

Collective Bargaining in the Professional Women's Hockey League

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The PWHL had its first season in 2023-24. Unlike other professional sports, the league and the players association had their first collective bargaining agreement sorted before the inaugural season began. The agreement is the first of its kind to treat women's hockey players as professional athletes, with a comprehensive set of terms and conditions around wages and benefits set out in the eight-year-long agreement.

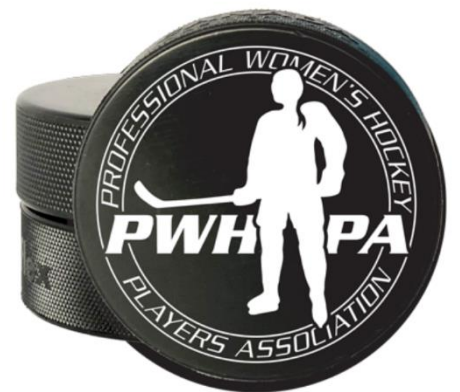
Players are happy with the agreement, believe it is a good starting place, and that advocating for strong terms is closely aligned with building their relationship with the league and investors. As far as we know, no grievances have been filed. Yet.

One issue is that players are getting paid different salaries. This is essentially based on their value in terms of scoring points, attracting fans, investors, and raising the overall profile of the league. No player can earn less than \$60,000 but a smaller proportion can earn as much as \$90,000. In time, it is possible that players will start to have some concerns with how these allotments are made, and whether the distribution is fair. Take a step back from the details for a second, however, and we can see that there are bigger underlying issues.

The PWHL is basically a transnational employer which bargains a collective agreement with a transnational union (the players association). But, for the sake of convenience, the legal reality that the six teams are governed by three different labour law regimes has been largely ignored to date.

If you were to design a collective bargaining structure for the PWHL, you might start by recognizing that the six teams fall under the jurisdiction of the National Labor Relations Act (New York, Boston, Minnesota), Ontario labour law (Ottawa, Toronto), and Quebec labour law (Montreal). The PWHLPA could then be a player's association that bargains on behalf of those three separate bargaining units representing the six teams, with the league, for one collective agreement that applies across borders. But that's not actually the way it works in the PWHL, and it's not the way it works in other leagues.

So, how does it work? In short, the professional sports leagues have historically behaved as if the NLRA applies in Canada. The sports' associations are voluntarily recognized by the leagues and the parties then pretend that there is one transnational bargaining unit. They bargain a collective agreement, take a ratification vote of all the players on both sides of the border, and, if a majority of players accept the proposed settlement, the parties behave as if there is a single collective agreement that governs employees and employers on both sides of the border. This works perfectly fine, provided everyone agrees to play along with the fiction that the NLRA applies in Canada.



However, issues arise when, every now and then, one party or another (but usually the players' associations) decide it is useful to enforce Canadian labour laws strategically. For example, in the 1990s, Major League Baseball and the NBA locked out their umpires and referees and elected to use replacement workers. The lockout and the use of replacement referees was perfectly legal in the United States under the NLRA, but clearly illegal in Ontario when it came to the Toronto-based teams. The unions' unfair labour practice complaints before the Ontario Labour Relations Board were successful.

The OLRB ruled that Ontario labour laws apply to work performed in Ontario even if that work is part of transnational sports league. Since the leagues had not satisfied Ontario's legal prerequisites to lockout workers, the lockouts were unlawful. Moreover, the Ontario law in effect in the 1990s banning the use of replacement workers meant that the use of scab officials was unlawful too. These Ontario decisions caused the leagues to return to the bargaining table, where deals were quickly reached.

Other potential issues lie just beneath the surface, dormant only because the leagues and players' associations have so far agreed not to raise them. For example, voluntary recognition of a union isn't recognized under Quebec labour law. Therefore, legally speaking, the players on the PWHL's Montreal Victoire and the NHL's Montreal Canadiens are non-union. This has huge implications for transnational sports collective bargaining that everyone just ignores. For example, non-union workers in Canada cannot lawfully strike or be locked out. If a lockout or strike of Victoire players occurs in the future, will it be ruled unlawful under Quebec law? Maybe.

The PWHL is garnering a lot of attention and support, and promises to deliver for fans, players and investors alike. So far, so good on the labour relations front. However, troubles will inevitably surface at some point. No professional sports league has entirely avoided labour conflict. It will be at the point of conflict that the potential labour law issues percolating under the surface are most likely to fissure and create problems. The basic legal truth is that PWHL players on Canadian teams are governed by Canadian labour laws. As argued more fully [elsewhere](#), there may come a point when this legal reality will clash with the fiction that the NLRA has supranational application to Canadian hockey rinks. □

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