the Year Ended 30th April 1960, AO, F223-3-1-121.

[51] The clubs agreed to pay players a pro-rated share of gate receipts for any exhibition game played after the season started; to pay the players their "proper share" of clause 8 activities (television revenues); to pay to return the players home after the season; and to allow the players to be the sole judge of their own fitness to play. Revised Draft Amendments To Standard Player's Contract Concerning Matters Agreed Upon at Owner-Player Conferences on Feb. 4th and June 3, 1958, AO, F223-3-1-105.

[52] For the 1957-1958 season, the Leafs received CDN$287,932 from Canadian television and the Canadiens likely a similar amount. Aside from any local arrangements, the American teams divided the proceeds of a renewed CBS national deal—US$234,000 over 21 games. See Ross, "Hockey Capital," Appendix VII.

that the idea of a union once again gained currency, again in an era of general revived interest across all the major league sports.

The fundamental question at the root of the NHLPA failure was whether players really were laborers who could form a trade union. Seemingly caught in a space both commercial and non-commercial, players felt uneasy locating themselves wholly within either. This in itself reflected the success of the owners in using cultural formations to restrain their labor force. Led by Conn Smythe, the league appealed to cultural bonds of loyalty and tradition as justifications for retaining the existing economic structure of labor-management relations, long after other industries had been forced by the state to move toward formal, union-led collective bargaining arrangements.[53] In most cases, the push to collective bargaining had been forced by the state, but it was notably missing in sports, especially in those like hockey that straddled several jurisdictions.[54] State and national legislation and regulations were either incompatible or inapplicable. In Ontario, the certification criteria (the appropriate definition of "trade unions" and so forth) seemed ill-equipped to accommodate the specialized nature of athletic employment, where collective salary bargaining was anathema to a pay-for-performance culture. The owners played on this perspective, but it also conformed to the players' own understanding. Players saw the benefits of organizing into an "association" to deal with general working conditions and common benefits like pensions, but a "trade union" implied fixed wages and seniority perquisites, and those possibilities were actively resisted. Confusing players further, the association proposed to represent them before the league in group issues such as the pension, but not before the clubs in individual issues such as salary negotiations. Not only were the players not always clear on this stance, but state and provincial labor boards could not necessarily accommodate the proposed flexibility (the OLRB might have done so; the NYSLRB would not). Furthermore, even had the NHLPA been certified in Ontario, the association may have been isolated there—representing players from one team of a six-team league. This highlights the obstacles faced in establishing an effective union for a labor force paid by six separate employers in six jurisdictions across an international border.

In the end, if the players could not define and reconcile their cultural and business identities, the state would not do so on their behalf. If the failure of the NHLPA had shown anything, it was that unless the players could balance competition and cooperation, as the clubs had learned to do, they would have to trust the owners to do it for them.

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[53] The National Labor Relations Act (Wagner Act) of 1935 had signalled the sea change in this regard.

[54] Staudohar notes that the state's influence in hockey is less significant than in other sports. Staudohar, *Playing for Dollars*, 142.