

SALARY ARBITRATION AND THE EFFECTS ON MAJOR LEAGUE BASEBALL AND BASEBALL PLAYERS

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INTRODUCTION

Throughout the history of Major League Baseball, there has been an acrimonious employer-employee relationship between the Major League Baseball players and Major League Baseball ("MLB"). Much of the labor disputes stem from the free agency and salary arbitration requirements in the collective bargaining agreement ("CBA") between the players and the teams. The collective bargaining agreement ("Basic Agreement") reached on February 25, 1973 has been directly responsible for baseball's numerous work stoppages.

How much does the CBA's maligned salary arbitration system fuel the animosity between MLB and its players? Is the salary arbitration system becoming detrimental to the game of baseball? This article will address these two issues.

Part II will provide the background for baseball's current labor woes. Part III will provide MLB procedures in the current salary arbitration system. Part IV will examine how the salary arbitration system is eroding MLB. Part V will describe MLB's efforts to correct the labor problems through removing the salary arbitration system. Part VI will examine the possibilities for baseball to correct the problems that the current salary arbitration system has created.

II. HISTORY

The process of salary arbitration stems from the reserve system created at baseball's inception. When professional baseball was beginning in the 1870s, players were held to only one-year contracts, which allowed players to switch from team to team incessantly. [EN 1] At this time, the owners felt a lack of power over the players. This led a few of the team owners to create a "gentlemen's agreement" applicable to all of the owners that would allow each team to protect five of their own players. [EN 2] These players became "reserved" to their present club and out of the reach of other teams. [EN 3] The "gentlemen's agreement" created by the owners eventually transformed into what is now known as the reserve system.

By the 1880s, the reserve system spread to every team and each individual player had a reserve clause inserted in his contract. [EN 4] The reserve clause of the contract bound the player to the one team that he originally signed with. [EN 5] Thus, the player became the property of the particular team he originally signed with. This system prevented a player from leaving his team until retirement. In essence, the first team to sign the player became his home for the rest of his career.

The reserve system was first challenged in 1922 in the case of *Federal Baseball Club v. National League of Professional Clubs*. [EN 6] Through this decision, the U.S. Supreme Court created an antitrust exemption for baseball. According to Chief Justice Holmes, baseball was exempt from the antitrust laws because it did not constitute interstate commerce. Therefore, baseball was not within the scope of the Sherman Act. [EN 7] This holding upheld the reserve system and the players continued to be the property of the owners.

The courts again dealt with the problems of the reserve system as recently as 1972 in the case of *Flood v. Kuhn*. In *Flood*, the plaintiff, then-baseball player Curt Flood, attempted to bring

an antitrust claim against MLB for the reserve system. [EN 8] The court again upheld the decision of *Federal Baseball Club v. National League* and *Toolson v. New York Yankees* [EN 9] where they found that MLB's reserve system was exempt from antitrust laws. [EN 10] The court found that Congress had many opportunities to end baseball's antitrust exemption, however chose not to do so. [EN 11] Through this holding, the courts found that the reserve system was acceptable and continued to be left untouched.

Amid all these problems with the reserve system, the players, through the assistance of the Nation Labor Relations Board, developed a union bargaining status and created a salary arbitration provision with the owners. [EN 12] Soon after the Flood decision, baseball signed a new CBA that would create a salary arbitration process from the remnants of the reserve system. [EN 13] On February 25, 1973, the players and owners reached a new CBA that included salary arbitration. [EN 14]

The continued problems with labor negotiations in baseball was tackled recently by Congress at what many consider the root of the problem, MLB's antitrust exemption. Congress passed the Curt Flood Act in 1998 [EN 15] that started limiting baseball's antitrust exemption that was granted and upheld in the previous cases: *Federal Baseball Club v. National League*, *Toolson v. New York Yankees*, and *Flood v. Kuhn*. The purpose of this act was to afford MLB players the same protection under the antitrust laws that other professional athletes receive. [EN 16] In essence, as stated by Senator Patrick Leahy, the Flood Act "ends what is left of baseball's antitrust exemption." [EN 17] However, the Act cannot be misconstrued as overruling the courts' previous holdings in *Federal Baseball*, *Toolson*, and *Flood*. The Act was meant to express how Congress felt about the antitrust exemption. Through the Flood Act, Congress wanted to express that their previous silence in tackling the issue of baseball's antitrust exemption was in no way acquiescence to it. [EN 18] Congress did not want the courts to construe their silence on the issue of the antitrust exemption as an endorsement of it. The enactment of the Curt Flood Act shows that the Flood court's speculation of Congress's desire to expand the scope of the antitrust exemption was wrong. [EN 19] However, Congress did not completely dismantle the antitrust exemption baseball has enjoyed for so long. The Flood Act removed baseball's antitrust exemption only in terms of labor relations. Congress afforded the players more protection under 15 U.S.C. 27a where it was established that only major league baseball players have standing to sue and that baseball would be subject to the same antitrust laws that affect other professional sports businesses in terms of labor relations. [EN 20] The Flood Act's removal of baseball's antitrust exemption on labor relations did away with the reserve system that the owners have tried to protect since its inception. It seems the Flood Act's removal of the antitrust exemption seems to be correlated to an increase in players seeking salary arbitration and free agency. Therefore, many of the current problems with salary arbitration, rising salaries, and other labor related issues seem to have been increased by the passage of the Curt Flood Act. Although many considered the antitrust exemption the main problem in baseball's current labor woes, it is apparent with the Flood Act's passage that the antitrust exemption was only part of the problem.

III. SALARY ARBITRATION IN THE COLLECTIVE BARGAINING AGREEMENT

The process of salary arbitration in baseball is significantly different from that of conventional arbitration used in most common labor negotiations. Salary arbitration in baseball is unique because of the final offer format, also known as the high/low format. [EN 21] The final offer format forces each side to submit to a salary proposal to an arbitrator. The arbitrator must

chose either the amount given by the owner or the amount given by the player. The arbitrator comes to a decision by looking at the evidence presented by each side according to the criteria outlined in Article VI (F)(12) of the CBA. [EN 22]

Article VI (F)(12) specifies the criteria for salary arbitration. The criteria that may be introduced in an arbitration hearing, according to Article VI (F)(12)(a) include:

- (i) Quality of player's contribution to the club during the past season (including but not limited to his overall performance, special qualities of leadership and public appeal),
- (ii) the length and consistency of his career contribution,
- (iii) the record of the players past compensation, comparative baseball salaries,
- (iv) the existence of any physical or mental defects on the part of the player,
- (v) and recent performance record of the club including but not limited to its league standing and attendance as an indication of public acceptance.

Under Article VI (F)(12)(b), the following evidence is not admissible in an arbitration hearing:

- (i) The financial position of the player and the club;
- (ii) Press comments, testimonials or similar material bearing on the performance of either the player or the club, except that recognized annual player awards for playing excellence shall not be excluded;
- (iii) Offers made by either player or club prior to arbitration;
- (iv) The cost to the parties of their representatives, attorneys, etc.;
- (v) Salaries in other sports and occupations. Article XX of the modified collective bargaining agreement ("Basic Agreement") which was reached on January 1, 1990, sets forth the requirement that reserved players with greater than three years, but less than six years of service may demand salary arbitration. [EN 23]

IV. PROBLEMS WITH SALARY ARBITRATION

The requirements laid out by the collective bargaining agreement still leave much room for problems between the players and the teams. The first problem stems from the final offer or high/low format of arbitration procedure. In requiring the arbitrator to chose one amount or the other makes the final offer format unique. The arbitrator cannot reach a compromise between the two parties' offers. Since the arbitrator can only choose one side, many owners feel that this may be the root cause of the increasing salaries in baseball. The owners feel that abolition of salary arbitration is proper because it becomes a "win-win" situation for the players. After salary

arbitration, "the players will always come out better than they were before." [EN 24] The issue for the owners is that if they present an amount that is significantly low, the arbitrator will tend to favor the player and choose the higher amount. [EN 25] In order to prevent this from happening, many teams tend to keep their amount submitted higher than they would like to prevent the arbitrator from choosing the higher amount given by players. However, the counter argument is that the final offer format forces both sides to give a reasonable offer. During the arbitration process, the parties will be more concerned with how much the other side will offer. The parties will also concentrate on making their own offer fairer, so that the arbitrator will select it.

The second issue with salary arbitration is whether the evidence introduced between the two sides can affect the ongoing relationship between the team and the player after the arbitration hearings. According to the CBA-criteria for salary arbitration, a team can essentially introduce evidence that may degrade a player and his accomplishments in the arbitration hearings. However, since the player will likely be returning to the same team the following year, the team may tend to hold back sensitive information which may offend the player. An arbitrator from a prominent New York law firm that handles some of the arbitration proceedings for the New York Yankees stated in a phone conversation on March 4, 2002, that most teams tend to hold back degrading and malicious information about some of their players because they are afraid of the repercussions in the following year. For example, many teams will not disclose information in an arbitration hearing about how the team manager, teammates, or members of the organization feel about a certain player. If this information is negative, it will not be a comfortable situation for that player if he remains with the team during the following season. Some teams are afraid of introducing the degrading and detrimental evidence of a player and his conduct to prevent the player from being offended and taking those feelings of betrayal with him to the field the following season. The arbitrator gave an example of a player being affected by an arbitration hearing in the National Hockey League ("NHL"). The case involved the owner of the New York Islanders who went into a salary arbitration hearing with their then goalie. The owner introduced humiliating evidence into the arbitration hearing about that goalie. The goalie felt so betrayed by his team and the whole process, he refused to return to the Islanders the following season. Thus, the goalie was traded because of his refusal to play directly due to the arbitration hearings. To avoid an outcome such as this, most professional teams avoid introducing humiliating and degrading evidence of the players that are in salary arbitration in order to keep a positive ongoing relationship the following season.

The other major problem of salary arbitration in baseball is what happens when either party wins. If the owner wins, the player may feel betrayed. A player may feel that he played well for the past few seasons to deserve a higher salary. By losing the arbitration hearing, the player may avoid playing up to his full potential in the following season due to resentment towards the team. There is also the possibility the player may play even better the following season with the intention of not returning to his present team. A player may play beyond his potential to impress other teams and will not even consider re-signing with his present team as a free agent. A negative ongoing relationship is severely detrimental to baseball. The game becomes one of politics and business and not one of enjoyment or love for the game. There is also a direct affect on the fans and the economic prosperity of the game. On the flip side, there may be problems with how the player may be treated if he wins the salary arbitration. The owners may feel that the player's salary is too high for his ability. They may chose to reduce his playing time or change where he bats in the line-up, thus affecting his

offensive output. In the case of a pitcher, the team may choose to put him in a more mediocre role. This may affect the player's ability to negotiate for a higher salary in the future during free agency. The integrity of the game is affected by the ongoing relationship between the player and the team after arbitration.

V. ATTEMPTS TO ABOLISH SALARY ARBITRATION

The process of salary arbitration, although agreed to by both the owners and players, is considered a significant factor in many of the labor disputes that have plagued baseball. The owners, who originally created the process of salary arbitration through the creation of the reserve system, have attempted on many occasions to remove it from baseball. The owners fear that the rising salaries are in direct correlation with the process of salary arbitration. As recently as 1995, the owners attempted to remove salary arbitration, but failed to do so. In *Silverman v. Major League Baseball Player Relations Committee, Inc. and The Constituent Member Clubs of Major League Baseball*, the Court had to determine whether to enforce a district court injunction preventing MLB from unilaterally deciding not hiring free agents and eliminating salary arbitration. [EN 26] The players claimed that MLB's elimination of salary arbitration was an unfair labor practice and that under the National Labor Relations Act ("NLRA") free agency and salary arbitration constituted matters relating to wages, hours, and other terms and conditions of employment. Therefore, they are mandatory subjects of bargaining and MLB cannot alter them. [EN 27] Under section 8(d) of the NLRA, the duty to bargain is defined as "the obligation...to meet...and confer in good faith with respect to wages, hours, and other terms and conditions of employment" [EN 28] Free agency and reserve issues [salary arbitration] are "at the center of collective bargaining in much of the professional sports industry." [EN 29] The courts found that since salary arbitration is a crucial portion of the CBA, MLB cannot unilaterally dispose of salary arbitration. It would constitute an unfair labor practice and be in violation of the Basic Agreement. [EN 30]

VI. ALTERNATIVES TO SALARY ARBITRATION

Although the owners have tried to abolish salary arbitration, the consequences of such an action, if successful, would not cure the current labor woes. The alternative of completely eradicating salary arbitration favors the owners. It would be difficult to persuade the players to agree to such a scenario. The players would likely not collectively bargain with the owners regarding the total removal of the salary arbitration system. If the players were to agree to remove the salary arbitration system from the CBA, they would likely demand to have "unrestricted free agency for players with three or four years of service". [EN 31] The problem with having unrestricted free agency and no salary arbitration is that superstar players would receive large offers from teams. However, the more average players would suffer and receive less than they normally would receive under salary arbitration. This would cause a significant gap between the superstar players and the average and below average players. The problem of rising salaries would continue because the owners would expend more money on the superstars on bidding wars with the money they normally would have had to save to sign the average players. In addition, under the unrestricted free agency system, there is a possibility of a flooding in the market and a possible depression in the salaries as a result. Since all the players would be going into free agency after three or four years, the owners would have plenty of players to

choose from and could offer whatever they felt was fair. The process of salary arbitration avoids this problem because it prevents players from receiving too low a salary. Therefore, a pure free agency system, although favored by the players, would actually be more beneficial to the owners and teams. Although the removal of salary arbitration is a possibility, the labor disputes would likely continue as a result of the free agency alternative.

The problem of salary increase in correlation with salary arbitration seems to be the main issue for owners and baseball. A possible solution for this problem is to limit the extent to which a player's salary may increase each year. MLB could follow the example set by the much successful salary cap format that the National Football League ("NFL") now follows. The NFL salary cap system works by limiting each team to a certain amount of money they may expend for the whole team in terms of salary. The salary cap system sets a level of salary above which a player cannot be signed. Under this system, the NFL allows for both restricted and unrestricted free agency. The unrestricted free agent players in the NFL are those players that have accrued five or more seasons and are allowed to negotiate and sign with any club.[EN 32] The teams can sign unrestricted free agents for any amount of money they feel is proper, however they have to keep in mind that they are limited to their spending for their whole team roster by the salary cap.[EN 33] Therefore, the teams are forced to consider the maximum amount that they can spend for an unrestricted free agent. The NFL does away with the salary arbitration process by including restricted free agents. The restricted free agent is a player that has accrued three or more seasons in the league. [EN 34] The restricted free agent's original club has the first choice in signing or refusing to sign the player. [EN 35] The team can receive a draft choice as compensation if the restricted free agent signs with another club. In addition, the NFL has league minimum and maximum salaries that a player may receive when he is a first year player. [EN 36] The NFL's salary cap format has kept salaries from skyrocketing, as well as kept a positive relationship between the players and teams on the issues of labor negotiations.

Baseball should also consider installing the salary cap method to prevent salaries from continuing to skyrocket. One possibility is to create seniority levels; the longer a player has played, the more that player may demand during arbitration. For example, a third year player can be allowed a maximum of \$600,000 and a minimum of \$200,000 per season, and the teams and players can negotiate through salary arbitration for the highest amount available or for less than the maximum. However, the players may argue that this leaves them with little room for bargaining power and that salary arbitration, in essence, is dead.

Another option is to do away with the final offer format of arbitration and establish the more customary version of arbitration. This would be the option where the teams and the players each bring a figure to the arbitration proceedings, and the arbitrator can decide on a more compromising figure. This option will undoubtedly keep the salaries more level and will prevent the arbitrator from having to choose a salary that is too high, or choosing a salary that is too unjust for a player. Although these are some alternatives that might help in eliminating some of the current labor woes plaguing baseball, one has to keep in mind that these options are not totally foolproof. Salary arbitration is not the only significant part in many of the labor disputes. Free agency, unlimited spending of some of the larger market teams, and problems with revenue sharing have also been significant factors in many of the labor disputes. All of these other factors must be considered when baseball tries to correct the problems with their current labor agreements.

VII. CONCLUSION

The process of salary arbitration has become an indelible part of baseball. However, what both the players and the owners must consider is the integrity of the game. The current labor woes and work stoppages cannot be fixed with just a passage of an act by congress or a judicial decision. Both the players and owners have to come to an amicable decision where both sides are willing to make sacrifices for the good of the game. If the trend continues, as it has in the past, of players and owners being only concerned with their self-interest, the integrity and popularity of baseball will diminish. Once the fans are fed up with the politics and business of baseball, there will be no turning back for the players and owners. The fans are the ones that bring the money into baseball, whether it is by attendance or purchasing merchandise. If the players and owners continue to quarrel over labor issues and initiate more work stoppages, the fans may be reluctant to follow baseball any more. Therefore, by losing the fans, the economic prosperity that baseball has enjoyed for so long will cease to exist.

[EN 1] Thomas J. Hopkins, *Arbitration: A Major League Effect on Players' Salaries*, 2 SETON HALL J. SPORTS L. 301, 303 (1992).

[EN 2] Kevin A. Rings, *Baseball Free Agency and Salary Arbitration*, 3 OHIO ST. J. DISP. RESOL. 243, 245 (1987).

[EN 3] *Id.* at 245.

[EN 4] *Id.* at 303.

[EN 5] Robert A. McCormick, *Baseball's Third Strike: The Triumph of Collective Bargaining in Professional Baseball*, 35 VAND. L. REV. 1131, 1155 (1982).

[EN 6] *Federal Baseball Club Inc. of Baltimore v. National League of Professional Clubs*, 259 U.S. 200 (1922).

[EN 7] *Id.* at 209.

[EN 8] *Flood v. Kuhn*, 407 U.S. 258 (1972).

[EN 9] *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953).

[EN 10] *Id.* at 283.

[EN 11] *Id.*

[EN 12] McCormick, *supra* note 5 at 1152.

[EN 13] Mark L. Goldstein, *Arbitration of Grievance and Salary Disputes in Professional Baseball: Evolution of a System of Private Law*, 60 CORNELL L. REV. 1049, 1067 (1960).

[EN 14] *Id.* at 1068.

[EN 15] 15 U.S.C. § 27a (1998).

[EN 16] Morgen A. Sullivan, *A Derelict in the Stream of the Law: Overruling Baseball's Antitrust Exemption*, 48 DUKE L. J. 1265, 1284-85 (1999).

[EN 17] *Id.* at 1284.

[EN 18] *Id.* at 1286.

[EN 19] *Id.*

[EN 20] *See supra* note 15.

[EN 21] Jonathan M. Conti, *The Effect of Salary Arbitration on Baseball*, 5 SPORTS LAW J. 221, 230 (1998).

[EN 22] Daniel Silverman v. Major League Baseball Player Relations Committee, Inc. and The Constituent Member Clubs of Major League Baseball, 67 F.3d 1054, 1057-58 (2nd Cir. 1995).

[EN 23] *Id.* at 1057.

[EN 24] Conti, *supra* note 21 at 232.

[EN 25] *Id.*

[EN 26] *Silverman*, 67 F.3d at 1054.

[EN 27] *Id.* at 1061.

[EN 28] Wood v. National Basketball Association, 809 F.2d 954 (2nd Cir. 1987).

[EN 29] *Id.* at 961.

[EN 30] *Silverman*, 67 F.3d at 1062.

[EN 31] Conti, *supra* note 14 at 246.

[EN 32] Bernard Pellegrino and Seth Josephson, *The Practical Impact and Historical Significance of the National Football League Free Agency Compromise after McNeil v. National Football League* 790 F. Supp. 871 (D. Minn. 1992), 4 SETON HALL J. SPORTS L. 1, 8 (1994).

[EN 33] *Id.* at 7-8.

[EN 34] *Id.* at 7.

[EN 35] *Id.* at 7-8.

[EN 36] *Id.* at 7.