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Labor and Immigration Issues in Sports

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Abstract

Every year, international athletes come to play professional sports in the United States. Are they stealing jobs from Americans, or should they be welcomed for their talents? Should they be entitled to special treatment with regard to immigration and labor laws, or should they have to go through the same procedures as any immigrant applying for United States citizenship? The purpose of this article is to determine the historical and cultural framework with regard to the use of sports as a vehicle to achieve immigrant assimilation in the United States. This article also addresses the topic of athletes coming into the United States to "steal" jobs from Americans. Second, this article discusses the legal issues as well as the overlapping labor issues concerning immigration and worker migration. Third, the article is also important in the post-9/11 period because of immigration and security issues.

Introduction

American citizens are wary when newly arrived immigrants set forth on American soil with the hopes of getting a job and living the "American Dream." The American Dream, to most people, consists of living in freedom, gainful employment with a high salary, a home, a car and a family. There are many views on recently arrived immigrants and the uneducated person usually argues that these immigrants are taking jobs away from American citizens. Citizens get upset because when these immigrants arrive, they have to find jobs in order to survive. Most immigrants take on menial jobs that American citizens do not want, like a bus boy, or a food delivery person. However, most citizens turn the other cheek when the immigrant is a sports star.

Aside from the talent of the sports star, there are various aspects one must consider when trying to attract a non-American citizen to join an American-based sports league or team. Some of those issues include: labor issues, legal ramifications, governmental action, cultural assimilation issues, political wrangling, and unforeseen circumstances that might arise. Labor issues address the feelings of resentment mentioned above where American citizens feel that jobs are being taken away from fellow Americans by immigrants who are willing to work for a lot less. "Workers who had previously protected their wages by agreement not to work for less than their fellow worker were faced with competition from immigrants willing to work for much less" (Carrell and Heavrin, 2004, p.4-5).

There are various legal issues to address. However, it is hard to say with certainty if all of the laws that have been enacted are any serious help to the highly paid athlete. For example, does one think that an athlete is worried about the Fair Labor Standards Act, which governs minimum wage standards, the number of hours in a work week, and overtime pay?

This is very doubtful. However, there are legal issues that these foreign born athletes must address and conform. Some of those legal ramifications include immigration status, the payment of taxes and the construction of an enforceable contract. In some cases, child labor laws come into play because the superstar athlete is younger than 18.

The government is a huge factor in labor and immigration issues as well. It is up to the U.S. government to protect its citizens while promoting historical and constitutional ideals. The inscription on the Statue of Liberty reads, "Send us your poor, your tired, your huddled masses." Immigrants built the United States, and its society. However, the realities of a post 9/11 America must come into play. Security is a huge concern, along with immigration laws. Finally, it would also not be the United States unless economic factors were taken into consideration as well. So, antitrust and political ideologies must be addressed too.

Even after the athlete has arrived, and the political wrangling begins between the country he left and the United States, issues like assimilation come into play. Assimilation, in the context of culture and labor laws, must occur, to some degree, in order for the athlete to be successful in his endeavors. This is where the resentment from Native Americans begins. Xenophobia occurs because the traditional worker arrives with his own cultural values and the American citizens want him to embrace their own cultural values. Assimilation in this context tends to follow historical perspectives. Early immigrants assimilated and molded the concept of what it is to be American. History shows that such is the case.

Regardless, there are many variables one must take into consideration before determining whether or not athletic immigrants deserve to be treated differently. Should their pure talent be the determining factor for being allowed to pursue the American Dream through sports, or should they too be forced to go through the same procedures as any ordinary immigrant? Hopefully, this paper will provide some of the answers.

This paper looks at a variety of labor issues concerning immigrants who come to the United States for sports related activity. It discusses the legal, cultural, political and other extreme circumstances behind this phenomenon. The paper addresses specific instances as well as studies conducted on the practice of allowing immigrants to play a sport in a different country. Finally, the paper concludes with some thoughts and suggestions into the matter and some suggestions for seeking common ground.

Review of Literature

Legal

There are many legal issues the immigrant worker has to familiarize himself with if he is to be successfully employed in the United States. However, some worker concerns like job security, holidays, vacation pay, promotions and age discrimination are not typically things fought for by foreign-born athletes. This is due to the fact that the average career length in professional sports is approximately 3-5 years depending on the sport. In addition, professional sports athletes might be required to play on holidays, such as Thanksgiving Day football. Professional athletes tend to worry about other worker concerns such as drug testing, health plans, profit sharing, grievances and arbitration. Probably the best way to start the review of literature section of this paper is with the Immigration Act of 1990 and the surrounding legal and governmental issues with regard to athletes.

The Immigration Act of 1990 was a major overhaul of the United States immigration policies and laws. As previously mentioned, it is up to the

government to protect its citizens and its borders. One of the main thrusts of the Immigration Act of 1990 was that it placed workers coming into the United States into various categories. Of those categories there are two that must be specifically mentioned with regard to this paper; those are the O and P categories.

Specifically, the O category is for "workers with extraordinary abilities". The P category is for "athletes and entertainers" (United States Citizenship and Immigration Services a.). These athletes must conform to an additional set of requirements in order to be eligible for these category designations. For both the O and P categories, aside from the extraordinary abilities the athlete possesses, he must be a temporary worker only visiting for the sole purposes of performing. In addition, he must be uniquely qualified for the position, and he must have a foreign home that he does not intend on abandoning (United States Citizenship and Immigration Services b.). Basically, what the government wants to know is that he will return to his country once he has finished performing.

One can argue that athletes can fit into either category O or P. They are uniquely qualified workers in the sense that they possess a talent that is better than any American citizen. This is proven by the immigrant's ability to make the team over all other persons trying out for a position. The O category designation is a little bit more geared to specialized workers in the arts and sciences. However, the United States government created the P category to specifically refer to athletes. So, when it comes to the legal issues surrounding whether or not athletes are legally allowed to come to the United States and play in professional sports leagues, the government has developed immigration laws to allow this to occur. However, the laws do not provide that these gifted persons should be favored over ordinary immigrants seeking entry into the United States.

There are other legal/labor issues involving the immigration status of an athlete into the United States for the specific purpose of engaging in professional sports. Some of those issues, aside from the immigration status, include: contracts and taxation (O'Connor, 2000). O'Connor outlined the specifics of the Immigration Act of 1990 as it pertains to athletes coming into the United States to play professional sports. His report is specifically designed to train lawyers who might represent these athletes.

Contract issues can take on various forms. Most times, these athletes are unfamiliar with contracts in general. O'Connor (2000) points out that a lawyer or representative of the athlete should engage the athlete into two different contracts, one contract to be his legal representative and another contract with the team the athlete will play for. O'Connor suggests that in some cases these individuals need to be taught the nuances of a contract because they have no prior knowledge of how contracts work, but more importantly one does not want the athlete just to walk away from a contract. This idea of understanding and honoring contracts can go on even further because all major professional sports leagues are governed by collective bargaining agreements. So, it is up to the athletes' representative to explain what collective bargaining agreements are all about as well.

Collective bargaining agreements and sports go hand in hand. The negotiations that occur between labor and management is the gist of what their relationship is all about. The Wagner Act made unions a force to be reckoned with. Two of the many things the Wagner Act achieved are the fact that management had to recognize the employee's right to form a union, and management had to bargain in good faith. These two rights are the cornerstones for successful collective bargaining

agreements in industry as well as in the world of sports.

Another area the athlete needs to be instructed on is taxes. Every good American knows that his taxes are due by April 15th of any given year to pay his fair share of the taxes due from the preceding year of work. O'Connor relates how taxation issues become more complex for the athlete because he is unfamiliar with paying taxes in general, or he is unfamiliar with the American tax system. To make it even more complex, there are state taxation issues for athletes who play in any given state. It is up to the athlete to pay these individual state taxes, so it is in his best interests to find a representative that is knowledgeable in this area.

Another legal aspect of recruiting immigrants to play professional sports in the United States involves child labor laws (Donnelly, 1997). In his report, Donnelly outlines child labor and sports labor issues. The United Sates classifies anyone under the age of 18 as a child, so there are a variety of laws that protect them. Oftentimes athletes recruited to play in the United States are under the age of 18. This phenomenon occurs in some of the big four professional sports of baseball, basketball and hockey, but not so much in football.

Additional legal and child labor factors are raised when the child-athlete needs to sign a professional contract. Anyone in the United States under the age of 18 is not permitted to enter into a legal contract. Legal guardians or caretakers can often take advantage of the child-athlete and walk off with the money earned by the athlete simply because the caretaker is the legal guardian of the child and an administrator of the funds produced from the labor of the child. Other child labor factors include the number of hours a child is allowed to work in a week. Sometimes training and practice hours, in addition to time spent in playing the game, are over the limit for the child-athlete. For the most part, sport leagues get away with exploiting the child as long as they play within the terms of their respective collective bargaining agreements.

Some other governmental restraints on sports and immigration concern the recruitment of college coaches. When recruiting a college coach, all NCAA Division I schools seek the best coaches in the world for their teams. Equal opportunity programs and Title IX laws call for colleges to get the best coaches available for their teams. However, sometimes these laws interfere with immigration laws. A 1984 article by Abbott and Smith revealed that Title IX and equal opportunity laws were making women's programs more equal to men's programs, but immigration laws prevented the very best from coming to the United States (Abbott and Smith, 1984).

Cultural

There are many cultural aspects of an immigrant coming to the United States to participate in professional sports or sports in general. An article by Gems (2001) discusses these phenomena from a historical perspective. Gems wrote about how early unions desired to increase leisure time as a fringe benefit. The pressure the unions brought on companies like Spaulding and Pullman led to their sponsoring of sports related employee teams. This may be a reason that during the times when workers were having vicious strikes the Pullman strike was on the calm side. "The Pullman strike was peaceful and well organized..." (Carrell & Heavrin, p.10). Regardless, the sponsoring of the employee teams and the use of sports to acculturate newly arrived immigrants all happened because companies wanted to "Americanize" immigrant workers through sport (Gems, 2001).

The theme of using sport to assimilate recently arrived immigrants

continued with a study by Stodolska and Alexandris. Stodolska and Alexandris also discussed the role of sport to "Americanize" recently arrived immigrants to the United States. Their findings showed that after the introduction of sports, the immigrants fell into one of three categories. Those categories are: (1) groups that embraced and assimilated to white culture, (2) groups that assimilated to a subculture of their own ethnic community, and (3) groups that preserved their own ethnic values and promoted their ethnic group solidarity (Stodolska & Alexandris, 2004).

Other studies argue that some professional sports followed the immigration patterns of the United States. This is similar to what Carrell and Heavrin noted with the history of craftspeople in the United States. "The original craftspeople came from free laborers, those immigrants who paid their way to the New World and established homes and families and passed on their trade to their children" (Carrell & Heavrin, p.3). An article by Gilbert (1999) traces the glut of Irish born baseball players in the Major League in the 1890s. Gilbert argues that there were many Irishmen in the league at that time because the earlier patterns of immigration into the United States allowed the new generation of Irish-Americans to become assimilated and partake in professional sports (Gilbert, 1999). Early labor unions were comprised of cheap, immigrant workers, and as they assimilated into the United States, they took on jobs in better industries while climbing the social ladder.

The Irish were not the only immigrants who assimilated into sports. After the Irish, the major immigrant group came from Italy. Italians moved up the social ladder after the Irish did. An article by Mormino (1982) discusses how Italians assimilated into sports in the St. Louis area in the decades of the 1920s and 1930s. The assimilation factor parallels what these immigrant groups were trying to achieve on the union front and the gains they hoped to make in labor-management relations.

Political

There are a variety of political issues that surround immigrants coming to the United States to play professional sports. Some athletes see their talent as a way out of their country. For example, how many athletes try to get out of Cuba each year? Success stories like that of Orlando "El Duke" Hernandez of the New York Mets show that Cuban immigrants will go out of their way to play professional sports in the United States. Meanwhile, little-known, hopeful defectors, like Elian Gonzalez, must be returned to the country of their birth. The political ramifications do not end there.

Some researchers believe that sport is a "social technology," that organizes the world to solve its political and social problems (Dyerson, 1998). Dyerson also believes that the struggle of sports athletes mirrors how the United States grew as a country. Dyerson (1998) argues that there are many civil rights issues that parallel the rise of sports in the United States. Most detractors of Dyerson argue that sports are now part of big business and to argue that it can solve the political and social ills of the world is absurd (Mason, 2000).

Another study with regard to political ideologies and sport comes from Hemphill. Hemphill (1992) discussed the "Freedom in Sport." Specifically, Hemphill talks about sport as an "extension of play," and how play is embraced in the United States, but not necessarily around the world. In addition, Hemphill argues that sport is an "extension of alienated capitalist labor" (1992). It is within these two points that political ideologies in sport can be analyzed for countries throughout the world. It is also within these two points where the political wrangling between countries occurs. It is hard in some instances for a country to

see a beloved hero leave for the United States to become rich and famous. On the other hand, some countries embrace the idea that their athletes have made it to the pinnacle of professional sports.

Other Circumstances

What this paper has discussed so far are the legal, cultural and political situations where foreign-born athletes come to the United States to play sports, specifically professional sports. However, sometimes there are extenuating circumstances that bring athletes into the U.S. immigration and sports spotlight. Sometimes these other circumstances might be able to fit in one of those other categories, but most often they are special cases. Let us start with the Olympics.

Sometimes foreign-born athletes wish to come to the United States to become citizens and represent the U.S. in the Olympics. Jarvis discussed the requirement for an athlete to do just that (2000). First, the athlete must have at least five years of residency in the United States. Second, that requirement can be shortened to three years if the athlete marries an American citizen (Jarvis, 2000). Even though these athletes are not paid, they do have non-monetary aspirations, such as American citizenship. In these cases, they are not taking away jobs of Americans, but spots on the Olympic squad that American-born athletes would have occupied. However, these instances are rarely met with resistance from Americans because the foreign-born athlete must possess some talent in order to make the Olympic team.

Another non-monetary aspect of immigrants coming to the United States to participate in sports is at the collegiate level. Every year, colleges seek to recruit the best available players to participate on their teams. However, this is becoming a little bit harder in the post-9/11 world. Gardner and O'Toole (2002) outlined the myriad of problems with recruiting international students to play collegiate sports. Some of those problems include being stopped at security checkpoints to ascertain passport and visa validity. In addition, laws have been made that tighten the once loose visa market for international athletes looking to play college sports.

Since the subject of 9/11 was mentioned, what happens when security, labor, sports and immigration issues come together? The result is the plight of Kwame James. The average reader is not going to be too familiar with Mr. James, but he might just be the greatest foreign-born, American hero. Mr. James was one of the people who stopped the notorious, "shoe-bomber," Richard Reid. Reid was intent on blowing up an American Airlines plane that was filled with people. Mr. James, and some others, subdued Reid and prevented an attack. James is a Canadian born athlete with hopes of becoming an American citizen. Just for his bravery in this instance, he should be awarded U.S. citizenship, but what makes Mr. James's story even more intriguing is that he is a minor league basketball player with NBA aspirations. Mr. James' problems were outlined in an article by O'Connor (2003). O'Connor recants the story and the plight of Mr. James and introduces another legal fact of sports and immigration—there are no work permits for athletes in training (2003).

The problems with not allowing work permits for athletes in training prove that it is difficult for the college athlete, who is considered in training and non-professional, to come to the United States with the hope of playing professional sports. However, this requirement makes it very difficult for professional teams in the United States to develop foreign-born talent. In Mr. James's case, he has alternatives. He saved a bunch of Americans from death in the plane incident. He attended school in the U.S. and therefore can try to find a job in his field of study. Finally, he can try to marry an American citizen. However, what about the professional

sport teams that are looking for foreign born talent? Sports teams cannot recruit that type of athlete unless the teams are willing to sign the athlete to a professional contract. Basically, the requirement of no work permits for athletes in training forces teams to take a chance on an athlete that may or may not pay dividends for them down the line.

Finally, in the case of other circumstances, what should be done when a foreign- based professional sports franchise moves its entire team to a new location in the United States? For example, this is the case with the Montreal Expos moving to Washington D.C. Of course the players will be allowed to play in the United States, but what about the hundred or so office workers that have been with the team since its inception? The various factors were addressed by Adams.

Adams wrote about the various front office positions that are not within the legal definition for immigration as stated before, specifically that the immigrant should be uniquely qualified and no other person could perform the job as well. This is easy to do with a highly talented athlete, but it is very difficult to prove that the Montreal Expo ticket manager is uniquely qualified and no other American can perform the duties of this position as well (Adams, 2004). Other positions throughout the organization were lost to Americans. Groundskeepers, salespersons, and a host of other jobs were lost due to the fact that they are not highly skilled positions and Americans could fill them. I can personally guarantee that there was no major uproar by team officials looking to keep these jobs for their workers. Conversely, there were no Americans feeling bad that these people had lost their jobs either.

Studies

Most of the studies on immigrants coming to a country to play sports, and the migration of workers for sports related endeavors have been conducted by Maguire. Unfortunately, Maguire does not study the effects on the migration of workers into the United States, but he does study the effects on the phenomena of athletes going from their birth country to another country to play professional sports, and he proves that that migration is a global issue (Maguire, 1994).

One of Maguire's earliest studies was about Americans migrating to England to play in professional British Basketball Leagues (Maguire, 1994). In this study and all of his other studies, Maguire looks at the problems and tensions associated with migrants in global sport processes. In 1996 Maguire studied the migration of Canadian hockey players into England to play professional hockey. In that study, Maguire assessed labor rights, work permits and salary caps as they pertain to these players and their relationship with English citizens. These are some of the exact same issues discussed in this article, and are just as problematic in the United States.

Another major study of Maguire's, and problem for the government of England, lies in the number of soccer players recruited to play in the Premier League in England. The Premier League is one of the best soccer leagues in the world, and teams recruit players from around the world. In their study, Maguire and Pearton (2000) looked at the implications of soccer players in the Premier League as a part of globalization and worker migration. Maguire and Pearton conclude that the recruitment of these soccer players parallels workers migrating to countries where work is abundant. In addition, Maguire and Pearton address the economic, political and social factors these soccer players affect when they go to England to play professional soccer.

Summary and Conclusions

Playing professional sports is a dream for many people throughout the world. The idea of being able to be well compensated to play a game, and something that you love, is a goal that only the truly talented can achieve. However, how are the local citizens to act when immigrants come into their country to take jobs away from the locals and make a great deal of money at the same time? The answer is, for the most part, local citizens embrace the athlete and his or her talents and hope that these athletes embrace the American way.

This paper has outlined a variety of labor aspects that the foreign-born athlete must take into consideration when he heads to the United States to play sports, whether it is professionally or not. The athlete must consider the legal aspects first and foremost. The issue of immigration and the laws that surround the foreign-born athlete to legally come to the United States must be adhered to. Some people might believe that these athletes receive special treatment, but that special treatment is with regard to getting them into the United States to play professional sports. However, all of the special treatment these athletes receive is within the letter of the law. This is clear because the United States has specific designations of these types of immigrants as outlined above. So, from a legal perspective, the United States government embraces these athletes.

The cultural aspect of these athletes coming into the Unites States might be where the feelings of resentment kick in. Xenophobia is the fear of foreigners and this fear runs rampant when immigrants come to the United States. However, this fear is usually seen when immigrants compete with Americans for jobs, something that does not occur in a sports context. The average fan is not really going to care if Yao Ming or Sammy Sosa adopts the ways of the average American. Also, the average American is not talented enough to make a professional sports team, so it is not like these athletes are competing with Americans for jobs. If there was an American more talented than these foreign-born athletes, then he is going to make the team. So, the cultural aspects involved with hoping a foreign-born sports star assimilates to the cultural norms of American is not a real factor Americans worry about. The emphasis is on the athlete's ability to perform. Anything short of this is a non-factor, including cultural aspects.

The political aspects of the immigrants coming into the United States only gets difficult when there are differences in the political ideologies between the two countries to begin with. If the country where the migrant comes from is at odds already with the United States, then those feelings of hatred are reinforced. On the other hand, if the political climate between the two countries is good, or even fair, then there is not a problem. This is proven by the large amount of baseball players in Major League Baseball that hail from the Dominican Republic.

As with any situation there are always extenuating circumstances. This paper outlined the various situations that may arise when someone seeks United States citizenship. Specifically, this paper has outlined the residency requirements for athletes who wish to become American citizens in order to represent this country in the Olympics. If the athlete is talented, then he will be allowed to enter the United States, provided he meets the requirements set forth by the governing bodies. This paper also discussed the plight of Kwame James, an athlete, but actually a better hero than athlete. His case for immigration should be judged on his heroics and not necessarily his athletic ability.

Then there is the case of the non-highly skilled worker seeking to migrate to the United States. Again, it is in these instances that this author believes that American resentment takes place. There would have been a major uproar if your average American could not vie for the various

front office positions that became available when the Montreal Expos moved to Washington, D.C.. If the Expos were allowed to bring all of their employees with them, then labor groups would have become very irate and fought to give those jobs to American citizens.

So, are these foreign-born athletes really stealing jobs from American citizens? Absolutely not. Making a professional sports team better should entail getting the best athletes from around the world. Professional sports leagues have embraced this idea by implementing worldwide drafts. The National Basketball Association does it, and Major League Baseball favors it as well (Carrell & Heavrin, 2004). Owners, managers, employees and fans want to win, want the team to be competitive, and want to field the most talented athletes in the world.

Are these athletes given special treatment? This is obvious, and expected, to get the athlete to come to the United States. However, being a professional sports star does not guarantee U.S. citizenship. There is no indication that these athletes receive special attention when, and if, they decide to become citizens of the United States.

References

Abbott, A. & Smith, D.R. (1984). Governmental constraints and labor market mobility. *Work & Occupations*, 11(1), 29-53.

Adams, R. (2004). Law keeps bulk of Expos staff from moving. *The Sports Business Journal*, p.47 Retrieved from, www.sportsbusinessjournal.com/index.cfm? fuseaction=article.preview&artic...

Carrell, M.R., & Heavrin, C. (2004). *Labor Relations and Collective Bargaining*. Upper Saddle River, N.J: Pearson Prentice Hall.

Donnelly, P. (1997). Child labour, sport labour. *International Review for the Sociology of Sport*, 32(4), 389 - 406.

Dyerson, M. (1998). *Making the American Team, Sports Culture and the Olympic Experience*. Champaign, IL: University of Illinois Press.

Gardiner, A., & O'Toole, T. (2002, July 11). Foreign athletes face more scrutiny, *USA Today*, p. C12.

Gems, G. R. (2001). Welfare capitalism and blue-collar sport: The legacy of labour unrest. *Rethinking History*, 1(5).

Gilbert, T. (1999, September). When baseball was Irish. *World of Hibernia*. Retrieved April 21, 2008, from http://findarticles.com/p/articles/mi_hb3593/is_199909/ai_n8540240

Hemphill, D.A. (1992). Sport, political ideology and freedom. *Journal of Sport & Social Issues*, 16(1), 15-33.

Jarvis, L. (2000). American dreams. Women's Sports & Fitness, 3(3).

Maguire, J., & Pearton, R. (2000). The impact of elite labour migration on the identification, selection and development of European soccer players. *Journal of Sports Sciences*, 9(18).

Maguire, J. (1996). Blade runners: Canadian migrants, ice hockey, and the global sports process. *Journal of Sport & Social Issues*, 20(3), 335 – 360.

Maguire, J. (1994). Preliminary observations on globalization and the

migration of sport labour. Sociological Review, 42(3), 452-480.

Mormino, G. R. (1982). Playing fields of St. Louis: Italian immigrants and sports: 1925-1941. Journal of Sport History, 9(2), 5-19.

O'Connor, I. (2003, February 12). Shoe-bomb hero deserves to stay. USA Today, p. C03.

Stodolska, M., & Alexandris, K. (2004). The role of recreational sport in the adaptation of first generation immigrants in the United States. *Journal of Leisure Research*, 36(3), 379-413.

United States Citizenship and Immigration Services. (n.d.a.) Retrieved April 5, 2008, from http://uscis.gov/graphics/services/visas.htm#P-

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