THE HIDDEN BALL TRICK: HOW MAJOR LEAGUE BASEBALL ENDURED THROUGH ITS TUMULTUOUS LABOR HISTORY

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By: Derek A. Carrillo

“Baseball has the largest library of law and lore and custom and ritual, and therefore, in a nation that fundamentally believes it is a nation under law, well, baseball is America's most privileged version of the level field.” – A. Bartlett Giamatti

I. INTRODUCTION

In the long and esoteric history of Major League Baseball (“MLB”), there have been many employment disputes that have plagued the game. The diehard fans talk about the game as “America’s Past Time,” and they clamor at the opportunity to watch their big league heroes perform their trade. In every generation, the game of baseball bestows on its fans Hall of Famers. The 20s had Ruth. The 30s had DiMaggio. The 40s had Robinson. The 50s had Mantle, etc.

However, for all the peanuts and crackerjacks, it is necessary to take a step back and realize that being a MLB player is a job, and they are employees. Comprehending that, playing a child’s game is what these players are employed to do, is both mesmerizing and astonishing. Fans do not think of these players as having the same everyday life problems as normal people, especially complications in employment. Nevertheless, just like any other occupation, all MLB players have rights in their employment, and may exercise those rights accordingly. As history has shown, this has not always been the case.

This article is going to analyze and put into perspective the history of MLB’s labor issues, and how the authority shifted between player and owner over time. Part II discusses the origins of MLB, and how it has developed into the today’s game. Part III discusses how the

\[1\] Juris Doctor Candidate, 2014, Barry University Dwayne O. Andreas School of Law. The author would like to thank his family and friends for the continued love and support, as well as Professor Dan O’Gorman for his guidance and supervision throughout this article.

\[2\] Frank Deford, A Gentleman & A Scholar, Sports Illustrated, April 17, 1989, at 86.
Commission’s Office was established, and how the authority has altered since. Part IV discusses the growth of the Major League Baseball Players’ Association. Part V discusses the emergence of arbitration, and the evolution of free agency. Lastly, Part VI discusses the periods where player and owner power swayed between a work stoppage and a lockout.

II. ORIGINS OF MAJOR LEAGUE BASEBALL

A. BIRTH OF A SPORT

The beginnings of professional baseball originated in the 1870s with the creation of the National Association of Professional Baseball Players (“NAPBP”), which encompassed teams from various cities.³ Players in the NAPBP were expected to establish and maintain social standing, have money amassed outside of baseball, and to devote their own money towards dues, uniforms, and upkeep of the playing fields.⁴ Vulgarity was banned on penalization of fine, and arguing with an umpire could result in “personal disgrace” until any imposed fine was paid.⁵

During this time, all players enjoyed the league produced players market system known as “revolving,” a sort of pre-free agency.⁶ Under the revolving system, a player was competitively bid for before each season, and signed a contract with the owner who offered him the most money.⁷ Players were very happy with this structure, and due to financial constraints on players because of ancillary NAPBP expenses, “team jumping” and “contract jumping” became a common tradition.⁸ By moving from team to team during the course of a season, the player

⁵ Id.
⁶ Seabury, supra note 3, at 337.
⁷ Id.
achieving greater compensation was finally available. Owners were unhappy with this structure because contract breaking was prevalent everywhere in the NAPBP, and matters worsened when, in 1875, Chicago was able to sign four of the best baseball players in the league, including Albert Spalding (“Spalding”), away from Boston.  

With the departure of Spalding and his teammates, the strength of the players followed, which left the remaining east coast owners bitter. The owners finally realized that there is a real threat of losing all their best players to other teams or even worse, another league. Spalding and Chicago owner William Hulbert (“Hulbert”), viewing baseball as a business, decided, rather than wait for the spited owners to attempt retribution, they would proceed in a new direction.

B. THE NATIONAL LEAGUE & THE CREATION OF THE “RESERVE CLAUSE”

i. *The National League*

With support from the mid-western cities of St. Louis, Louisville, and Cincinnati, Spalding drafted a constitution and created the National League of Professional Base Ball Clubs (“NL”). Although the new league had many of the same teams, it was drastically different in terms of structure. The organization was more centralized (“league” as opposed to “association”) with the individual team (“club”) serving as the supporting structure instead of the

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11 Id., at 9-10.
12 Insley, *supra* note 8, at 603.
14 Id.
15 Id.
players.\textsuperscript{16} One noticeable difference was that players limited their activities to the field of play, with a clear line of separation between “management,” (those who controlled the grounds upon which games were played, discipline, scheduling, player contracts, and public relations), and the “players.”\textsuperscript{17}

However, by 1879, even with these changes, owners were still failing to make a profit.\textsuperscript{18} With attendance consistently down, clubs were struggling economically, with players’ salaries incorporating about two-thirds of a team's total expenses.\textsuperscript{19} The major contributing problem to the lack of profits was the fact that owners continued to bid for players, who were permitted to sign with any club when their normal one-year contracts expired.\textsuperscript{20} This format was denounced by owners like Hulbert who grumbled: “It is ridiculous to pay ballplayers $2000 . . . when the $800 boys often do just as well.”\textsuperscript{21} The economic fact was unavoidable however, because when clubs bid against one another, costs (primarily labor) rose, and profits went down.\textsuperscript{22} Eventually, this practice caught up with the blossoming NL clubs, and over one-half of the teams collapsed under the economic strain caused by owner to owner competition for players.\textsuperscript{23}

\textbf{ii. The Reserve Clause}

In 1879, with an effort to stop “contract jumping” by the players, and to control the constant attempts to outbid one another, the remaining NL owners held a secret meeting.\textsuperscript{24} At this meeting, the NL owners reached a “gentlemen’s agreement,” which allowed a club to protect

\begin{footnotesize}
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\item[\textsuperscript{16}] Devine, supra note 4, at 10-11.
\item[\textsuperscript{17}] Devine, supra note 4, at 11.
\item[\textsuperscript{18}] Devine, supra note 4, at 11-12.
\item[\textsuperscript{19}] Devine, supra note 4, at 12.
\item[\textsuperscript{20}] Id.
\item[\textsuperscript{21}] Devine, supra note 4, at 12-13.
\item[\textsuperscript{22}] Devine, supra note 4, at 13.
\item[\textsuperscript{23}] Moorad, supra note 9, at 56.
\item[\textsuperscript{24}] Insley, supra note 8, at 603.
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(reserve) five players off their team. Accordingly, this created the “Reserve Clause,” which allowed clubs exclusive right to their protected players in order to prevent league jumping. None of the other clubs would seek to engage or even to negotiate with these players without permission from the reserved player's present owner.

Essentially, the reserve clause allowed a team to renew a player's contract for one-year unilaterally upon its expiration, even if the player refused to re-sign with the team. A player was blacklisted if he refused to sign with his team. Because the new contract would also include a reserve clause, players found themselves stuck on a contractual treadmill, with continually repeating obligations and no reasonable way out. Players could not seek employment with other teams; being permanently barred from the sport was the consequence of those that did. Absent retirement or the team's decision to trade or cut them, players remained bound to their original team. Through the arrival of the reserve clause, professional baseball achieved a “monopsony . . . that is, a buyer's monopoly--over their players.”

The owners' maintained that the reserve system was necessary for preserving healthy and robust competition between teams, all under the guise of the term “competitive balance.” Competitive balance was an palpable concern during the early years but nevertheless, the reserve system was not the cure-all. Owners simultaneously promoted competitive imbalance to the

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25 Moorad, supra note 9, at 56.
26 Insley, supra note 8, at 603.
27 Devine, supra note 4, at 13.
28 Moorad, supra note 9, at 56.
29 Insley, supra note 8, at 603.
30 Moorad, supra note 9, at 56.
31 Id.
32 Id. Moorad, supra note 9, at 56-57.
34 Moorad, supra note 9, at 57.
35 Id.
degree that “poor clubs would literally sell their talented players’ contracts to richer teams.”

Owner justifications for these policies, that completely limited player freedom, were regularly misleading and distorted. John Montgomery Ward, of the New York Giants, described the reserve clause like this: “Like a fugitive slave law, the reserve rule denies [the player] a harbor or livelihood, and carries him back, bound and shackled, to the club from which he attempted to escape…He goes where he is sent, takes what is given him, and thanks the Lord for life.”

Finally, the worst part of the reserve clause is that players were never informed of it, and had to discover this peril on their own.

C. OUTSIDE COMPETITION

i. The American Association

The reserve clause put the owners in a significant superior bargaining position than their employee players. The players’ reaction was initially optimistic, but soon turned to demise when they realized that the reserve clause did not have their best interests in mind. Salary increases were now a thing of the past, and there was no longer a free market for players’ services. In order to circumvent the reserve clause, players were limited to establishing alternative leagues, which forced the development of competition for players' services, and forming player associations.

36 Id.  
37 Id.  
40 Moorad, supra note 9, at 57.  
41 Id.  
42 Id.
In order to ward off the growing monopoly of the NL, the American Association (“AA”) was formed in 1881. The AA took steps to distinguish itself from the NL by selling tickets for half the price of those sold by NL clubs, and allowing beer and whiskey in the stands on Sundays. The AA was known as “the beer and whiskey league,” because one of its founders was a St. Louis saloonkeeper. In the early 1882, the NL and the AA coexisted and played twenty-one (21) inter-league exhibition games against one another, all won by the NL. During that same year, however, two players from Detroit of the NL signed to play in the AA. This resulted in the NL refusing to further recognize the AA, to which the AA retaliated by refusing to respect the reserve clauses of the NL. The AA took a step further and signed thirteen former NL players to AA options for the 1883 season.

As a result, the AA leaders were invited to a baseball summit conference hosted by the NL in New York. The NL used the nostalgia of the days before the first reserve clause, and argued that, with competition, even between different leagues, players again had superior bargaining power. This only spelled doom, and that as a result, all of the owners faced financial collapse without a settlement. After listening to the NL’s proposal, the AA and NL came to an agreement that temporarily ended competitive bidding for players, and incorporated three key things. The first was a minimum player salary of $1000. The second, they agreed to retain a reserve clause and, finally the third and most important, they agreed to respect the reserve rights

43 Devine, supra note 4, at 14.
45 Id. at 61-67.
46 Id. at 72.
47 Id.
48 Id. at 73.
49 Id.
50 Charles C. Alexander, Our Game 37 (1991); Representatives for the newly formed Northwestern League, a minor league, were also invited to this summit.
52 Alexander, supra note 50, at 37.
53 Id.
of other teams.\textsuperscript{54} Now to the players’ chagrin, the owners once again eliminated the competition, and enjoyed their most profitable season in 1883.\textsuperscript{55}

ii. \textit{Evolution of the Players’ League}

The earliest attempt at unionization in professional baseball was following the owners’ decision to impose a $2000 salary cap at the end of the 1885 season, and thus, the Brotherhood of Professional Base Ball Players was formed (“Brotherhood”).\textsuperscript{56} The founder, John Montgomery Ward, who was the captain for the New York Giants of the NL\textsuperscript{57}, furthermore was an 1885 graduate of Columbia Law School.\textsuperscript{58} During his tenure there, Ward wrote an article, prior to the 1885 season, that addressed the reserve clause.\textsuperscript{59}

Within one-year, the Brotherhood had a total of 107 members and had a separate chapter in all of the NL cities.\textsuperscript{60} This fact, \textit{inter alia}, lead the Brotherhood to have a meeting with the NL owners in 1887, at which the NL owners agreed to consider a player-proposed model contract, and agreed to remove the salary cap.\textsuperscript{61} Following the 1888 season, not only had the owners failed

\textsuperscript{54} Id. at 37; Voigt, \textit{supra} note 51, at 127-128. The American Association was now recognized as a “major” league while the Northwester Association was now a high minor league.

\textsuperscript{55} Alexander, \textit{supra} note 50, at 37.

\textsuperscript{56} Pietrusza, \textit{supra} note 44, at 99.

\textsuperscript{57} Alexander, \textit{supra} note 50, at 53. Ward had grown up a pitcher and compiled a record of 158-102 and an earned run average of 2.03 from 1878-1884 with Providence and New York of the National League. He then trained himself as a fielder and played shortstop, second base and the outfield for New York, Brooklyn of the Players’ League, and Brooklyn of the National League, compiling a .280 batting average in 1811 games. See Voigt, \textit{supra} note 51, at 155-56.

\textsuperscript{58} Pietrusza, \textit{supra} note 44, at 100. He graduated with honors and was also given a political science prize from Columbia in 1886. Id. In 1888, he published what was then considered the definitive work on the technical aspects of playing baseball entitled \textit{Base Ball: How to Become a Player}. Id. Additionally, despite potential ridicule by other players, Ward apparently was the first to wear a glove for fielding. See Rudolph Brasch, \textit{How Did Sports Begin?} 39 (1970).

\textsuperscript{59} Pietrusza, \textit{supra} note 44, at 100. Ward evidently argued that the reserve rule depended solely on its intimidating power affect and actually had no legal effect. He also argued that it was tyrannical that the blacklisting of players who violated a rule that did not offend either the criminal or civil law.

\textsuperscript{60} Alexander, \textit{supra} note 50, at 53; Pietrusza, \textit{supra} note 44, at 100-102.

\textsuperscript{61} Pietrusza, \textit{supra} note 44, at 102-103. The meeting did result in a change in the location of the “reserve rule.” Prior to this time, the rule was contained in the National Agreement among the various teams, with the players agreeing to
to remove the salary cap, they turned it into a classification system with all players grouped into one of five classes, with the salary defined by the classification. To address this growing concern, the players considered striking and causing a work stoppage, but instead sought to create their own league, and accordingly, the Players’ League was inaugurated and began play in 1890.

Now with another league to foster competition, the NL decided to take the fight off the field and bring it to the steps of the courthouse. There were three cases, none successful, where the owners attempted to prevent a major leaguer from playing on a Players’ League team. Two of these cases were filed by New York of the NL, one in state court against captain, and Players’ League organizer Ward, and the other in federal court against future Hall of Fame catcher Buck Ewing, all in an effort to prevent them from league jumping to the new Players’ League. The third case was filed by Philadelphia of the NL against infielder Billy Hallman in the Pennsylvania Court of Common Pleas. Because all player contracts were structured almost identical to one another, all three cases involved nearly identical facts and theories. All three players’ 1889 player contracts contained a provision allowing the team to “reserve” each of them “for the next ensuing season” if they met two conditions. First, player salary would not be less than in the 1889 contract, and secondly, that each player was one of fourteen (14) players

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62 Voigt, supra note 51, at 158-159.
63 Pietrusza, supra note 44, at 103-105; Voigt, supra note 51, at 159-160.
64 Devine, supra note 4, at 21.
65 Metropolitan Exhibition Co. v. Ward, 9 N.Y.S. 779 (N.Y. Sup. Ct. 1890); Metropolitan Exhibition Co. v. Ewing, 42 F. 198 (S.D.N.Y. 1890).
67 Ewing, 42 F. at 200; Ward, 9 N.Y.S. at 782; Hallman, 8 Pa. Cty. Ct. Rep. at 61. The “reserve” clause was first inserted into the individual player's contract in 1887 after a committee of players met with a committee of owners. Prior to that time, each player's contract bound the player to the league-creating “national agreement” which contained the “reserve clause.” Ewing, 42 F. at 203.
reserved by the club.68 The “reserve clause” did not indicate the terms of the 1890 contract in any of these agreements.69

The Ward and Hallman court both held that the “reserve clause” did not specifically set out the terms of the reserve year agreement.70 The federal court in Ewing enjoyed the benefit of the Ward decision in New York, and the Pennsylvania decision in Hallman, and therefore wasted no time reiterating that the team's contractual right to “reserve” did not translate into a certain and definite contract.71 The Ewing court held that the reserve clause was only an agreement to negotiate for a contract and was not overly restrictive on the players' freedom.72 The court in Ewing further held that the team was not entitled to damages for the player's refusal to sign a new contract with the team.73 The result of these cases was a victory for the players, and now they had an incentive to try to entice major league stars away from the NL over to the Players’ League.74 The Players’ League was successful in recruiting future Hall of Famers that included Connie Mack, Hugh Duffy, and Buck Ewing and eventually had a league that was superior to the NL in terms of “star” power.75 This victory, however, was short lived.

The new Players’ League owners had a difficult time of keeping up with expenses as their NL counterparts.76 The Players’ League lost approximately $300,000, and its financiers did not believe baseball could survive with two leagues.77 Consequently, the Players’ League lasted

69 Ewing, 42 F. at 201; Ward, 9 N.Y.S. at 782; Hallman, 9 Pa. Cty. Ct. Rep. at 61. The Pennsylvania Court starkly noted: “It would have been easy to have said ‘upon the terms and conditions mentioned in the agreement of 1888’ but that was not said . . . ” Id.
70 Devine, supra note 4, at 22.
71 Id. at 23.
72 Ewing, 43 F. at 204.
73 Ewing, 43 F. at 205.
74 Devine, supra note 4, at 24.
75 Id.
76 Id. at 25.
only one season. This left the players with no options, and once again, the owners had their monopoly. This disparaging situation for baseball players sustained for nearly ten years.

D. STEPPING UP TO THE PLATE: THE AMERICAN LEAGUE

i. Roots

For a period just under a decade, the NL dominated in the realm of professional baseball. As the NL’s reign dwindled in the 1890s, the little known Western League began to gather a following and praise. With the departure of the NL from some of its key cities, including Cleveland, Washington D.C., and Baltimore following the 1899 season, the Western League was ready to take its share of the professional baseball territory. In 1900, to effectuate this transition, the Western League changed its name to the American League (“AL”). Additionally, the newfound AL moved into the now abandoned Cleveland, and also Chicago, which put them in direct competition with the NL. Despite all these new changes, the AL was not major league status just yet.

ii. Getting the Call-Up to the Majors

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78 Id.
79 Seabury, supra note 3, at 338.
80 Helyar, supra note 39, at 5.
82 Gustaf Axelson, Commy 136-143 (1919).
83 Axelson, supra note 82, at 136-137.
84 Pietrusza, supra note 44, at 150.
85 Axelson, supra note 82, at 136-137. Chicago was long considered to be the “hub” of the American League, as league headquarters was there (as had been the headquarters of the predecessor Western League). This added credence to the notion that the American League had long been planned as a rival major league, peaceably if possible, through war if necessary. See Id. at 142.
86 Devine, supra note 4, at 31.
At the brink of major league status, the AL had three factors simultaneously converge in order to complete the transition.\textsuperscript{87} First, the former Western League’s adherence to the National Agreement expired after five years in 1900.\textsuperscript{88} Ban Johnson, president of the former Western League and the newly formed AL, purposely refused to sign the agreement for another season.\textsuperscript{89}

Secondly, there were rumors afloat of a revived American Association that spread throughout the late 1890s and into 1900.\textsuperscript{90} The threat of a new rival to the NL allowed Johnson to bolster his plan to move the AL eastward under the appearance of refusing to sign an extension of the National Agreement.\textsuperscript{91} The NL thought that Johnson’s threats to move into eastern cities were puffery, and simply ignored them and instead, began to align with a revived American/“National” Association.\textsuperscript{92} Consequently, for the 1901 season, Johnson moved into Baltimore and Washington, neither of which had a major league team because the NL had pulled out, and Philadelphia, which had the NL Phillies.\textsuperscript{93} Moreover, the AL started a new team in Boston, which again was in direct competition with the NL.\textsuperscript{94}

The third and major factor leading to the AL achieving major league status was labor turmoil within the NL.\textsuperscript{95} There were persistent player grievances over baseball's $2400 salary cap, and excessive fines were also contributing issues, as was the major league practice of “farming” players to the minors, where salaries could be lowered despite the fact that the player

\textsuperscript{87} Id. at 32.
\textsuperscript{88} Id.
\textsuperscript{89} Murdock, supra note 81, at 44-46.
\textsuperscript{90} Axelson, supra note 82, at 144-145; Pietrusza, supra note 44, at 153.
\textsuperscript{91} Murdock, supra note 81, at 45.
\textsuperscript{92} Pietrusza, supra note 44, at 154.
\textsuperscript{93} Devine, supra note 4, at 32.
\textsuperscript{94} Id.
\textsuperscript{95} Murdock, supra note 81, at 46; Pietrusza, supra note 44, at 155-156.
\textsuperscript{96} Devine, supra note 4, at 33.
was still secured to the team.\textsuperscript{96} The players once again sought to unionize and formed the Protective Association of Professional Baseball Players ("PAPB") in June 1900.\textsuperscript{97} This new union rapidly attracted over 100 players from the National, American, and Eastern Leagues to be members.\textsuperscript{98} Throughout all of this, the PAPB refused support from labor leader Samuel Gompers\textsuperscript{99}, possibly because baseball’s laborers had generally not considered themselves unionist\textsuperscript{100}, or maybe because of the earlier failure of the Players’ League.\textsuperscript{101} Initially this new baseball players’ union did not favor the AL, but the very fact that there was labor strife within organized baseball nevertheless gave Johnson an incentive to entice the players with.\textsuperscript{102} In order strengthen his incentive, in early 1901, Johnson agreed to the PAPB proposed players’ contract that permitted the ten day clause to apply to both player and team, prohibited “farming” without the player’s consent, created health benefits for players, and adopted an arbitration board for

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\textsuperscript{96} Pietrusza, \textit{supra} note 44, at 161-162. The “farming” problem can be seen in the later case of, \textit{Baseball Players’ Fraternity, Inc. v. Boston American League Baseball Club}, 151 N.Y.S. 557 (App. Div. 1915), aff’d. 117 N.E. 1061 (N.Y. Ct. App. 1917). Pitcher Kurt Hageman was under contract to the Boston American League Club at a salary of $400 per month. 151 N.Y.S. at 558. Ultimately, Hageman pitched in a total of 32 major league games for Boston during 1911-12, and St. Louis and Chicago of the National League in 1914. After playing for Boston in 1912, Hageman was assigned to Jersey City, a minor league team, although he was paid the same salary. Later, Boston sold its option to recall Hageman from Jersey City to Denver, another minor league club, and told Hageman that he would have to make a new contract with Denver. Denver also purchased Boston’s right to reserve Hageman. Denver offered him only $250 per month and Hageman refused. He reported for duty to Boston, to whom he claimed he was under contract and, when he was not paid, he sued to collect the two months salary remaining on his contract. This claim was ultimately assigned to the plaintiff protective association. 151 N.Y.S. at 558, 563. By the time of this case, major league rules had changed and Hageman could not be assigned to a minor league club until he had been offered on waivers to all other major league teams and refused. As a result, the players’ fraternity was successful in its suit against the Boston team. \textit{Id.} at 562-63. Prior to the merger of American and National leagues, however, the action by Boston in assigning Hageman to Denver and requiring him to make a new contract for less money with Denver would have been permitted.

\textsuperscript{97} Pietrusza, \textit{supra} note 44, at 162.

\textsuperscript{98} Devine, \textit{supra} note 4, at 33.

\textsuperscript{99} Pietrusza, \textit{supra} note 44, at 162.

\textsuperscript{100} Seymour, \textit{supra} note 33, at 170. “[T]he ball player flinches from unionism because its blue-collar connotations might detract from the public's and his own view of himself.” \textit{Id.}

\textsuperscript{101} Pietrusza, \textit{supra} note 44, at 162.

\textsuperscript{102} Devine, \textit{supra} note 4, at 33.
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player disputes.\textsuperscript{103} At the very same time, AL owners were signing away NL players, thus provoking yet another round of lawsuits by professional baseball.\textsuperscript{104}

\textit{iii. The First Non-Compete Case in MLB History}

When the AL decided to move a team into Philadelphia, home of the notorious NL Phillies, it was only a matter of time before a showdown between the AL and the NL would commence, and what a perfect battleground for the owners and lawyers alike.\textsuperscript{105} The instigating factor happened when the AL Philadelphia A’s effectively “stole” and signed Hall of Famer Napoleon “Nap” Lajoie away from the Phillies, a move which instantly gave the AL reverence.\textsuperscript{106} Philadelphia’s NL Phillies retaliated through the court system and sought injunctive relief preventing Lajoie and others from playing with the rival A’s, in what was considered the first major case of the enforceability of player contracts.\textsuperscript{107}

The case was heard in early 1901 with Lajoie arguing that the reserve clause was unenforceable, and on the other hand, the Phillies arguing that the clause is essential to the existence of professional baseball.\textsuperscript{108} After hearing both sides of the case, the trial court ultimately denied injunctive relief to the Phillies and allowed Lajoie to play for the A’s.\textsuperscript{109} The trial court refused to issue an injunction due to the lack of mutuality and uncertainty of the contract.\textsuperscript{110} The court held that Lajoie’s skills were not of a unique or extraordinary nature for which Philadelphia would suffer if it lost.\textsuperscript{111} This decision lead to the numerous NL players

\textsuperscript{103} Murdock, \textit{supra} note 81, at 47; Pietrusza, \textit{supra} note 44, at 162-163.
\textsuperscript{104} Devine, \textit{supra} note 4, at 34.
\textsuperscript{105} Murdock, \textit{supra} note 81, at 48. It was believed the battle for recognition would be won or lost in Chicago and Philadelphia, the cities that had both a National and American League club.
\textsuperscript{106} Id. Lajoie had batted .328, .363, .328, .380, and .346 in his previous seasons with the Phillies.
\textsuperscript{107} Murdock, \textit{supra} note 81, at 48.
\textsuperscript{108} Devine, \textit{supra} note 4, at 34.
\textsuperscript{109} Murdock, \textit{supra} note 81, at 48.
\textsuperscript{111} Id.
leaving to join the AL. This shifted the greater bargaining power back to the players’ association, and meant more competition which equaled higher salaries. However, this victory and jubilation for the AL would not last too long.

In 1901, while playing for Hall of Fame manager Connie Mack of the Philadelphia A’s, Lajoie won the AL’s triple crown, batting .426, accumulating 125 runs batted in, and hitting 14 home runs. In early 1902, his legal battle with his former club reached the Supreme Court of Pennsylvania. The Supreme Court overturned the lower court and ruled that Lajoie's talents were unique, thus meeting one of the elements of the Phillies' suit seeking specific performance. Although he had had an outstanding 1901 baseball season, his success on the field may have been his downfall in court. The Supreme Court noted that Lajoie's contract was one negotiated

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112 Pietrusza, supra note 44, at 163-164 (reporting that somewhere between 92-111 of the 182 players who played in the American League during 1901 were former National League players).

113 See David S. Neft & Richard M. Cohen, The Sports Encyclopedia: Baseball 12 (13th ed. 1993). Lajoie, who had been making $2600 with the Phillies, was paid either $4000 or $5000 to play for the A's. More importantly, the entire amount was placed on deposit in a bank and available to Lajoie through two friends. When Lajoie was later sold to the Cleveland American League team, he was guaranteed a salary of either $25,000 for 3 or $30,000 for 4 years. Pietrusza, supra note 44, at 164. Even choosing the lower $30,000 over 4 year figure, as a direct result of competition for his services, Lajoie's salary increased from $2,600 in 1900 to $7,500 in 1903, his first full year with Cleveland, an increase of 288%.

114 Pietrusza, supra note 44, at 164. He also led the league in runs (145), hits (232 in 136 games), doubles (48), total bases (350), on-base percentage (.451), and slugging percentage (.643). Id. at 337. His batting average of .422 ranks second to Rogers Hornsby's .424 for the St. Louis Cardinals in 1924 in all time season high batting averages. See Neft & Cohen, supra note 113, at 646.

115 The trial court had found that Lajoie could be considered “unique” only if his services were such as “to render it impossible to replace him.” Philadelphia Ball Club v. Lajoie, 51 A. 973, 973 (Pa. 1902). The supreme court found this view to be “extreme,” finding instead that Lajoie had played for the Phillies for several years and had thus become familiar with the “action and methods of the other players in the club.” Lajoie, 51 A. at 974. It was found that Lajoie's work itself was “peculiarly meritorious.” Id. Finally, Lajoie is well known, has great reputation among the patrons of the sport, for ability in the position, which he filled, and was thus a most attractive drawing card for the public. He may not be the sun in the baseball firmament, but he is certainly a bright, particular star. Id.

As a result, the court defined uniqueness as services that “are of such a unique character, and display such a special knowledge, skill and ability as renders them of peculiar value to the plaintiff, and so difficult of substitution that their loss will produce irreparable injury, in the legal significance of the term, to the plaintiff.” Id. Under such conditions, those services would not be capable of redress by money damages, and, as a result, equitable intervention would be justified. Id.

116 Devine, supra note 4, at 35.
for three years, and provided for renewal every six month and, turning to “mutuality,” the agreement was different than other player contracts in earlier cases for two reasons.\textsuperscript{117}

First, instead of following the normal one-year renewal cycle, Lajoie’s contract was nonstandard because it gave Philadelphia an option to renew for the 1901, 1902, and 1903 seasons.\textsuperscript{118} The issue in \textit{Lajoie} was the equities of the parties to an agreement “partially executed by services rendered.”\textsuperscript{119} The court found it “inequitable to permit the defendant to withdraw from the agreement at this late date,” because the team had fully performed and changed its position in reliance on the performance of the Hall of Fame second baseman.\textsuperscript{120} The court concluded that Lajoie had “deliberately accepted” the terms of the agreement as a result of this nonstandard right of renewal.\textsuperscript{121}

Secondly, the “reserve” clause itself was different from those in previous cases. Under paragraph 18 of the agreement, the right to reserve was a part of Lajoie's consideration, for which Philadelphia in turn agreed “to pay him for his services . . . the sum of $2400.”\textsuperscript{122} The court concluded that “the fact of this concession to the plaintiff is distinctly pointed out as part of the consideration for the large salary paid to the defendant…” overcame the fact that the contract looked tough because it gave the club the right to terminate on ten days' notice, and gave the player no right to terminate.\textsuperscript{123} Consequently, the court found the provisions to have been bargained for by the parties and, when coupled with specific contractual authority to enjoin

\begin{enumerate}
\item Lajoie, 51 A. at 974.
\item Id.
\item Id. Consequently, “the situation is not now the same as when the contract was wholly executory,” as would have been the case when the formal contract expired and a single “reserve” year contract was about to spring into existence. Id.
\item Lajoie, 51 A. at 974.
\item Id.
\item Id.
\item Id.
\item Id. at 975.
\end{enumerate}
Lajoie from playing elsewhere, the court looked only to whether there was any showing of an attempt to overreach by the Phillies. 124

Following remand to the trial court 125, Lajoie was enjoined from playing for another team during the term of his agreement with the Phillies. 126 This temporary victory for the NL was nonetheless transitory. As a practical matter, Connie Mack sold Lajoie to the AL Cleveland Bronchos, who guaranteed Lajoie $25,000 for three seasons, when it was determined that an action alleging violation of the injunction would have to be filed in Pennsylvania. 127 The Phillies’ attempts to have the Ohio courts enforce the Pennsylvania injunction utterly failed, and Lajoie continued to play in all AL cities except Philadelphia. 128 As a legal matter, the Lajoie victory triggered the NL to bring two other suits 129, but the courts in both cases, however, did not concur in the Lajoie precedent. 130

iv. Creation of Major League Baseball

With the conclusion of the 1902 season, came peace between the AL and NL. 131 Both leagues held a meeting in 1903, in which the NL accepted the AL as an equal, and together they formed the bicameral system what we now call Major League Baseball (“MLB”). 132 During this meeting, the owners of both leagues agreed to respect a common reserve system and to design a structure that would be run by a National Commission (“Commission”), made up of presidents of both leagues and a neutral party agreed upon by the two league presidents. 133 This agreement

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124 Id. at 975-976.
125 Id. at 976.
126 Pietrusza, supra note 44, at 164.
127 Devine, supra note 4, at 37.
128 Pietrusza, supra note 44, at 164-165.
129 Murdock, supra note 81, at 54.
130 Devine, supra note 4, at 37.
131 Id. at 41.
133 Helyar, supra note 39, at 5.
made baseball an extremely profitable business for the owners for the next ten years, and brought an increased interest due to the launch of the World Series.\(^\text{134}\)

E. THE FEDERAL LEAGUE & CREATING THE ANTITRUST EXEMPTION

In 1913, there was one last shot at trying to bring down the MLB monopoly, and that was the formation of the Federal League.\(^\text{135}\) During a two-year span from 1913 to 1915, the threat of league-jumping nearly doubled the average salary.\(^\text{136}\) Hall of Famer Ty Cobb\(^\text{137}\) had his salary doubled to $20,000 and Tris Speaker\(^\text{138}\) got an astonishing two-year contract of $36,000.\(^\text{139}\) However, major league owners' threatening to blacklist players who actually jumped leagues was a useful deterrent, and the owners of Federal League teams struggled to compete with the established leagues for quality players.\(^\text{140}\)

In an attempt to increase their ability to compete with MLB, the owners of the Federal League sued under the Sherman Antitrust Act of 1890\(^\text{141}\), alleging that the agreements that ruled the American and National Leagues were illegal restraints of trade.\(^\text{142}\) In an attempt to gain sympathy to their cause, the Federal League owners strived to have a federal judge Kennesaw Mountain Landis in Chicago hear the case, because he was known for making brash decisions.\(^\text{143}\)

\(^{134}\) Dworkin, supra note 77, at 50.
\(^{135}\) Zimbalist, supra note 132, at 8-10.
\(^{136}\) Helyar, supra note 39, at 6.
\(^{137}\) Ty Cobb (the “Georgia Peach”) was arguably one of baseball's greatest players. Cobb won the American League batting title ten times in his twenty-three year career (1905-1928). Stephen F. Weinstein, The Random House Pro Baseball Dictionary 75 (1993). Cobb was an inaugural member of the Hall of Fame in 1936. Id. at 413.
\(^{138}\) Tristram (Tris, the “Gray Eagle”) Speaker, centerfielder for Boston (1907-1915) and Cleveland (1916-1926), was inducted into the Baseball Hall of Fame in 1937. Id. at 413.
\(^{139}\) Helyar, supra note 39, at 6.
\(^{140}\) Dworkin, supra note 77, at 54.
\(^{142}\) Dworkin, supra note 77, at 54.
\(^{143}\) Helyar, supra note 39, at 7.
Before the case could be heard, the battling leagues signed a “peace treaty” in 1915,144 and judge Landis never issued a decision.145 This treaty resulted in many of the Federal League owners being bought out, and also allowing them to sell their players to other teams.146 A couple of Federal League teams were merged into the Major Leagues, and all player eligibility was reinstated.147 The rights of any player who was not sold back reverted to the team in the National or American League that previously owned them.148

The Baltimore Federals were the only remaining team who were dissatisfied after the signing of this treaty.149 The Federals were prevented from buying the St. Louis Cardinals and moving them to Baltimore.150 The Federals sued the NL, the AL, the presidents of each league, the neutral member of the National Commission, and the three persons administering the Federal League, alleging a violation of the Sherman Antitrust Act by attempting to monopolize the business of baseball.151 While the Federals prevailed in the District Court, the Court of Appeals for the District of Columbia overturned the decision.152 In a last resort, the Federals finally appealed the case to the United States Supreme Court, where it became the first case in the purported “baseball trilogy.”153

144 Dworkin, supra note 77, at 54.
145 Helyar, supra note 39, at 8.
146 Dworkin, supra note 77, at 54.
147 Id.
148 Id.
149 Id. at 55.
150 The owners did not allow this move because they believed, as Charles Comiskey, owner of the Chicago White Sox, put it, Baltimore was “a minor league city and not a hell of a good one at that.” See Zimbalist, supra note 132, at 9.
152 National League, 269 F. at 688.
In Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs\textsuperscript{154}, the leagues' actions initially appeared to be the type of behavior Congress meant to prohibit with both sections 1 and 2 of the Sherman Antitrust Act.\textsuperscript{155} In order for the Act to apply, the business of baseball must meet two criteria.\textsuperscript{156} First, baseball had to be a “trade or commerce” as specified by the Act.\textsuperscript{157} Second, this trade or commerce had to be interstate.\textsuperscript{158} Baseball failed on both counts according to the Supreme Court.\textsuperscript{159}

The Supreme Court ultimately decided that the Sherman Act did not apply to the business of baseball.\textsuperscript{160} Justice Holmes stated: “[t]he business is giving exhibitions of base ball, which are purely state affairs.”\textsuperscript{161} Holmes reasoned that the actual business was the game, and the fact that the players and equipment crossed state lines was incidental rather than essential.\textsuperscript{162} Thus, baseball did not affect interstate commerce.\textsuperscript{163} Additionally, “the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words.”\textsuperscript{164} From this ruling, MLB was granted its infamous antitrust exemption.\textsuperscript{165} This landmark decision created a substantial setback to players because it “deprived them of the legal means to challenge

\textsuperscript{154} Federal Baseball, 259 U.S. at 200.


§ 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States…is declared to be illegal…

§ 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States…shall be deemed guilty of a felony…

\textsuperscript{156} Federal Baseball, 259 U.S. at 208-209.

\textsuperscript{157} Id. at 209.

\textsuperscript{158} Id. at 208-209.

\textsuperscript{159} Id. at 209.

\textsuperscript{160} Id.

\textsuperscript{161} Id. at 208.

\textsuperscript{162} Id. at 209.

\textsuperscript{163} Id.

\textsuperscript{164} Id.

\textsuperscript{165} Dworkin, supra note 77, at 55. The exemption lasted until 1998 when the Curt Flood Act became law.
the reserve clause other than through negotiation and player unionization or organization.\textsuperscript{166} Following the dissolution of the Federal League, players were left with scarce options in order to assert pressure on MLB. Although limited in terms of their legal remedies, players tried another avenue in order to gain bargaining power, a traditional labor “strike.”

F. FOUL BALL: THE 1918 BASEBALL STRIKE

In the early beginnings of the World Series, major league owners established a profit sharing system, and agreed that the players' would get sixty percent share of the profits of the gate from the first four games of the series.\textsuperscript{167} Subsequently, that amount was then changed to a split sixty percent to the winning team, forty percent to the loser.\textsuperscript{168} In 1918, the owners amended the plan to permit the first four teams in each league to share in these same receipts without any consultation of the players.\textsuperscript{169}

In 1918, following the beginning of World War I, baseball attendance dropped to a near record low and resulted in MLB owners not raising prices for World Series tickets, as had been the normal custom.\textsuperscript{170} However, it was predicted that the Series' participating Boston Red Sox and Chicago Cubs' winning players would earn at least $2000, and losers at least $1400.\textsuperscript{171} Because of this prediction, the players pledged ten percent of their share to support the war effort.\textsuperscript{172}

\textsuperscript{166} Schubert et al., supra note 38, at 152.
\textsuperscript{167} Devine, supra note 4, at 50.
\textsuperscript{168} Seymour, supra note 33, at 253-254. Originally, the division between winner and loser was 75/25 but this split caused players to make side deals with their opponents so as to increase the potential earnings from the series. The first four games were used as the base to prevent the players from artificially extending the series beyond the required number of games. Id.
\textsuperscript{169} Id. at 254.
\textsuperscript{170} Devine, supra note 4, at 50.
\textsuperscript{171} Id.
\textsuperscript{172} Seymour, supra note 33, at 254.
When gate attendance at the first three games of the series was similarly low, owners lowered their expectations, and considerably reduced the shares of the series' participants.\textsuperscript{173} While traveling on the train from Chicago to Boston, the players agreed to strike unless winners and losers received a guaranteed $1500 and $1000 respectively.\textsuperscript{174} Causing a one-hour delay, the players refused to begin game five in Boston until their demands were met.\textsuperscript{175} The players stalled play until being promised a post-series meeting with owners and, no retorts against striking players.\textsuperscript{176} Following the conclusion of the series, however, there was no meeting.\textsuperscript{177} The winning Red Sox players received slightly more than $1000, the losing Cubs slightly more than $670, and all players were fined to the extent they were not awarded the usual souvenirs of their the World Series participation.\textsuperscript{178}

III. ESTABLISHING THE COMMISSIONER’S OFFICE

A. BLACK SOX SCANDAL

In 1919, the Chicago White Sox played the Cincinnati Reds in the World Series, in which the White Sox were heavily favored.\textsuperscript{179} The White Sox, stunningly, lost five games to three in the series.\textsuperscript{180} The next year, rumors began to swirl that players were involved in throwing the World Series.\textsuperscript{181} Prior to this point, there had been only been isolated rumors that some players were involved in gambling, but in general, people could not believe that a World Series could be

\textsuperscript{173} Devine, \textit{supra} note 4, at 50.
\textsuperscript{174} Seymour, \textit{supra} note 33, at 254.
\textsuperscript{175} \textit{Id.} American League President Ban Johnson arrived at game 5 “inebriated and made a maudlin appeal to the men” to continue playing. The players then recognized that no meaningful negotiations could take place with Johnson in such a condition and agreed. Seymour, \textit{supra} note 33, at 254-55.
\textsuperscript{176} \textit{Id.} at 254.
\textsuperscript{177} Seymour, \textit{supra} note 33, at 255.
\textsuperscript{178} \textit{Id.} The winning Red Sox were apparently to receive a commemorative stick pin, which they still had not received, making them the only World Series winner to not receive any memento of victory.
\textsuperscript{180} \textit{Id.}
\textsuperscript{181} \textit{Id.} In September of 1920, a Cook County Illinois special grand jury began investigating baseball gambling, particularly the 1919 World Series.
thrown.\textsuperscript{182} After a multitude of witness testimony, two White Sox players admitted to fixing World Series games and implicated six of their fellow teammates, followed by the grand jury indicting all eight players.\textsuperscript{183} This in turn spawned the infamous “Black Sox” Scandal.\textsuperscript{184} Eight members of the Chicago White Sox, working together with gamblers to purposefully throw the World Series to the underdog Cincinnati Reds, participated in the most notorious and recognized example of corruption ever witnessed in American professional sports history.\textsuperscript{185} When the story broke in the papers, the public was furious.\textsuperscript{186}

The Black Sox scandal diminished public confidence in a sport already struggling due to the notable absence of a neutral decision-maker.\textsuperscript{187} In order to repair the tarnished image of MLB, the owners decided to implement sweeping changes.\textsuperscript{188} Numerous club owners called for replacing the Commission with a single leader who possessed an prestigious reputation, had no connections with baseball, and whose “mere presence would assure that public interests would first be served, and that...as a natural sequence, all existing evils would disappear.”\textsuperscript{189} Subsequently, the Commission was dissolved, and plans were made to elect a authoritative Commissioner.\textsuperscript{190}

\section*{B. THE FIRST COMMISSIONER IN PROFESSIONAL SPORTS}

\textsuperscript{182} Id. at 219-220.
\textsuperscript{183} Jeffrey A. Durney, Comment, Fair or Foul? The Commissioner and Major League Baseball's Disciplinary Process, 41 Emory L.J. 584, 585 (1992).
\textsuperscript{186} Reinsdorf, supra note 179, at 220.
\textsuperscript{187} Pachman, supra note 184, at 1414.
\textsuperscript{188} Reinsdorf, supra note 179, at 220.
\textsuperscript{189} Pachman, supra note 184, at 1414.
\textsuperscript{190} Reinsdorf, supra note 179, at 220.
On November 12, 1920, MLB owners elected baseball's first commissioner, and “framed for the industry the basic governmental structure that stands to this day.” Baseball set the precedent for American professional sports by creating the first sole commissionership. The owners selected Federal Judge Kennesaw Mountain Landis (“Landis”) as the first Commissioner, a contributing factor in that he had won the owner’s respect with his preference of baseball in Federal Baseball Club of Baltimore. As a pre-condition to employment, Landis informed the owners that he would accept the job only if he had absolute power when making decisions. The owners gave in to Landis’ demands, and assured him that he would have his unlimited power. However, Landis continued to delay the start to his new position until a new National Agreement was drafted. Landis met with the owners and drafted what would become the Major League Agreement (“MLA”). Once completed, the new MLA would grant the Commissioner very broad investigative and punitive power.

On its face, the new MLA appeared somewhat basic in form, but subsequently would be used as a powerful tool in Landis’ hands throughout his tenure. Landis immediately went to work, with one of his first duties in office consisting of dealing with the now infamous “Black

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192 Daniels & Brooks, supra note 185, at 27.
194 Reinsdorf, supra note 179, at 220.
195 Id.
196 Lavelle, supra note 191, at 99.
197 Reinsdorf, supra note 179, at 221.
198 Lavelle, supra note 191, at 100. Judge Landis insisted on the punitive powers. When Landis heard rumors that one of the former powers of Major League Baseball, Ban Johnson, was trying to change the pertinent clause in the Agreement to read “recommend [punitive]” action, he was insistent. He told the committee that the clause had to say “take [punitive] action” or else they would have to find a new commissioner. He said, “You have told the world that my powers are to be absolute. I wouldn't take this job for all the gold in the world unless I knew my hands were to be free.” Seymour, supra note 33 at 322.
199 Daniels & Brooks, supra note 185, at 27.
Sox” players, who had been indicted for fixing the 1919 World Series. Landis callously banned all eight players accused of participation in the Chicago “Black Sox” gambling plot. A hometown jury in Chicago had acquitted the ballplayers after their confessions “conveniently” disappeared. Nonetheless, Landis refused to permit them back into baseball and implemented a lifetime ban, citing his governing authority to act in the game's best interests. Aside from the lifetime bans of the infamous “Black Sox” players, Landis was well known for imposing a controversial suspension of Babe Ruth in 1922 over “barnstorming.” Judge Landis held the Commissioner’s office for twenty-three years, ruling until 1944 when he died at age 78.

C. PRIMARY SOURCE OF POWER: “THE BEST INTERESTS” CLAUSE

I. The Original Agreement

The original MLA was officially adopted in January 1921, which subsequently created the Office of the Commissioner and detailed the powers of the position. The MLA is essentially a contract between the constituent clubs of the NL and the AL, and functions as a

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201 Id.
202 Irwin, supra note 110, at 292. It took the jury just a few hours on August 2, 1921 to acquit the players and two gamblers on trial for throwing the World Series games. When the jury announced its decision, a scene of “wildest confusion” erupted in the courtroom: “spectators cheered, and hats and papers were tossed in the air; and the jurors carried the players around on their shoulders.” Seymour, supra note 33, at 329.
203 Curtis, supra note 200, at 8. Landis stated: “Regardless of the verdict of the juries, no player that throws a ball game; no player that undertakes or promises to throw a ball game; no player that sits in conference with a bunch of crooked players and gamblers where the ways and means of throwing games are planned and discussed and does not promptly tell his club about it, will ever play professional baseball.” Eliot Asinof, Eight Men Out 330 (1963).
204 Craig F. Arcella, Major League Baseball's Disempowered Commissioner: Judicial Ramifications of the 1994 Restructuring, 97 Colum. L. Rev. 2420, 2430 (1997); Curtis, supra note 201, at 9. In 1921, World Series participants were not allowed to participate in post-season tours because of a fear this might take some importance away from the Series. Ken Sobol, Babe Ruth & the American Dream 137-38 (1974). A promoter wanted the Babe, along with some other players, to go on a post-season tour of upstate New York, Pennsylvania and Ohio. Id. The players planned to ignore the rule, and Judge Landis warned them that they were not to put themselves above the law. Id. Landis said, “This case resolves itself into a question of who is the biggest man in baseball, the commissioner or the man who makes the most home runs.” Id. The Babe went on the tour despite warnings from nearly everyone, and Judge Landis fined him a month's salary and suspended him the next season until May 20th (thirty-nine days). Id.
205 Lavelle, supra note 191, at 103.
charter under which MLB operates. Article I, Section 2 and 3, and Article VII, section 1 delineated the Commissioner’s foremost authority. The primary source of power for the Commissioner within the MLA comes from Article I, section 2, which is commonly referred to as the “Best Interests” Clause. In particular, Article I, Section 2(a) gave the Commissioner the power to investigate a transaction or practice that he believed could be detrimental to the “best interests” of baseball. Section 2(b) allowed the Commissioner, after finishing his investigation, to take whatever preventative, remedial or punitive action he believed appropriate under the circumstances. Consequently, this vague authority of the “best interests” clause has been interpreted as granting the Commissioner a wide range of authority with which to govern the game, meaning he could act against either Major League, any Major League club or any individual party to the MLA, and against the players.

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207 Id. at 543.
208 Reinsdorf, supra note 179, at 221.
209 Curtis, supra note 200, at 7. As originally worded, Article I, § 2 of the MLA:

The functions of the Commissioner shall be as follows:

(a) To investigate, either upon complaint or upon his own initiative, any act, transaction, or practice charged, alleged, or suspected to be detrimental to the best interests of the national game of baseball, with authority to summon persons and to order the production of documents; and, in case of refusal to appear or produce, to impose such penalties as are hereinafter provided.
(b) To determine, after investigation, what preventive, remedial, or punitive action is appropriate in the premises, and to take such action either against Major Leagues, Major League Clubs or individuals, as the case may be.
(c) To hear and determine finally any dispute between the Major Leagues which may be certified to him for determination by the President of either Major League.
(d) To hear and determine finally any dispute to which a player is a party, or any dispute concerning a player, which may be certified to him by either or any of the disputants.
(e) To formulate, and from time to time announce, the rules of procedure to be observed by the Commissioner and all other parties in connection with the discharge of his duties. Such rules shall always recognize the right of any party in interest to appear before the Commissioner and be heard and the right of the Presidents of the two Major Leagues to appear and be heard upon any matter affecting the interests of the Major Leagues, or either of them.


210 Reinsdorf, supra note 179, at 221.
211 Id.
212 Id.
In addition, the Commissioner has authority granted from Article I, Section 3 that lists courses of punitive action that the Commissioner may take.\(^{213}\) Furthermore, the Commissioner derives authority from Article VII, Section 1 which dictates that the Major League clubs are bound by the Commissioner's decisions, including any disciplinary decisions, and also, that the Major League teams waive their right to recourse to the courts.\(^{214}\) It is plain from the stringent reliance on the arrangement set up by the MLA of 1921, and from the broad interpretation Commissioner’s are allowed to give to the MLA, that MLB intended for its Commissioner to have absolute power, and that questions of scope and due process were apparently of little concern.\(^{215}\) The “best interests” clause has undergone only nominal changes since its official inception but, nonetheless, those apparently minor amendments to semantics and syntax considerably alter the scope of the Commissioner's authority.\(^{216}\)

II. **Evolution of the Commissioner’s Powers**

The first amendments to the MLA by which the owners limited the Commissioner’s power came in 1945, the year after Landis had passed away.\(^{217}\) First, the baseball owners amended Article VII, section 2 of the MLA, expunging the provision under which they waived their rights to challenge the Commissioner's actions and decisions in court.\(^{218}\) Nevertheless, they did retain the first part of the section, which stated that they were to be bound by the decisions of the Commissioner and the penalties imposed by him.\(^{219}\) Second, they added a provision to Article I, Section 3 that stated conduct that did not violate a specific league rule could be not be

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\(^{213}\) Id.

\(^{214}\) Id.

\(^{215}\) Pachman, *supra* note 184, at 1416.

\(^{216}\) Curtis, *supra* note 200, at 7-8.

\(^{217}\) Lavelle, *supra* note 191, at 103.

\(^{218}\) Curtis, *supra* note 200, at 12.

\(^{219}\) Lavelle, *supra* note 191, at 103.
voided by the Commissioner as detrimental to the game. These two amendments were in effect during the tenure of the next two commissioners. However, these limitations on the Commissioner’s power did not survive for long.

Three amendments to the MLA were adopted in 1964. The first was to remove the language to Article VII, section 2 added in 1945 that prevented the Commissioner from finding any act or practice “taken in compliance” with a Major League Rule to be “detrimental to baseball.” The second amendment was to add back the provision deleted in 1945, which waived any rights of recourse to the courts to challenge a Commissioner's decision. Finally, the owners altered the actual language of the “best interests” clause, replacing the term “detrimental to the best interests of the national game of Baseball” to “not in the best interests of the national game of Baseball.” The last amendment was perhaps the most significant for future administrations because now the new Commissioner needed only to demonstrate that an action had a subjective effect of not being in the game's best interests, where previous commissioners were required to find that an action had some affirmative “detrimental” effect on baseball before being permitted to respond.

III. Defining the Scope of the Commissioner’s Power – Finley v. Kuhn

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220 Pachman, supra note 184, at 1416.
221 Lavelle, supra note 191, at 103.
222 Pachman, supra note 184, at 1417.
223 Lavelle, supra note 191, at 105.
224 Id.
225 Id.
226 Curtis, supra note 200, at 17.
227 Id.
The most significant decision regarding the Commissioner’s powers and scope of the “best interest” clause was decided in Charles O. Finley & Co., Inc. v. Kuhn.\textsuperscript{228} In this leading case, the Seventh Circuit first addressed the breadth of the Commissioner’s “best interests of baseball” power.\textsuperscript{229} Commissioner Bowie Kuhn had determined that the Oakland Athletics' sale of three player contracts to the New York Yankees and Boston Red Sox was contrary to the best interests of the game, its integrity, and the public’s confidence in the League.\textsuperscript{230} The court reasoned that the Commissioner must have the authority to determine whether any act—not just ones that break the Major League Rules or moral standards—is “not in the best interests of baseball” to prevent a potentially disastrous judicial venture into the “complex” rules and code of the game.\textsuperscript{231} It further held that the court was in no position to determine whether Kuhn's decision to disallow the player assignments was right or wrong, but did believe the Commissioner acted in good faith throughout his investigation and deliberation of the issue.\textsuperscript{232} Essentially, the Seventh Circuit mandated that the Commissioner derive from the textual language of the MLA the power to take any action, in good faith, to protect the best interests of baseball, the interests and morale of the players, and the honor of the game.\textsuperscript{233}

\textbf{IV. Where the Commissioner Stand’s Today}

By the mid-1980s, the MLA provisions that gave the Commissioner his original textual authority had been amended multiple times, and the Commissioner power seemed to be on the

\textsuperscript{229} Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 530 (7th Cir. 1978).  
\textsuperscript{230} Id. at 531. The three players were Joe Rudi, Rollie Fingers, and Vida Blue. Id.  
\textsuperscript{231} Id. at 539.  
\textsuperscript{232} Id.  
\textsuperscript{233} Winkel, supra note 206, at 545.
However, by the time current Commissioner Alan “Bud” Selig took over the Commissioner’s Office in 1994, the Commissioner's powers under the “best interests of baseball” clause were inherently narrow and were created only to ensure the integrity of the game. In 1992, the owners amended Article I, Section 4 of the MLA to read that the Commissioner may not use his “best interests of baseball” power to take an action that the Major League Clubs could not accomplish themselves, unless the teams voted or refrained from voting at a Joint Major League Meeting or League Meeting concerning the Major League Constitution on the matter. However, an exception exists if the matter involves the integrity or public confidence of baseball.

Similarly, the owners amended Article V, Section 2(e), and this provision now limits the power of the Commissioner by not allowing the Commissioner to resolve matters concerning a specific league. Nonetheless, this section is subject to the same exception enumerated in Article I, Section 4—if the integrity or public confidence in baseball is at issue, the Commissioner has broad authority under the “best interests of baseball” clause to take any action he deems necessary. Accordingly, even though the amendments were intended to limit the Commissioner's powers, they had the opposite effect. Under the new amendments, the Commissioner can use his “best interests” power in any way, except areas of labor, so long as he can show that the integrity or public confidence of baseball is at stake. The amended clauses increasingly broaden the scope of the Commissioner's power because of baseball's standing as a public business. This allows the Commissioner to easily justify his use of his “best interests”

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234 Daniels & Brooks, supra note 185, at 30.
235 Winkel, supra note 206, at 545.
236 Winkel, supra note 206, at 546; Reinsdorf, supra note 179, at 233.
237 Winkel, supra note 206, at 546; Reinsdorf, supra note 179, at 233.
238 Winkel, supra note 206, at 546-547; Reinsdorf, supra note 179, at 234.
239 Winkel, supra note 206, at 547; Reinsdorf, supra note 179, at 234.
240 Winkel, supra note 206, at 547; Reinsdorf, supra note 179, at 233.
power by framing a matter as a public confidence or integrity issue.\textsuperscript{241} This becomes especially relevant in matters where player, owner, or team conduct threatens the image and health of the game of baseball.\textsuperscript{242} Since the Commissioner has not relinquished any responsibility and has been given participation into the overall structure of baseball, the Commissioner, consequently, has more power today than he did in the past.\textsuperscript{243}

IV. RISE OF THE MAJOR LEAGUE BASEBALL PLAYERS’ ASSOCIATION

A. THE AMERICAN GUILD

In 1946, Robert Murphy, who was a Pittsburgh Pirates player and former examiner for the National Labor Relations Board, made the final attempt at unionization when he formed the American Guild.\textsuperscript{244} As a result of Murphy’s tactical errors, the American Guild made limited advances.\textsuperscript{245} However, the American Guild is credited with “providing the impetus for certain concessions on the part of management. Those concessions included the adoption of minimum salary,…the establishment of a limited pension fund, the shortening of spring training, and the payment to players of a spring training allowance that is to this day referred to as ‘Murphy Money’.”\textsuperscript{246} Even though the union ultimately failed, it did create the first players' pension fund.\textsuperscript{247} The pension fund encompassed matching contributions from clubs and players, and generated the opportunity for future player action concerning working conditions.\textsuperscript{248}

B. FOUNDING A UNION

\textsuperscript{241} Winkel, supra note 206, at 547.
\textsuperscript{242} Id.
\textsuperscript{243} Reinsdorf, supra note 179, at 235.
\textsuperscript{244} Insley, supra note 8, at 605.
\textsuperscript{245} Seabury, supra note 3, at 344.
\textsuperscript{246} Schubert et al., supra note 38, at 153.
\textsuperscript{248} Id.
i. Early Unionism

During the All-Star break in 1954, team player representatives formed the Major League Baseball Players' Association (“MLBPA” or “Players' Association”) in response to widespread player dissatisfaction with the administration of the 1946 pension fund. The MLBPA's early days were unstable: it experienced a lack of strong central organization, suffered from an undeveloped sense of identity, and lacked solid objectives. Much of the MLBPA's early difficulties resulted from management--Judge Robert Cannon originally ran the MLBPA, but nevertheless had pro-owner sympathies that ran deep. Further exasperating the MLBPA's inadequacies was the fact that, for more than a decade, its management was only available on a part-time basis. As fortune would have it for the players, Cannon declined the offer of full-time control of the union in 1966.

ii. The Players’ Rep

In 1966, Marvin Miller (“Miller”) became the union’s first permanent, full-time director, and drastically changed the MLBPA's structure. Miller brought extensive negotiating experience and legal knowledge to the MLBPA from his tenure as a United Steelworkers of

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249 Seabury, supra note 3, at 345; Gould, supra note 247, at 66.
251 Moorad, supra note 9, at 62-63. The MLBPA hired municipal judge, Robert C. Cannon, to represent them in 1959, and conversely, Cannon did a better job of representing the owners—and himself. See Schubert et al., supra note 38, at 154; Helyar, supra note 39, at 14-15. The owners paid Cannon's retainer and he aspired to be commissioner—a job he could not get without appeasing the owners. Helyar, supra note 39, at 15. Cannon even stated that “[t]he thinking of the average major league ballplayer, [was that] we have it so good we don't know what to ask for next.” Id.
252 See Marvin Miller, A Whole Different Ball Game: The Sport and Business of Baseball 7 (1991).
253 Id. Owners were so pleased with Cannon that they proposed to pay part of their revenues into a fund to pay for Cannon's New York City office. See id.
America official.\textsuperscript{255} Unlike his predecessors, Miller viewed himself as a partisan labor negotiator between the union he represented, and the Commissioner who represented management.\textsuperscript{256} Miller’s loyalty was solely to the union, while he contemporaneously sought to develop a relationship between the players and owners that was “dignified and mutually respectful.”\textsuperscript{257} Miller's first major hurdle was to unify the players, and to help accomplish this goal, he established a permanent office for the MLBPA to encourage year-round communication between the players and union leadership.\textsuperscript{258}

\textit{iii. Collective Bargaining}

The MLBPA held its first big meeting in 1967 where Miller asked the players to list all grievances that they had.\textsuperscript{259} Additionally, as the MLBPA's strength grew, owners formed their own labor relation’s organization, the Player Relations Committee (“PRC”), to engage in collective bargaining with the union.\textsuperscript{260} The collective bargaining process, a fundamental labor-management practice, comprises of player-owner negotiations over MLB's economic and legal framework.\textsuperscript{261} Ideally, this should result in an agreement by both sides to abide by the guidelines upon which they settle.\textsuperscript{262} Miller convinced the players that the baseball industry was sufficiently flourishing to give the players a greater share of revenues, providing the union remained united

\textsuperscript{255} Id.
\textsuperscript{256} Miller, supra note 252, at 47.
\textsuperscript{258} Id. at 201.
\textsuperscript{259} Helyar, supra note 39, at 14-18.
\textsuperscript{260} Lowenfish, supra note 257, at 203.
\textsuperscript{261} Glazer, supra note 254, at 344.
\textsuperscript{262} Id. at 345.
in its demands for a higher minimum salary and improved working conditions. Collective bargaining gave the players a powerful hand to play with against the owners.

In 1968, the MLBPA and the PRC established the first collective bargaining agreement in American professional sports called the Basic Agreement (“CBA” or “Basic Agreement”). The 1968 Basic Agreement was a groundbreaking event in baseball’s labor history because it finally gave the players a cooperative voice in determining the conditions of their employment. The Basic Agreement was distinct, as the players and owners for the first time negotiated items such as minimum salaries, benefits, pension payments, etc. A significant aspect of the Basic Agreement was that the players obtained the right to formal grievance arbitration, which allowed players to file complaints against owners who violated their contractual rights. This was only a partial victory because under the arbitration procedure, the Commissioner, who is blatantly biased, resolved grievances. The last big achievement in the Basic agreement was the party’s incorporation of the Uniform Player's Contract (the standard employment contract signed by all major-league players), therefore instituting player contracts as an applicable subject for arbitration. Furthermore, the incorporation of the UPC meant that any

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263 Lowenfish, supra note 257, at 202.
264 Glazer, supra note 254, at 345.
265 Miller, supra note 252, at 163-164; Moorad, supra note 9, at 63.
266 Lowenfish, supra note 257, at 203.
267 Miller, supra note 252, at 164; Moorad, supra note 9, at 63. The players obtained a $4,000 increase in the minimum annual salary; in the twenty years preceding Miller's hiring in 1966, the minimum salary had risen only $2,000. Lowenfish, supra note 257, at 203.
268 Miller, supra note 252, at 164.
269 Lowenfish, supra note 257, at 203. The significance of grievance arbitration was reduced by the fact that the commissioner worked for the owners, who actually fired Commissioner Eckert in December 1968 for ruling in favor of a player in a grievance arbitration hearing. See Zimbalist, supra note 132, at 18.
270 Miller, supra note 252, at 97.
future changes to the Uniform Player's Contract must be accomplished through collective bargaining, which eliminated the owners able to unilaterally alter its terms and conditions.\textsuperscript{271}

The first authentic sign of union camaraderie came with the negotiation of the 1969 benefits package.\textsuperscript{272} As the owners attempted to stall negotiations, some players engaged in the first mass holdout.\textsuperscript{273} Players refused to sign contracts until a deal was done, arguing that the benefits package was an essential part of their contract.\textsuperscript{274} This strategy ultimately succeeded, and the parties signed a new, acceptable contract in time for spring training.\textsuperscript{275}

V. EMERGENCE OF ARBITRATION & THE EVOLUTION OF FREE AGENCY

A. ARBITRATION BEGINNINGS

i. 1970 CBA & 1972 Strike

The second CBA materialized two years following the inaugural Basic Agreement.\textsuperscript{276} The new CBA notably involved increases in minimum salaries and limited salary cuts to twenty percent.\textsuperscript{277} However, the provision establishing the right to binding impartial arbitration had the greatest impact on player and owner relations, because it reconfigured the whole arbitration process.\textsuperscript{278} In 1972, the MLBPA went on the first league-wide work stoppage in the history of

\begin{footnotesize}
\textsuperscript{271} Id.
\textsuperscript{272} Id. at 99-104.
\textsuperscript{273} Id.
\textsuperscript{274} Id.
\textsuperscript{275} Id. at 105.
\textsuperscript{276} Moorad, supra note 9, at 64.
\textsuperscript{277} Pietrusza, supra note 44, at 589.
\textsuperscript{278} See Miller, supra note 252, at 97. The 1970 CBA also established a player's right to representation in individual contract negotiations. See Helyar, supra note 39, at 89. Replacing the commissioner in the role of grievance arbitrator was a tripartite panel comprised of two partisan members and one neutral member, who would act as Chairman and be selected by joint agreement of the players and owners. Additionally, the panel was given original jurisdiction to resolve any disputes involving any agreement between a “Player and a Club,” and the rulings were legally binding upon both sides. Glazer, supra note 254, at 346.
\end{footnotesize}
MLB, consequently delaying the beginning of the regular season. When owners refused to use the excess in the players' pension fund to add a cost-of-living increase to the players' medical and retirement benefits, the players decided to strike. In reality, the real strife between the owners and players was not over the tangible issues, but rather each party's tenacity to stand firm, and who could hold out the longest. In the end, it was the owners backed down from their position and gave in to the players' demands. Most importantly, this shifted power towards the players because now they were claiming an equal share in the bargaining power, whereas before, they were left with the unilateral terms that the owners deemed appropriate.

### ii. The Final Legal Challenge To The Reserve System

Following the close of the 1969 season, Curt Flood, a star outfielder that had spent twelve years of his major league career with the Saint Louis Cardinals, refused to report after being traded to the Philadelphia Phillies. Flood appealed to MLB Commissioner Bowie Kuhn for freedom to contract with other teams, but was flatly rejected. After losing in the Southern District of New York and the Second Circuit, Flood competed the hat trick when the Supreme Court ruled in *Flood v. Kuhn* that stare decisis mandated continued adherence to earlier

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279 Glazer, *supra* note 254, at 347.
280 Id.
281 Id.
282 Miller, *supra* note 252, at 221. The players gained $500,000 from the strike settlement, but lost $600,000 in foregone wages. The owners realized a net savings of $100,000 in player salaries, but lost $5.2 million in revenue from the eighty-six games that were canceled. See Zimbalist, *supra* note 132, at 19.
283 Miller, *supra* note 252, at 220-222.
284 Moorad, *supra* note 9, at 61.
285 Id.
principles, and reaffirmed MLB’s antitrust exemption. Flood was a victory for the owners, as it kept their precious reserve system intact.

Shortly following the aftermath of Flood, negotiations began for the 1973 CBA. In an attempt to cease player attacks on the reserve system, the owners proposed that individual salary disputes with players be submitted to arbitration. The effect was to give a player with the requisite number of service years to have his salary decided by a neutral party. The owners believed that having these disputes heard by a neutral arbitrator would not have a significant financial impact. Additionally, another pivotal concession by the owners in the 1973 CBA was the ten and five rule. Finally, the first salary arbitration hearing commenced on February 11, 1974 between the Minnesota Twins and pitcher Dick Woodson.

### iii. Overview Of The Arbitration Procedure

The MLB salary arbitration process begins immediately after the World Series, and Players and teams must inform one another of their plans to arbitrate, and each side’s final salary offers must be submitted to MLB within three days after notice of intention to seek arbitration is

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289 Seabury, supra note 3, at 350.
290 Conti, supra note 288, at 226.
291 Seabury, supra note 3, at 350. Previously, when a player and club were unable to agree on a salary figure, the player’s only leverage was to hold out into the season or to retire. These alternatives hurt both sides, as the player did not collect salary and the team missed his on-field contributions. Glazer, supra note 254, at 352.
292 Helyar, supra note 39, at 152.
294 Ed Edmonds, A Most Interesting Part of Baseball’s Monetary Structure - Salary Arbitration in Its Thirty-Fifth Year, 20 Marq. Sports L. Rev. 1, 1 (2009). Woodson won his hearing when the arbitrator chose his $30,000 offer instead of the Twins’ $23,000 offer. Id. Woodson was then traded to the New York Yankees where he was sent down to the minor leagues and never returned to the major leagues. Id. Woodson claimed he was “blackballed” because he used the arbitration process. Id.
MLB uses a unique form of arbitration, “Final Offer” arbitration, in which both parties, the player and the team, submit a single number to the arbitrator: that which the player thinks he should be paid, and that which the team actually wants to pay him. After a hearing during which the player and team each have the opportunity to make a presentation, the arbitrator chooses one of the two numbers as the player's salary for the upcoming season.

The most current CBA provides that any player who has accrued the requisite Major League Service Time (“MLST”) “may submit the issue of the Player's salary to final and binding arbitration without the consent of the Club.” Eligible players must accumulate between three and six years of MLST, or fall into the “Super Two” category. Accordingly, for either set of eligible players, both the athlete and the team unilaterally can subject the other to binding arbitration. For any other player, the team and player jointly may consent to arbitration.

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297 Jeff Monhait, Baseball Arbitration: An ADR Success, 4 Harv. J. Sports & Ent. L. 105, 112 (2013). Tripartite panels preside over salary arbitration hearings. Each year, the MLB Labor Relations Department, representing the owners, and MLBPA jointly selects the arbitrators. At the hearing, the two sides submit a signed and executed UPC with a blank space left for the salary figure. Each side has one hour to present its case, and a half hour for rebuttal. The arbitrators “make every effort to” issue a decision within twenty-four hours of the hearing. The CBA restricts the arbitrator's decisions by providing that “the arbitration panel shall be limited to awarding only one or the other of the two figures submitted.” Arbitrators do not issue written opinions. As a practical matter, the dispute's pivot point is the midpoint between the player's request and the team's offer. If the panel finds the player is worth more than the midpoint, the player wins, and if the panel finds the player is worth less than the midpoint, the team wins. After filling out the player's contract with the awarded salary, the arbitrators send the contract to the parties. Id. at 119-120.
298 2012 Basic Agreement, art. VI(E)(1)(a) (2012).
299 Id. at art. VI(E)(1)(b). Under the current CBA, a Super Two is “a Player with at least two but less than three years of Major League service ... [and] at least 86 days of service during the immediately preceding season ... [who] ranks in the top 22% ... in total service in the class of Players who have at least two but less than three years of Major League service ....” Id.
300 Monhait, supra note 297, at 118.
301 See 2012 Basic Agreement, art. VI(E)(1)(b).
The CBA outlines the criteria that the panel may consider in making its determination of the player's value.\textsuperscript{302} Permissible evidence may include: (1) the player's “contribution to his Club (including but not limited to his overall performance, special qualities of leadership and public appeal)”\textsuperscript{303} in the preceding season (often called the platform year); (2) the player's “career contribution”; (3) the player's past compensation; (4) the salaries of comparable players;\textsuperscript{304} (5) any “physical or mental defects” of the player; and (6) the Club's recent performance, which can include “[l]eague standing and attendance as an indication of public acceptance.”\textsuperscript{305} However, evidence of the financial situation of the player or the team, comparative salaries in other sports, press reports, pre-arbitration salary proposals by either party, and the costs of representation to either party are inadmissible.\textsuperscript{306}

B. ABOLISHING THE RESERVE CLAUSE

\textit{i. The First “Free Agent”}

Prior to the 1974 season, Jim “Catfish” Hunter signed a one-year, $100,000 contract with the Oakland Athletics, and requested that half of the amount be paid as regular salary with the other half being used to purchase a $50,000 non-taxable annuity in Hunter's name.\textsuperscript{307} Nonetheless, A’s owner Charles Finley, refused Hunter's request because the payment would not be tax-deductible for Finley until Hunter collected on the annuity.\textsuperscript{308} Following Finley’s denial, the MLBPA filed a grievance on behalf of Hunter claiming that Finley's refusal to purchase the

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{302}]{Id. at art. VI(E)(10).}
\item[\textsuperscript{303}]{Id. at art. VI(E)(10)(a).}
\item[\textsuperscript{304}]{Id. The CBA requires the player to be compensated with “particular attention ... to the contracts of Players with [MLST] not exceeding one annual service group” above that of the player. Id.}
\item[\textsuperscript{305}]{Id.}
\item[\textsuperscript{306}]{Id. at art. VI(E)(10)(b).}
\item[\textsuperscript{307}]{Ben Einbinder, What FINRA Can Learn from Major League Baseball, 12 Pepp. Disp. Resol. L.J. 333, 338 (2012).}
\item[\textsuperscript{308}]{Id.}
\end{itemize}
\end{footnotesize}
annuity voided Hunter's playing contract.\textsuperscript{309} In December 1974, arbitrator Peter Seitz ordered Finley to purchase Hunter's annuity, and declared Hunter free to contract with any club he wished.\textsuperscript{310} Hunter, now MLB’s first ever unrestricted free agent, then signed an unprecedented five-year, $3.75 million contract with the New York Yankees.\textsuperscript{311} The result of the Hunter’s arbitration paved the way for other players to calculate their true market value, and further strengthened MLBPA’s confidence in the arbitration process.\textsuperscript{312}

\textit{ii. The M & M Boys}

In the year following the Hunter arbitration, a more decisive arbitration hearing would take place that would forever change MLB. While MLBPA failed against the reserve clause based on antitrust foundation, they next moved to overthrow the system using contract theory in the arbitration setting.\textsuperscript{313} The MLBPA brought a grievance on behalf of pitchers Andy Messersmith and Dave McNally.\textsuperscript{314} The controversy centered on Section 10(a) of the Uniform Player's Contract.\textsuperscript{315} The players contended that the reserve clause only allowed the club to

\begin{itemize}
\item \textsuperscript{309} Id.
\item \textsuperscript{310} Id.
\item \textsuperscript{311} Id.
\item \textsuperscript{312} Id.
\item \textsuperscript{313} Seabury, supra note 3, at 352.
\item \textsuperscript{314} Monhait, supra note 297, at 113. Both pitchers, Messersmith of the Los Angeles Dodgers and McNally of the Montreal Expos, signed contracts for the 1974 season. Following that season, neither could reach an agreement with his respective team, and consequently, the Dodgers and the Expos invoked the reserve clause and both players played the 1975 season without a new contract. Towards the end of the season, Messersmith and Marvin Miller began discussions about filing for free agency if Messersmith completed the season without a new contract, but these discussions were complicated because negotiations between Messersmith and the Dodgers were still ongoing. Miller contacted McNally to ensure standing to file a grievance. McNally, who began the season without a new contract, left the game in the middle of the season and did not plan to return. McNally agreed to add his name to the grievance just in case Messersmith settled. According to Miller, McNally was the ideal candidate to test the meaning of the reserve clause because he did not plan to play again and, thus, had no downside risk. When the season ended, both Messersmith and McNally had effectively played out their option year without a new contract. They filed the grievance on the last day of the 1975 season. Seabury, supra note 3, at 352-353.
\item \textsuperscript{315} Hopkins, supra note 293, at 308.
\end{itemize}
renew the contract for one year, while club owners contended that the clause could be invoked year after year, unilaterally, at the club's discretion.\textsuperscript{316}

The arbitrator who would presided over this monumental arbitration hearing was none other than Peter Seitz, the arbitrator who furnished MLB's first free agent the year before.\textsuperscript{317} Noting that the owners' interpretation of the contract would allow teams to renew the contract in perpetuity, Seitz determined that such a broad power required an explicit grant in the contract.\textsuperscript{318} The UPC did not contain such an explicit grant, and thus, in Seitz's view, did not grant a team "the right to renew a contract at the end of a renewal year."\textsuperscript{319} Finding no contractual relationship between player and team at the end of the renewal year, Seitz subsequently declared Messersmith and McNally free agents.\textsuperscript{320} Although Seitz was fired within hours of his decision,\textsuperscript{321} the federal courts upheld Seitz's ruling against the owners' preference.\textsuperscript{322} Seitz had essentially eviscerated the reserve system,\textsuperscript{323} and his ruling effectively granted free agency without a minimum service requirement, without the team's right to retain the player, and without any compensation to the club losing the player.\textsuperscript{324} The clear result was that any major-league player with a one-year contract for 1975 could therefore refuse to sign a new contract for 1976, play out his option year, and become a free agent at season's end.\textsuperscript{325}

\begin{footnotes}
\item[316] Id.
\item[317] Seabury, supra note 3, at 353.
\item[318] Id. at 113-114.
\item[319] Id. at 114.
\item[320] Id.
\item[321] Hopkins, supra note 293, at 309.
\item[322] See Kan. City Royals Baseball Corp. v. Major League Baseball Players Assoc., 532 F.2d 615 (8th Cir. 1976).
\item[323] Monhait, supra note 297, at 113.
\item[324] Miller, supra note 252, at 256.
\item[325] Lowenfish, supra note 257, at 20.
\end{footnotes}
In the wake of the Messersmith-McNally arbitration, and after failing to have the decision overturned in federal court, the 1976 CBA was negotiated. The Messersmith-McNally decision led to immediate changes to the structuring of the reserve system in the 1976 CBA. Under the new system, teams could reserve players with fewer than six years of major league service. After six years of major league service, players became free agents and were able to participate in a post-season “re-entry draft.” However, players continued to be limited by other teams during the draft.

Free agency and salary arbitration had the combined effect of significantly increasing player salaries. The restrictions on free agency served Miller's planned effect of reducing the supply of players on the open market, while also augmenting the competition and resultant salaries for those players. Arbitration allowed players to compare themselves to players who had received deals on the open market, producing a trickle-down effect from the free agent salaries to arbitration-eligible players. Moreover, this connection between free agency and salary arbitration forced lower revenue teams to pay players similarly to the higher revenue teams.

VI. TWO DECADES OF STRUGGLE BETWEEN PLAYERS AND OWNERS

A. 1981 PLAYER STRIKE

326 Hopkins, supra note 293, at 309.
327 Einbinder, supra note 307, at 339.
328 See Basic Agreement, art. XVII(B) (1976).
329 Id. at art. XVII(B), (C).
330 Id.
331 Gould, supra note 247, at 69.
333 Id.
334 Gould, supra note 247, at 69.
The 1976 CBA elapsed in 1980, and as the new 1980 CBA negotiations proceeded, another player strike appeared inescapable.\textsuperscript{335} Subsequently, the parties avoided a strike by resolving all differences except those regarding the principal issue, free agency, and assigning that issue to a study group for one year investigation.\textsuperscript{336} However, in 1981, the committee failed to resolve the issues, and in the middle of the season, another work stoppage transpired.\textsuperscript{337} Free agency compensation-what a team received when it lost a player to free agency-was the sole issue of the strike,\textsuperscript{338} because the current system afforded compensation through the amateur draft.\textsuperscript{339} However, the owners sought compensation in the form of a player from the signing team's major league roster.\textsuperscript{340} The MLBPA proposed numerous different compensation schemes, but none included direct “reprimand” of the signing team.\textsuperscript{341} The MLBPA knew that the owner’s scheme would chill the free agent market.\textsuperscript{342} By refusing to accept anything less, the owners forced the first mid-season strike in sports history.\textsuperscript{343} The strike ended after fifty days and 713 games that were not rescheduled.\textsuperscript{344} The owners got a different method of free agent compensation, but had failed to achieve any of their objectives.\textsuperscript{345} Nevertheless, losses were felt on both sides with the net owner losses totaling $72 million and players' foregone salaries exceeding $34 million.\textsuperscript{346}

B. 1985 PLAYER STRIKE

\textsuperscript{335} Miller, supra note 252, at 286.
\textsuperscript{336} Id. at 291.
\textsuperscript{337} Helyar, supra note 39, at 258-264.
\textsuperscript{338} Miller, supra note 252, at 309.
\textsuperscript{339} Helyar, supra note 39, at 222-223.
\textsuperscript{340} Id.
\textsuperscript{341} Id.\textsuperscript{342} Miller, supra note 252, at 298.
\textsuperscript{343} Id.
\textsuperscript{344} Zimbalist, supra note 132, at 22-23.
\textsuperscript{345} Miller, supra note 252, at 319
\textsuperscript{346} Zimbalist, supra note 132, at 22.
The three central issues that led to the fleeting 1985 strike were the owners' pension contributions, salary arbitration, and the free-agent compensation pool.\textsuperscript{347} The 1981 CBA had allocated one-third of MLB's national television revenue to the players' pension fund; in 1983, this equated to $15.5 million.\textsuperscript{348} Subsequently, the 1984-89 television contract more than quadrupled the revenues, forcing owner contributions to exceed $60 million per year.\textsuperscript{349} The owners wanted to reduce the percentage allotted for the pension fund in order to safeguard their franchises' continued profitability.\textsuperscript{350} Owners claimed that nearly all clubs were losing money due to escalating player costs.\textsuperscript{351} The owners likewise wanted to increase the service requirement for salary arbitration to three years, while the players wanted to lower it to one year.\textsuperscript{352} Finally, both sides were unhappy with the 1981 free-agent compensation plan, and decided it needed a change.\textsuperscript{353} Following a two-day strike in early August and threats from the Commissioner to force the parties into a settlement, both sides compromised on the central issues in a five-year CBA.\textsuperscript{354} The players would receive $32.7 million annually in their pension fund over the next six years, which doubled the owners' prior contributions.\textsuperscript{355} However, the owners succeeded in raising the service requirement for salary arbitration to three years.\textsuperscript{356} Furthermore, the free agent re-entry draft and the compensation pool were now eliminated, so that teams losing a free agent only received a first or second-round amateur draft pick from the signing team.\textsuperscript{357}

\textit{i. Owner Retaliation}

\textsuperscript{347} Glazer, supra note 254, at 360.
\textsuperscript{349} Id.
\textsuperscript{350} Glazer, supra note 254, at 360.
\textsuperscript{351} Staudohar, supra note 348, at 43-44.
\textsuperscript{352} Glazer, supra note 254, at 360-361.
\textsuperscript{353} Id. at 361.
\textsuperscript{354} Staudohar, supra note 348, at 44.
\textsuperscript{355} Zimbalist, supra note 132, at 24.
\textsuperscript{356} Glazer, supra note 254, at 361.
\textsuperscript{357} Zimbalist, supra note 132, at 24.
Following this 1985 CBA, the owners became aggravated with their failure to curb the growth of escalating player salaries.\textsuperscript{358} To address this problem, they took matters into their own hands, and implemented an illegal policy concerning free agents--collusion--that involved the concerted action of the owners to prevent instances of free agency.\textsuperscript{359} The owners decided among themselves to offer no free agent contracts, which was plain on its face because of the fact that following the 1985 season, fifty-seven free agent players out of sixty-two re-signed with their original teams for contracts less than their original teams had offered.\textsuperscript{360} This organized and coordinated action violated the 1985 CBA, which prohibited clubs from colluding amongst themselves.\textsuperscript{361} The players subsequently filed a grievance, and arbitrators found in their favor, stating that the owners violated the 1985 CBA.\textsuperscript{362} Owners were forced to pay the players $280 million in damages plus interest and distribution costs.\textsuperscript{363} As a trade off for this this settlement, the MLBPA guaranteed not to file any grievance for collusion that may have transpired during the 1989-90 off-season.\textsuperscript{364}

C. 1990 OWNER LOCKOUT

The end of collusion left the owners struggling to control the rapidly increasing player salaries.\textsuperscript{365} During spring training of the 1990 season, the owners imposed a thirty-two day lockout when they wanted to eliminate salary arbitration, substitute a pay-for-performance

\textsuperscript{359} Hopkins, supra note 293, at 314.
\textsuperscript{360} Deming, supra note 358, at 434.
\textsuperscript{361} Hopkins, supra note 293, at 315.
\textsuperscript{362} Deming, supra note 358, at 434.
\textsuperscript{364} Id.
\textsuperscript{365} Helyar, supra note 39, at 395.
formula for players with two to five years seniority, and impose a hardline salary cap.\textsuperscript{366} On the other hand, players wanted to return to pre-1985 arbitration eligibility restored to two years of MLB service, a substantial increase in their pension fund contributions, and team rosters expanded from twenty-four to twenty-five players.\textsuperscript{367} Only through the intervention of MLB Commissioner Fay Vincent did the lockout end, and the 1990 CBA was negotiated.\textsuperscript{368} Eventually the two sides compromised on salary arbitration for players with three years service, as well as for the top 17 percent of second-year players.\textsuperscript{369} Additionally, the minimum salary rose to $100,000, the owners agreed to marginally higher pension fund contributions, and the rosters expanded to twenty-five players as the players requested.\textsuperscript{370} With the thought of another lockout or strike in the near future, the players and owners agreed that either side could reopen the 1990 CBA to renegotiate major economic issues after three years.\textsuperscript{371}

D. 1994-1995 PLAYER LOCKOUT

One of the most damaging confrontations between players and owners occurred in 1994.\textsuperscript{372} At the heart of this dispute was the increasing disparity in broadcast revenues among the major-league clubs.\textsuperscript{373} All the parties declined to compromise: the small-market teams insisted on revenue sharing; the large-market teams refused to share revenues unless they could limit labor costs; and the players rejected any system imposing artificial salary restraints.\textsuperscript{374} Subsequently, the players walked out on August 12, 1994, and the 1994-95 strike was the most

\begin{itemize}
  \item \textsuperscript{366} Zimbalist, supra note 132, at 85.
  \item \textsuperscript{367} Staudohar, supra note 348, at 46.
  \item \textsuperscript{368} Helyar, supra note 39, at 414-416.
  \item \textsuperscript{369} Zimbalist, supra note 132, at 26.
  \item \textsuperscript{370} Staudohar, supra note 348, at 49.
  \item \textsuperscript{371} Glazer, supra note 254, at 362.
  \item \textsuperscript{372} Edmonds, supra note 294, at 5.
  \item \textsuperscript{373} Glazer, supra note 254, at 362.
  \item \textsuperscript{374} Glazer, supra note 254, at 364-365.
\end{itemize}
catastrophic, and ultimately unproductive, work stoppage in the history of American professional sports. The strike lasted 232 days, forcing the unprecedented cancellation of the 1994 playoffs and World Series. The owners lost $500 million in revenue, and the players forfeited $250 million in salaries. In December, the owners declared a bargaining impasse, and announced that they unilaterally would eliminate arbitration and impose a salary cap, which forced the MLBPA to file a complaint with National Labor Relation’s Board (“NLRB”) for unfair labor practices.

The strike continued through spring training of 1995, and the owners hired replacement players for the 1995 season, despite all efforts of federal mediators and President Bill Clinton to broker a settlement. After the NLRB found that salary arbitration and free agency were mandatory bargaining subjects, then-Judge Sonia Sotomayor issued a temporary injunction that restrained the owners from unilaterally imposing those changes, and the Second Circuit affirmed. Consequently, Sotomayor’s decision implemented the terms of the 1990 CBA for the 1995 season (and, subsequently, the 1996 season). Now content, the players returned to spring training in early April, and belatedly opened the regular season in mid-May. Eventually, the players and owners ratified a new CBA in November 1996, which then became effective for the 1997 season.

VII. CONCLUSION

375 Glazer, supra note 254, at 363.
376 Staudohar, supra note 348, at 46. The last time the World Series had been cancelled was 1904, when New York Giants owner John T. Brush refused to allow his National League championship team to play against the “minor league” Boston Red Sox. See Seymour, supra note 33, at 14.
377 Glazer, supra note 254, at 363.
378 Id. at 364.
379 Id.
381 Glazer, supra note 254, at 364.
382 Id.
383 Id.
MLB is distinct from other professional sports in America because of one of its most troubling features, its extensive history of continuing opposition between labor and management. Baseball owners held their player employees in employment servitude throughout their professional careers behind the protection of the antitrust exemption. When negotiations and litigation compelled changes in the way ownership conducts business, every change, even bargains to preserve the status quo, have derived only after sustained hostility and dogmatic positions.

Baseball players and owners have a reciprocal share in preserving the integrity of the game. In order to truly promote the advancement of baseball, both players and owners must participate in a mutually agreeable arrangement. Due to the decrepit history relations between the two sides, collective bargaining negotiations have consisted of an uneven give-and-take, with owners gaining an advantage depending upon the level of restriction on player rights or hindering players’ exercise of those rights. When reinstating supremacy is the primary goal for owners, both sides will fail to understand and assess each other's necessities and interests in the negotiation setting.

Ownership had the upper hand on players from the beginnings of baseball until the arrival of the MLBPA. Management established their CEO, the Commissioner, and his role in the labor disputes has evolved, along with a narrowing of his authority. The MLBPA brought a glimmer of hope to the players, and paved the way for how negotiations are conducted in today’s labor setting. Arbitration and free agency were two essential, and overall indispensable, tools for the players to swing momentum in their favor. Consequently, this ignited a span of two decades where each side traded blow for blow, with both suffering losses along the way. Following this
calamitous period came an era of peace, as both owners and players decided to work collectively to build a better MLB.

Since the beginning of the century, clashes between the MLBPA and the owners have been relatively minor to those in years past. The current CBA was ratified by the owners on in 2011, consists of a five-year term, and will expire in 2016. This CBA promoted the continuing peaceful trend of negotiations, and ensured MLB of an unprecedented two decades without a labor stoppage.

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384 Deming, supra note 358, at 436-437.
385 Id.