A Legal and Political Economic Analysis of College Football Event Labor

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In 2014, a concessions provider for the Tampa Bay Buccaneers used men experiencing homelessness to work home games (Hobson, 2014). The men received shelter and food instead of a wage. The same year cheerleaders across the United States filed lawsuits against NFL teams contesting exploitative, sexually discriminative, and underpaid working conditions (Adshade & Berri, 2015). Are these unfortunate coincidences that sport managers must respond to; or do the legal and political conditions of event labor make exploitative working relationships such as these possible or even probable? To provide an initial answer, we present an interdisciplinary legal and political economic study of college football game days at a FBS Division I University. First, we conduct a legal analysis of employment status of workers to determine all the possible legal classifications of labor at college football events. We then use fieldwork from a season of home games (n=6) to describe the type and frequency of each legal category.

Literature Review

Economists of labor focus on how workers bargain with firms over compensation. According to this perspective, departures from fair wage—represented as the Marginal Revenue Product (MRP)—result from labor market imperfections (Krautmaan, 1999). Owners, universities, and veteran players use leagues, the NCAA, and players associations to establish and maintain market power with which to extract economic rents from restricted or not-free agent professional athletes and college athletes (Berri, 2008; Sanderson & Siegfried, 2015). Economists have demonstrated professional and college athletes are paid a fraction of their value (Brown & Jewell, 2006; Hunsberger & Gitter, 2015; Krautmann et al., 2009). However, non-athlete labor has received little attention from sport economists, likely because it is difficult to procure wage and performance data on which MRP calculations rest. Outside of sport studies, scholars have critiqued economists’ use of bargaining and market power theories. According to political economists, bargaining depends on legislation such as pension plans, minimum wage and benefits, and statutory working conditions, all of which are in place before workers negotiate firms (Perotti & von Thadden, 2006). Political economy is compatible with legal analysis because it accepts that economic exchanges are negotiated within existing institutional structures such as courts, contract laws, and employment legislation (Fligstein, 1996).

As in economics, most legal analyses of sport labor focus on athletes. The exception is Spallanzani (2015) who examined how the Fair Labor Standards Act (FLSA) protects low-level workers of major league sports teams. The Act sets minimum wage and maximum hour rules but an exemption exists for “seasonal amusement or recreational establishments” (FLSA, 2006). Professional sport teams claim this exemption to defend against lawsuits from low-level workers (Spallanzani, 2015). While Spallanzani (2015) argued professional organizations should not be entitled to claim the exemption, it is important to consider how this and other legal exemptions impact working conditions in professional and collegiate sports.

Method

We begin by employing doctrinal legal research techniques to identify the various categories of workers present at college football game days under federal labor law. The doctrinal method involves the identification of various workplace relationships utilizing case law, treatises and additional secondary materials. The legal categories are determined based on principles of statutory interpretation and stare decisis. Using these techniques we were able to categorize the various types of workers at college events within the federal employment framework. After determining all the possible legal categories of work that might be observed at a college football home game, we conducted semi-structured interviews at six home games of a FBS Division I football program to find out which categories of workers exist, and the frequency of each category. At the time of writing two games remain of the
We begin from the assumption that employment data (i.e. wages, duties, work hours, benefits, employee-employer relationships, and legal protections and contracts) are the same for and can be generalized across a given job, but only for laborers who work for the same organization. Based off this assumption, we use qualitative saturation and triangulation to determine the common characteristics of each job-type (Flick, 2009). Qualitative saturation occurs when interviews with laborers of the same type and working for the same organization yield no new information. Triangulation denotes using multiple sources of data pertaining to a single phenomenon in efforts to establish the dependability of a finding (Flick, 2009). We will triangulate job-types by interviewing organizational representatives to corroborate workers accounts. Contradictions between the accounts of workers versus organizations will be reported.

Interviews will be coded using selective codes drawn from our legal analysis. Our goal is to place each laborer within a legal category of work. Using total employment numbers gathered from the athletic department, other organizations, and corroborated in our fieldwork, we will then estimate the number of people working in each legal category during a college football game day.

Preliminary Results and Discussion
The categories of workers that we have identified as potentially being present at college football games include the following: 1) full-time employees of public enterprises; 2) full-time employees of private enterprises; 3) part-time employees of public enterprises; 4) part-time employees of private enterprises; 5) independently contracted employees; 6) students employed by the university; 7) paid interns; 8) “student-athletes;” 9) un-paid interns; 10) prison labor; 11) volunteers for private for-profit enterprises; 12) volunteers for non-profit or public enterprises. Legally, many of these worker categories exist in a grey area with uncertainty as to their status. Notably, because they work college football games, many of these workers are less likely to be protected under the FLSA than if they worked for a professional sport team; this is because of amendments exempting public agencies from the FLSA (Tucci, 2012). We will discuss why the classification of worker is important for teams, sport management students and sport management programs. In conflicts between workers and sport organizations, legal definitions of “employment” will be critical for determining whose rights are protected.

Although fieldwork is ongoing we offer one preliminary interpretation regarding college football labor. Game days necessitate an influx of labor and this influx consists predominantly of workers with fewer legal protections. If this is the case it means college football games carry a greater risk of labor exploitation. Therefore, although sport events do not necessitate the exploitation of workers, they do precipitate the conditions under which workers can be taken advantage of with relatively few legal protections. Managers and legal consultants should be aware of people who work directly and indirectly for their organization as well as the legal status of this work. Sport managers must pay special attention to event-related labor because many event laborers work indirectly and under ambiguous legal statuses.