Fordham Intellectual Property, Media and Entertainment Law Journal

Volume 7 *Volume VII*
Number 1 *Volume VII Book 1*

Article 12

1996

Baseball's Antitrust Exemption: Out of the Pennant Race Since 1972

Anthony Sica
Fordham University School of Law

Baseball's Antitrust Exemption: Out of the Pennant Race Since 1972

Anthony Sica*

INTRODUCTION

The 1994 season overflowed with the best that baseball has to offer.[1] Fans were treated to some of the closest and most exciting pennant races in recent memory.[2] An infectious excitement permeated the baseball subculture, as several of the sport's oldest records faced serious challenges for the first time in years.[3]

August 11, 1994: 115 games into the season, Matt Williams belts his forty-third home run, keeping him on a pace to match Yankee Roger Maris' record of sixty-one home runs over a 162 game season.[4] Ken Griffey, Jr. crushes a grand slam for his fortieth home run of the year.[5] Tony Gwynn goes three for five[6] and raises his batting average to .394, the best in the majors and the highest major league mark since Boston's Ted Williams batted .406 in 1941.[7] Albert Belle and

---

* J.D. Candidate, 1997, Fordham University School of Law. This Note is dedicated to my family for a lifetime of love and support. I would like to thank Mark Salzberg for his invaluable comments and insights. Special thanks to Paula and Kyra Sica, for their patience and understanding, and for making it all worth while.

1. *See, e.g.*, Michael Wilbon, *Baseball Gets Charged With a Costly Error*, WASH. POST, Aug. 13, 1994, at F1; Bob Nightengale, *Strikingly Disappointed: Their Dream Season Becomes a Nightmare*, L.A. TIMES, Aug. 15, 1994, at C1.

2. *See* Robert McG. Thomas Jr., *If It's Over, '94 Season Had Tight Races and Individual Accomplishments*, N.Y. TIMES, Aug. 12, 1994, at B11; Wilbon, *supra* note 1, at F1; Nightengale, *supra* note 1, at C1.

3. *See* Wilbon, *supra* note 1, at F1; Nightengale, *supra* note 1, at C1; Thomas, *supra* note 2, at B11.

4. Thomas, *supra* note 2, at B11.

5. *Id.*

6. Gwynn had three hits in five times at bat. *Id.*

7. *Id.*

Frank Thomas continue their pursuit of the first major league Triple Crown[8] since Carl Yastrzemski of the Boston Red Sox accomplished the feat in 1967.[9] Randy Johnson strikes out fifteen batters, raising his major league leading total to 204.[10] The Yankees' Paul O'Neill chases his first batting title, leading the American league with a .359 batting average.[11] Greg Maddox wins his sixteenth game of the season and lowers his Earned Run Average[12] to an astounding 1.56 for 202 innings.[13] Three of the six major league divisions boast tight races for first place, and the final weeks of the season seem destined for an exciting playoff push.[14] On August 11, however, there was very little excitement among baseball fans; rather, they felt a sense of foreboding worry.[15]

August 12, 1994: at 12:45 A.M. E.S.T., the game between

---

8. *Id.* The Triple Crown is a term used to describe a player who finishes the season with the highest marks in three categories: batting average, home runs, and runs batted in ("R.B.I.s"). *Id.* Belle was second in batting average (.357), third in home runs (36), and tied for third in R.B.I.s (101). *Id.* Thomas was third in batting average (.353), second in home runs (38), and tied for third in R.B.I.s (101). *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Earned Run Average ("ERA") is a pitcher's statistic representing the average number of runs legitimately scored from his deliveries per full nine-inning game. PAUL DICKSON, THE DICKSON BASEBALL DICTIONARY 143 (1989). ERA is calculated by dividing the number of earned runs by the number of innings pitched, then multiplying by nine. *Id.* Along with won-lost record, nearly all baseball enthusiasts consider ERA to be the mark of a pitcher's efficiency over the course of a season. *Id.* Generally, an ERA of under 3.00 is considered good. *Id.*

13. Thomas, *supra* note 2, at B11.

14. *Id.*

15. *See, e.g.*, John Weyler, *Life Will Go On, but Maybe Not at Big A. Baseball: Fans, Players, and Stadium Workers Are All Making Strike Plans*, L.A. TIMES, Aug. 11, 1994 (Orange County edition), at A1; Jack Curry, *With End in Sight, Key and Yanks Take a Beating*, N.Y. TIMES, Aug. 11, 1994, at B13; Mary Ann Hudson, *Dodgers Get a Big Rally After a Dose of Reality*, L.A. TIMES, Aug. 11, 1994, at C1; Jennifer Frey, *In Mets' Locker Room, the Decor Was Strictly Business*, N.Y. TIMES, Aug. 11, 1994, at B15; *cf.* George Grella, *Perspective on Baseball; A Religion That Goes to Our Roots; The Game is So Much More Than the Greed and Arrogance of Its Major League Players and Owners*, L.A. TIMES, Aug. 11, 1994, at B7 (discussing the cultural significance of baseball in America).

the Oakland Athletics and Seattle Mariners ends and the Major League Baseball Players Association ("MLBPA") strike officially begins.[16] Thirty-three days later, the World Series, which had survived two world wars, the depression, and an earthquake, was canceled.[17]

The cancellation of the 1994 World Series is another chapter in the saga of employment relations in professional sports.[18] Since the inception of team sports, owners and players have been at odds in defining the terms of their employment relationship.[19] The resolution of these disputes is governed by contract, antitrust, and labor law.[20] In baseball, these fields of law cordoned themselves into three distinct phases of legal development; in football, however, these le-

16. *Baseball's Last Day*, N.Y. TIMES, Aug. 12, 1994, at B10.

17. Murray Chass, *Owners Terminate Season, Without the World Series*, N.Y. TIMES, Sept. 15, 1994, at A1; Ross Newhan, *Baseball Season, Series Canceled*, L.A. TIMES, Sept. 15, 1994, at A1.

18. *See* discussion *infra* parts I-II (discussing the development of employment relations between owners and players in professional baseball and football).

19. *Id.*

20. *See* ROBERT BERRY ET AL., LABOR RELATIONS IN PROFESSIONAL SPORTS 23 (1986); *see generally*, James R. Devine, *Baseball's Labor Wars in Historical Context: The 1919 Chicago White Sox as a Case Study in Owner Player Relations*, 5 MARQ. SPORTS L.J. 1 (1994); Robert McCormick, *Baseball's Third Strike: The Triumph of Collective Bargaining in Professional Baseball*, 35 VAND. L. REV. 1131 (1982); Mitch Truelock, *Free Agency in the NFL: Evolution or Revolution?*, 47 SMU L. REV. 1917 (1994); Thane N. Rosenbaum, *The Antitrust Implications of Professional Sports Leagues Revisited: Emerging Trends in the Modern Era*, 41 U. MIAMI. L. REV. 729 (1987); John Dodge, *Regulating the Baseball Monopoly: One Suggestion for Governing the Game*, 5 SETON HALL J. SPORT L. 35 (1995); Stephen F. Ross, *Monopoly Sports Leagues*, 73 MINN. L. REV. 643 (1989); Gary R. Roberts, *Sports League Restraints on the Labor Market: The Failure of Stare Decisis*, 47 U. PITT. L. REV. 337 (1986); Joseph P. Bauer, *Antitrust and Sports: Must Competition on the Field Displace Competition in the Marketplace?*, 60 TENN. L. REV. 263 (1993); Stephanie L. Taylor, *Baseball as an Anomaly: American Major League Baseball Antitrust Exemption—Is the Australian Model a Solution?*, 5 SETON HALL J. SPORT L. 359 (1995); Peter N. Katz, *A History of Free Agency in the United States and Great Britain: Who's Leading the Charge?*, 15 COMP. LAB. L.J. 371 (1994); William S. Robbins, *Baseball's Antitrust Exemption—A Corked Bat for Owners?*, 55 LA. L. REV. 937 (1995); Shant H. Chalian, *Fourth And Goal: Player Restraints in Professional Sports, A Look Back and a Look Ahead*, 67 ST. JOHN'S L. REV. 593 (1993) (discussing one or more of the areas of law that govern the resolution of disputes between owners and players).

gal areas have been intertwined throughout the development of the employment relationship between owners and players.[21]

During the first phase of employment relations in baseball, contract principles defined the employment relationship between owners and players.[22] Beginning with the formation of the first baseball leagues in the 1870s,[23] owners used these principles to obtain injunctions which prevented their contracted players from performing in rival leagues.[24] The earliest decisions in this phase favored the players.[25] In *Metropolitan Exhibition Co. v. Ewing*[26] and *Metropolitan Exhibition Co. v. Ward*,[27] for example, courts refused to enjoin ballplayers from playing in the fledgling Brotherhood League.[28] In contrast, the Pennsylvania Supreme Court held in *Philadelphia Ball Club v. Lajoie*[29] that the one-sided player contract of future Hall-of-Famer Napoleon Lajoie was justified because his services were of such a unique character, and so difficult to replace, that their loss would produce irreparable injury to his team's owner.[30] Although there were addi-

21. *See* discussion *infra* parts I-II (discussing the development of employment relations in professional baseball and football).

22. *See* discussion *infra* part I.A (discussing the contracts phase of development in professional baseball).

23. *See* BERRY, *supra* note 20, at 24. The first professional Baseball League, the National League, was formed in 1876. *Id.* at 47. The first challenge to the National League's monopoly occurred in 1882, with the formation of the American Association league. *Id.* at 48. The creation of the American Association ignited the first sports disputes dealing with contract breaches, as players under contract in the National League reneged on their contractual obligations to play in the American Association league. *Id.*

24. *See* discussion *infra* part I.A (discussing the contracts phase of development in professional baseball).

25. *See* discussion *infra* part I.A (discussing the contracts phase of development in professional baseball).

26. 42 F. 198 (C.C.S.D.N.Y. 1890).

27. 9 N.Y.S. 779 (Sup. Ct. 1890).

28. *See* discussion *infra* notes 101-14 and accompanying text (discussing *Ewing* and *Ward*).

29. 202 Pa. 210, 51 A. 973 (Sup. Ct. 1902).

30. *Id.* at 217, 51 A. at 974; *see infra* notes 124-35 and accompanying text (explaining the court's decision in *Lajoie*).

tional challenges during the contracts phase,[31] the standards set by *Lajoie* prevailed.[32] As a result, the injunction became the owners' usual remedy and a significant roadblock to player mobility.[33]

During baseball's second phase, courts applied antitrust principles to baseball.[34] Initially, courts debated whether such principles applied to professional sports.[35] For example, in *American League Baseball Club of Chicago v. Chase*,[36] the New York Supreme Court recognized that the business of baseball was a monopoly, but concluded that there was no violation of the Sherman Antitrust Act[37] ("Sherman Act" or "Act"), because baseball was not interstate commerce[38] for the purposes of the Act.[39] Likewise, in *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*,[40] the United States Supreme Court recognized that baseball was a monopoly, and similarly held that the sport was exempt from antitrust law.[41] In so holding, the Court reasoned that baseball was not interstate commerce for the purposes of the Sherman Act.[42] The Supreme Court's holding in *Federal Baseball* still stands today, despite contrary rulings from the

31. BERRY, *supra* note 20, at 27; *see, e.g.*, Weegham v. Killefer, 215 F. 168 (W.D. Mich. 1914), *aff'd*, 215 F. 289 (6th Cir. 1914); Brooklyn Baseball Club v. McGuire, 116 F. 782 (E.D. Pa. 1902); Connecticut Professional Sports Corp. v. Heyman, 276 F. Supp. 618 (S.D.N.Y. 1967).

32. BERRY, *supra* note 20, at 27.

33. *Id.*

34. *See* discussion *infra* part I.B (discussing the antitrust phase of employment relations in professional baseball).

35. *See* discussion *infra* part I.B.2.a (discussing the evolution of baseball's antitrust exemption).

36. 86 Misc. 441 (N.Y. Sup. Ct. 1914).

37. Sherman Anti-Trust Act of 1890, ch. 647, §§ 1-7, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. §§ 1-7 (1994)). *See* discussion *infra* part I.B.1 (discussing the Sherman Act).

38. *See infra* note 171 (explaining the Supreme Court's definition of interstate commerce in United States v. E.C. Knight, 156 U.S. 1 (1895)).

39. *Chase*, 86 Misc. at 459.

40. 259 U.S. 200 (1922).

41. *Id.* at 208-09.

42. *Id.*

Second Circuit on two subsequent occasions.[43]

During baseball's third and current phase of legal development, courts have employed labor law principles to define the relationship between owners and players.[44] Throughout this period, ballplayers have united and utilized labor law to advance their interests.[45] Owners and players have primarily settled their disputes through either arbitration, collective bargaining negotiations, or work stoppages.[46] During this phase, the players obtained numerous concessions from the owners, including escalated free agency, elimination of the reserve rule,[47] increased minimum salaries, and elevated pension benefits.[48]

In football, the conflict between owners and players developed in a significantly different manner than in baseball.[49] In contrast to baseball, the legal development of the employment relationship in football was characterized by an amalgamation of legal fields.[50] Initial disputes between owners and players focused on the league's unsuccessful at-

43. *See* discussion *infra* part I.B.2.c (discussing the subsequent challenges to the Supreme Court's decision in *Federal Baseball*).

44. *See* discussion *infra* part I.C (discussing the labor phase of development in professional baseball).

45. *See* discussion *infra* part I.C (discussing the labor phase of development in professional baseball).

46. *See* discussion *infra* part I.C.2 (discussing the history of employment relations between owners and players during the labor phase of development).

47. Professional Baseball Clubs, 66 L.A. 101 (1975) (Seitz, Arb.). Professional baseball's reserve system, commonly referred to as the reserve rule or reserve clause, is a complex system of rules and agreements between team owners relating to the objective of retaining exclusive control over the service of their players. *See id.* at 103-04. The reserve system is enforced to preserve the ability to discipline players, maintain financial stability, and promote competitive balance among teams. *Id.* The reserve system accomplishes these goals by restricting players' ability to work for different teams. *Id.*

48. *See* discussion *infra* part I.C.2 (discussing the history of employment relations during the labor phase).

49. *See* discussion *infra* part II (discussing the development of employment relations in professional football).

50. *See* discussion *infra* part II (discussing the development of employment relations in professional football).

tempts to obtain the same antitrust immunity that baseball enjoyed.[51] The first such case, *United States v. National Football League*,[52] occurred in 1953.[53] In *National Football League*, a Pennsylvania federal court held that the Sherman Act applied to professional football.[54] The Supreme Court adopted the *National Football League* rationale in it's 1957 decision, *Radovich v. National Football League*,[55] holding that the antitrust exemption established in *Federal Baseball* was expressly limited to professional baseball.[56] Despite these victories, however, the owners restricted player mobility with devices such as the Rozelle Rule[57] and the amateur draft.[58] To overcome these obstacles, football players unionized and continued to challenge the league on antitrust grounds.[59]

Football players utilized the same union tactics as baseball players, but their efforts were bolstered by the applicability of antitrust law to the league.[60] From the inception of the National Football League Players' Association ("NFLPA") in 1956, the organization has utilized strikes, collective bargaining, and antitrust law to challenge allegedly

---

51. *See* discussion *infra* part II.A (discussing the NFL's unsuccessful attempts to obtain antitrust immunity).

52. 116 F. Supp. 319 (E.D. Pa. 1953).

53. *Id.*

54. *Id.* at 321, 327-28, 330.

55. 352 U.S. 445 (1957).

56. *Id.* at 451.

57. *See* discussion *infra* notes 455-66 and accompanying text (discussing football's Rozelle Rule).

58. *See infra* notes 498-502 and accompanying text (discussing the invalidation of the draft on antitrust grounds). The amateur draft is a selection process by which each team, in an order dictated by record (the team with the worst record in the previous season picks first; the league champion picks last), chooses amateur athletes, in whom they hold an exclusive bargaining right for his services. Smith v. Pro Football, 420 F. Supp. 738, 741 (D.D.C. 1976), *modified*, 593 F.2d 1173 (D.C. Cir. 1978). A drafted player who is unable to reach an agreement with the team holding the rights to his services cannot play in the league. *Id.*

59. *See* discussion *infra* part II.C (discussing players' challenges to restrictive league practices).

60. *See* discussion *infra* part II.A (explaining how professional football was found to be subject to antitrust constraints).

restrictive league practices.[61] In fact, the majority of player victories have come by way of successful antitrust challenges.[62] For example, in *Mackey v. National Football League*,[63] the Eighth Circuit Court of Appeals invalidated the Rozelle Rule,[64] finding that the rule violated antitrust law.[65] Similarly, in *Smith v. Pro Football*,[66] a federal court in the District of Columbia invalidated the amateur draft on antitrust grounds.[67]

Despite these antitrust victories, however, football players have been significantly less successful than baseball players in bargaining with the owners.[68] Although player salaries in both sports have steadily increased, football owners have successfully implemented a salary cap,[69] which has retarded salary growth and hindered player mobility.[70] Critics attribute these management successes to football owners' ability to utilize the nonstatutory labor exemption,[71] which extends limited antitrust immunity to agreements that are the product of collective bargaining between labor unions and nonunion employer groups.[72]

---

61. *See* discussion *infra* part II.C (discussing NFLPA efforts to challenge restrictive league practices).

62. *See* discussion *infra* part II.A.C (discussing the initial determination that antitrust constraints applied to professional football and discussing subsequent successful antitrust challenges to restrictive league practices).

63. 543 F.2d 606 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977).

64. *See infra* notes 455-66 and accompanying text (discussing football's Rozelle Rule).

65. *Mackey*, 543 F.2d at 622.

66. 420 F. Supp. 738 (D.D.C. 1976), *modified*, 593 F.2d 1173 (D.C. Cir. 1978).

67. *Smith*, 420 F. Supp. at 743.

68. *See* discussion *infra* part II.C (explaining the history of collective bargaining negotiations between owners and players in professional football).

69. *See infra* notes 599-600 and accompanying text (discussing the salary cap created by the 1993 collective bargaining agreement).

70. Brian E. Dickerson, *The Evolution of Free Agency in the National Football League: Unilateral and Collective Bargaining Restrictiveness*, 3 SPORTS L.J. 165, 201-03 (1996); *see infra* notes 599-609 and accompanying text (discussing the adverse effects of the salary cap on player salaries, mobility, and marketability).

71. *See infra* note 415 (explaining the nonstatutory labor exemption).

72. *See* discussion *infra* part II.B (discussing the nonstatutory labor exemption).

The history of employment relations in American professional sports details the players' struggle to free themselves from the burdens of a reserve system,[73] and the owners' attempts to hold on to absolute control over the employment relationship.[74] A majority of the scholarship on this subject has focused on baseball's antitrust exemption.[75] In fact, numerous writers have proposed that the exemption be limited or repealed, either through legislation or court decision.[76] These arguments, however, rest on the presumption that the exemption plays an active role in present-day employment relations in professional sports.[77]

This Note argues that a historical analysis of employment relations in professional baseball and football demonstrates that baseball's antitrust exemption no longer plays a significant role in defining the legal status of players and owners in

---

73. *See supra* note 47 (discussing baseball's reserve rule); *see infra* notes 455-66 and accompanying text (discussing football's Rozelle Rule).

74. *See* discussion *infra* parts I-II (discussing the development of employment relations between owners and players in professional baseball and football).

75. *See supra* note 20 (demonstrating the large amount of scholarship on this issue).

76. *See generally*, Latour Rey Lafferty, *The Tampa Bay Giants and the Continuing Vitality of Major League Baseball's Antitrust Exemption: A Review of Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993), 21 FLA. ST. U. L. REV. 1271 (1994) (arguing for limitation of baseball's exemption to antitrust violations involving the labor market and player restrictions); Larry C. Smith, *Beyond Peanuts and Cracker Jack: The Implications of Lifting Baseball's Antitrust Exemption*, 67 U. COLO. L. REV. 113 (1996) (proposing termination of baseball's exemption or limitation of it to labor disputes); H. Ward Classen, *Three Strikes and You're Out: An Investigation of Professional Baseball's Antitrust Exemption*, 21 AKRON L. REV. 369 (1988) (proposing termination of antitrust exemption as economically inefficient and unconstitutional); Robert G. Berger, Essay, *After the Strikes: A Reexamination of Professional Baseball's Exemption From the Antitrust Laws*, 45 U. PITT. L. REV. 209 (1983) (arguing that there is no compelling public policy for retaining baseball's immunity); *see also generally*, Rosenbaum, *supra* note 20; Dodge, *supra* note 20; Katz, *supra* note 20; Ross, *supra* note 20; Roberts, *supra* note 20; Bauer, *supra* note 20; Taylor, *supra* note 20.

77. *See, e.g.*, Mark T. Gould, *Baseball's Antitrust Exemption: The Pitch Gets Closer and Closer*, 5 SETON HALL J. SPORT L. 273 (1995); Alison Cackowski, *Congress Drops the Ball Again: Baseball's Antitrust Exemption Remains in Place*, 5 J. ART. & ENT. L. 147 (1994).

baseball labor negotiations. Furthermore, this Note argues that collective bargaining and labor law constitute the legal foundation governing employment relations in all professional sports today.[78] Part I of this Note analyzes the history of employment relations in professional baseball in each of its three phases of legal development: contract, antitrust, and labor law. Part II examines the development of the employment relationship in professional football. Part II also illustrates the impact of the applicability of antitrust law on the development of the league and on collective bargaining between players and owners. Part III compares the history of the development of employment relations in football and baseball, and analyzes the current state of antitrust law in the courts, as it applies to professional sports. In addition, Part III argues that the antitrust exemption has been a dead letter in employment relations since 1972. Finally, this Note concludes that professional baseball no longer holds an advantage over other sports in the area of employment relations, because the present and future driving force behind employment relations in all professional sports is collective bargaining and labor law.

I. THE HISTORY OF EMPLOYMENT RELATIONS IN PROFESSIONAL BASEBALL

In order to fully understand the current legal status of professional baseball, it is essential to first examine the sport's employment relations history. This part provides an overview of each of the three phases of baseball's legal development. First, this part discusses the contracts phase, during which the attempts by both owners and players to

78. The clearest way to illustrate these differences is through a direct comparison of the evolution of the employment relationship in baseball and a non-antitrust exempt sport. This Note discusses football for the purposes of this comparison for two reasons. First, football came into being in 1920, only two years prior to the decision in *Federal Baseball*. Second, the development of football's employment relationship starkly demonstrates the effects of antitrust law with which baseball was not encumbered.

control their relationship were grounded in contract law. Second, this part analyzes the antitrust phase, focusing on the development of baseball's antitrust exemption. Finally, this part examines the labor phase, the third and current period of legal development in baseball. During this current phase, player victories in arbitration hearings, court, and collective bargaining negotiations have brought employment relations in professional baseball completely under the jurisdiction of labor law.

A. *Contracts Phase*

Since the first athlete was paid to play baseball,[79] the sport has endured labor difficulties.[80] The first significant labor movement in professional sports occurred in 1885,[81] with the formation of the Brotherhood of Professional Base Ball Players ("Brotherhood").[82] The players formed the Brotherhood in response to the National League of Professional Baseball Clubs' ("National League") [83] administration, which, they believed, denied them any control over their employment.[84] The Brotherhood's two primary grievances

79. The first professional baseball team, the Cincinnati Red Stockings, was formed in 1869. BERRY, *supra* note 20, at 47. The Red Stockings were not part of a league; rather, they toured the country and "took on all comers." *Id.*

80. *See* McCormick, *supra* note 20, at 1139-46; BERRY, *supra* note 20, at 23-27.

81. KENNETH M. JENNINGS, BALLS AND STRIKES 3 (1990). The first formal Baseball league, the National League of Professional Base Ball Clubs, was formed in 1876. *Id.*

82. *Id.* The Brotherhood was constituted with the following charter:

> We, the undersigned, professional base ball players, recognizing the importance of united effort and impressed with its necessity in our behalf, do form ourselves this day into an organization to be known as the 'Brotherhood of Professional Base Ball Players.' The objects we seek to accomplish are:
>
> To protect and benefit ourselves collectively and individually.
>
> To promote a high standard of professional conduct.
>
> To foster and encourage the interest of . . . Base Ball.

Id. at 4.

83. The National League, like all other sports leagues, is the combination of individual teams to maximize income and profits by eliminating internal competition for producers (players) and consumers (fans). BERRY, *supra* note 20, at 5.

84. *See* BERRY, *supra* note 20, at 24, 51; McCormick, *supra* note 20, at 1142;

were the $3,000 maximum yearly salary and the reserve rule.[85] The reserve rule, conceived in 1879 and since drafted into all standard player contracts, was an agreement among the eight National League clubs not to employ any player who was reserved by another team.[86] The rule granted each team the unilateral right to reserve a player, and thus contractually bind him to that particular team.[87] Once a team "reserved" a player, no other team would employ him, even if he retired and returned to the sport.[88] Furthermore, the team could hold the player as long as it desired, and could release him at any time, either with or without cause; the player, on the other hand, could never play for another team, regardless of his wish to do so.[89] Consequently, a one-year contract to play baseball for a team could potentially bind a player to that team for life.[90] Professional baseball players quickly recognized that, unless they united, the team owners would continue to exercise unilateral control over their pro-

---

JENNINGS, *supra* note 81, at 3-7.

85. *See* McCormick, *supra* note 20, at 1142; BERRY, *supra* note 20, at 51.

86. JENNINGS, *supra* note 81, at 4.

87. The reserve rule created an unusual contractual duty for reserved players. Reserved players whose contracts had expired were forced to re-sign contracts with the team that reserved them. If a reserved player refused to re-sign, he could not sign with any other team. *See* McCormick, *supra* note 20, at 1141; JENNINGS, *supra* note 81, at 4-5.

88. *See* JENNINGS, *supra* note 81, at 5.

89. McCormick, *supra* note 20, at 1141-42; *see* JENNINGS, *supra* note 81, at 4-5.

90. JENNINGS, *supra* note 81, at 4-5; *see* McCormick, *supra* note 20, at 1142. John Montgomery Ward, an accomplished baseball player of the era and early leader of the Brotherhood compared the reserve rule to a fugitive slave law in an open letter to the president of the National League:

> There is now no escape for the player. If he attempts to elude the operation of the rule, he becomes at once a professional outlaw, and the hand of every club is against him. He may be willing to play elsewhere for less salary, he may be unable to play, or, for other reasons, may retire for a season or more, but if ever he reappears as a professional ballplayer it must be at the disposition of his former club. Like a *fugitive slave law*, the reserve-rule denies him a harbor or a livelihood, and carries him back, *bound and shackled*, to the club from which he attempted to *escape*. We have, then, the curious result of a contract which on its face is for seven months being binding for life.

Jennings, *supra* note 81, at 5 (emphasis added).

fessional destinies.[91]

By 1887, the strength of the Brotherhood had grown sufficiently that it sought formal recognition by the owners.[92] Although the Brotherhood negotiated with the owners, it made little progress.[93] In 1889, player resentment of ownership grew so great that the Brotherhood formed a rival league, the National Brotherhood League ("Brotherhood League").[94] The ensuing defection of players to the new league triggered a flood of litigation, which focused on contract law.[95]

National League owners first sought restraining orders against the players' participation in the Brotherhood League.[96] The owners based these actions on the reserve

91. *See* BERRY, *supra* note 20, at 24, 51; JENNINGS, *supra* note 81, at 3-7; McCormick, *supra* note 20, at 1142-43.

92. JENNINGS, *supra* note 81, at 5.

93. *Id.* at 5-6.

94. *Id.* at 6.

95. BERRY, *supra* note 20, at 24.

96. It is clear that no court will order an employee or other person who is under contract to render personal services to perform. *See* RESTATEMENT (SECOND) OF CONTRACTS § 367(1) (1979); Pingley v. Brunson, 252 S.E.2d 560 (S.C. 1979) (reversing lower court order of performance of service contract). Such an order runs the risk of violating the involuntary servitude clause of the thirteenth amendment. *See* People v. Lavender, 398 N.E.2d 530 (N.Y. 1979); Robert S. Stevens, *Involuntary Servitude by Injunction: The Doctrine of* Lumley v. Wagner *Considered*, 6 CORNELL L.Q. 235 (1921). Although a court may not order performance of a personal service contract, it may enjoin a defendant from working for a competitor if such an injunction will not indirectly enforce performance by leaving the defendant without other means of earning a living. RESTATEMENT (SECOND) OF CONTRACTS § 367(2) cmt.a (1979); *see* Lumley v. Wagner, 42 Eng. Rep. 687 (1852). The theory is that the court is enforcing an express or implied negative covenant not to work for competitors during the contract term. JOHN D. CALAMARI & JOSEPH M. PERILLO, THE LAW OF CONTRACTS 667 (3d ed. 1987). That type of injunction generally is granted in situations where the employee's services are unique and extraordinary, and the loss of such services causes the employer irreparable harm. *See* David Tannenbaum, *Enforcement of Personal Service Contracts in the Entertainment Industry*, 42 CAL. L. REV. 18, 21 (1954); Bergman & Rosenthal, *Enforcement of Personal Service Contracts in the Entertainment Industry*, 7 BEVERLEY HILLS B.A. J. 49, 53 (1973); James T. Brennan, *Injunction Against Professional Athletes Breaching their Contracts*, 34 BROOK. L. REV. 61, 64 (1967). Under the present standard in professional sports, all professional athletes are regarded as possessing unique and extraordinary skill, thus permitting owners to readily ob-

clauses standard in all player contracts.[97] The primary issue was whether the owners were entitled to injunctive relief to force the players to return to their original teams.[98] In order to resolve this issue, the courts had to first address the enforceability of the contracts.[99] Specifically, courts examined the reserve clauses to determine if they met the contractual requirements of definiteness and evinced a sufficient mutuality of obligation.[100]

The first two decisions both resulted in victories for the players. In *Metropolitan Exhibition Co. v. Ewing*,[101] the Southern District of New York denied the owner's request to enjoin a player from leaving the National League and playing in the Brotherhood League.[102] The *Ewing* court held that the

---

tain restraining orders. *See, e.g.*, Central N.Y. Basketball, Inc. v. Barnet, 181 N.E.2d 506 (Ohio C.P. 1961); Dallas Cowboys Football Club, Inc. v. Harris, 348 S.W.2d 37 (Tex. Civ. App. 1961).

97. BERRY, *supra* note 20, at 24.

98. *See* Metropolitan Exhibition Co. v. Ewing, 42 F. 198 (C.C.S.D.N.Y. 1890); Metropolitan Exhibition Co. v. Ward, 9 N.Y.S. 779 (Sup. Ct. 1890); Philadelphia Ball Club v. Hallman, 8 Pa. C. 57 (1890); American Ass'n Base-Ball Club of Kansas City v. Pickett, 8 Pa. C. 232 (1890).

99. *See Ewing*, 42 F. at 200-02; *see also Ward*, 9 N.Y.S. at 779; *Hallman*, 8 Pa. C. at 57; *Pickett*, 8 Pa. C. at 232.

100. *See Ewing*, 42 F. at 200-02; *see also Ward*, 9 N.Y.S. at 779; *Hallman*, 8 Pa. C. at 57; *Pickett*, 8 Pa. C. at 232.

101. 42 F. 198 (C.C.S.D.N.Y. 1890).

102. *See id.* at 199. Although the *Ewing* court refused to grant the injunction, it espoused the doctrine of enforcement of an implied negative covenant through injunction:

> The doctrine is now generally recognized that, while a court of equity will not ordinarily attempt to enforce contracts which cannot be carried out by the machinery of a court, like that involved in the present case, it may nevertheless practically accomplish the same end by enjoining the breach of a negative promise, and this power will be exercised whenever the contract is one of which the court would direct specific performance, if it could practically compel its observance by the party refusing to perform through a decree for specific performance. It is indispensable . . . that [the contract] be one for the breach of which damages would not afford an adequate compensation to the plaintiff. It must be one in which the plaintiff comes into court with clean hands, and which is not so oppressive as to render it unjust to the defendant to enforce it.

Id.

reserve clause[103] failed for indefiniteness; that is, the clause failed to provide a definite understanding of the parties' reciprocal obligations.[104] In so holding, the court reasoned that the phrase, "right to reserve," held no meaning that could be defined without extrinsic sources.[105] Furthermore, the court stated that if the parties intended to create a condition by which the team could renew the player's contract for a second season—with the same rights and obligations as those for the first season—the parties could have easily and equivocally expressed that intention in the contract.[106] Consequently, the court held that because the meaning of the phrase, "right to reserve," was left wholly to implication, the contract failed for indefiniteness.[107]

In *Metropolitan Exhibition Co. v. Ward*,[108] John Ward similarly defeated his team's request for a state court injunction on the grounds that the reserve clause was indefinite.[109] The *Ward* court held that the contract failed for lack of mutual-

---

103. The reserve clause is reprinted in the opinion:

> Article 18. It is further understood and agreed that the [team] shall have the *right to 'reserve'* the [player] for the season next ensuing the [last contracted season], herein provided, and that said right and privilege is hereby accorded to [the owner] upon the following conditions, which are to be taken and construed as conditions precedent to the exercise of such extraordinary rights or privileges, viz.: (1) That the [player] shall not be reserved at a salary less than that mentioned in the 20th paragraph herein, except by the consent of the [player]; (2) that the [player], if he be reserved by the [owner] for the next ensuing season, shall not be one of more than 14 players then under contract—that is, that the right of reservation shall be limited to that number of players, and no more.

Id. at 200 (emphasis added).

104. *See id.* at 201. To be enforceable, a contract must embody the definite understanding of the parties to it in respect to their reciprocal rights and obligations; in short, the understanding of the parties must be reasonably certain. *See id.* at 203.

105. *Id.*

106. *Id.*

107. *Id.* at 201-02.

108. 9 N.Y.S. 779 (Sup. Ct. 1890).

109. *Id.* at 782.

ity[110] because the team could release Ward on ten days notice, but had the right to retain the player for an indefinite period of time.[111] The *Ward* court reasoned that this concentration of power in one party to a contract could lead to great inequities.[112] In this case, for example, the club could hold Ward until it was too late for him to reasonably gain other employment, and then release him without further obligation.[113] The *Ward* court concluded that this drastic imbalance of the parties' obligations constituted a lack of mutuality, and thus was fatal to the owner's claim for injunctive relief.[114]

Baseball historian Robert Berry, however, concluded that the seemingly substantial player victories in *Ewing*, *Ward*, and several other cases,[115] were, in fact, hollow.[116] Although it drew more fans than the National League,[117] the Brotherhood lasted only one season.[118] Ewing, Ward, and the rest of the Brotherhood were forced to return to the National

110. The doctrine of mutuality states that for a bilateral contract to be enforceable, both parties to the contract must supply adequate consideration. CALAMARI & PERILLO, *supra* note 96, §§ 4-12, at 225.

111. *Ward*, 9 N.Y.S. at 783.

112. *Id.*

113. *Id.*

114. *Id.* at 783-84. The court in Ward only considered whether a preliminary injunction should be issued. There was never a full trial on the legal issues. *Id.* at 781.

115. There were other lawsuits filed against players leaving the National League and American Association for the Players league. *See, e.g.*, *Hallman*, 8 Pa. C. 57; *cf. Pickett*, 8 Pa. C. 232 (granting team injunction that was ignored by player and never enforced).

116. BERRY, *supra* note 20, at 25.

117. The Brotherhood drew 908,887 fans for 532 games and the National League drew 813,678 fans for 540 games. JENNINGS, *supra* note 81, at 6; *see also* McCormick, *supra* note 20, at 1143.

118. JENNINGS, *supra* note 81, at 6. The Brotherhood failed for a number of reasons: (1) the owners of the National League spent about four million dollars to bankrupt the Brotherhood; (2) the Brotherhood played their season at the same time as the National League; (3) financial backers for the Brotherhood were quick to remove their financial support at the first sign that they might lose some money; and (4) the press appeared to favor the National League. *Id.*

League for the remainder of their respective careers.[119] Ultimately, the collapse of the Brotherhood League brought an end to collective player actions for the next ten years.[120]

In 1900, the birth of the American League of Professional Base Ball ("American League") triggered another wave of litigation.[121] The National League, which had operated unopposed since 1891,[122] was faced with the renewed problem of players defecting to a rival league.[123] Once again, the league's basic operating provisions were called into question; this time, however, the league prevailed in the courts.

The Pennsylvania Supreme Court's decision in *Philadelphia Ball Club v. Lajoie*[124] is the longest lasting precedent to come out of this second wave of litigation.[125] The case arose when Napoleon Lajoie left the National League to play in the new American League.[126] Seeking to keep him in the National League, Lajoie's former team filed for an injunction.[127] The team argued that the reserve clause in Lajoie's contract prevented him from playing for another team and that the contract did not lack mutuality because Lajoie's services were sufficiently unique to place him in the category of "impossible to replace."[128] Lajoie countered with the arguments articulated in *Ewing* and *Ward*, contending both that the reserve clause was invalid and that his contract failed for a lack of mutuality of obligation.[129]

---

119. *See* Devine, *supra* note 20, at 27 n.111-12; BERRY, *supra* note 20, at 25. Ewing and Ward are both members of the Baseball Hall of Fame. *Id.*

120. *See* BERRY, *supra* note 20, at 25.

121. *See* Dodge, *supra* note 20, at 40; BERRY, *supra* note 20, at 25-26.

122. The American Association, formed in 1881, was another short lived rival league. Devine, *supra* note 20, at 14. It collapsed in 1891. *Id.* at 27 n.113.

123. *Id.* at 29-41; Dodge, *supra* note 20, at 40; BERRY, *supra* note 20, at 26.

124. 202 Pa. 210, 51 A. 973 (Pa. Sup. Ct. 1902).

125. *See* BERRY, *supra* note 20, at 27.

126. *Lajoie*, 202 Pa. at 215, 51 A. at 973. Lajoie was signed away from the National League's Philadelphia Phillies by the American League's Philadelphia A's. *See* Devine, *supra* note 20, at 34.

127. *Lajoie*, 202 Pa. at 215, 51 A. at 973.

128. *Lajoie*, 202 Pa. at 213-14.

129. *Id.* at 214-15.

The trial court denied the team's request for an injunction.[130] The court reasoned that the prerequisite for an injunction was that the player's services were unique, extraordinary, and of such a character as to render him "impossible to replace," so that his breach of contract would cause his employer irreparable harm.[131] On appeal, the Pennsylvania Supreme Court reversed this decision.[132] The court rejected the "impossible to replace" standard as extreme and instead articulated a lower standard to obtain an injunction.[133] The court held that it would enjoin personal service contracts which required an employee's special knowledge, skill, and ability, which could not be easily obtained from others in the event of default.[134] Consequently, the *Lajoie* court enjoined the player from working for any other club within the court's jurisdiction during the term of his contract.[135]

The fact that the *Lajoie* court's jurisdiction was limited to Pennsylvania translated, in reality, to a negligible effect on the player's career.[136] The injunction did not force Lajoie to return to his National League team—it only prevented him from playing games for another team within that state.[137] As

130. Philadelphia Ball Club, Ltd. v. Lajoie, 10 Pa. D. 309 (1901).

131. Philadelphia Ball Club, Ltd. v. Lajoie, 202 Pa. 210, 216, 51 A. 973, 973 (Pa. Sup. Ct. 1902). The trial court concluded that the defendant's services did not measure up to this standard. *Id.* This doctrine originated in the theater industry. BERRY, *supra* note 20, at 24. Cases centered on the right of a theatrical employer to prevent an entertainer from taking a more lucrative engagement. *Id.*; *see, e.g.*, Lumbley v. Wagner, 42 Eng. Rep. 687 (1852) (enjoining opera singer from abandoning one troupe to join another).

132. *Lajoie*, 202 Pa. at 222, 51 A. at 976.

133. *Id.* at 216, 51 A. at 973.

134. *Id.* at 216, 51 A. at 973. The court articulated its standard:

> [T]he services of the defendant 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 that term, to the plaintiff.

Id. at 217, 51 A. at 974 (emphasis added).

135. *Id.* at 222, 51 A. at 976.

136. *See* Devine, *supra* note 20, at 37.

137. *Id.*

a result, Lajoie simply did not accompany his new American League team to games played in Pennsylvania.[138]

Notwithstanding the National League's narrow victory in *Lajoie*, the decision represented a major success for the league on a broader level; subsequent courts adopted the rationale that professional athletes possessed sufficiently unique talents to fit within the category of impossible to replace.[139] This precedent, which has withstood the test of time, effectively holds professional athletes to contracts that might be unenforceable in other industries.[140]

Thus, as *Ward*, *Ewing*, and *Lajoie* demonstrate, the net effect of the contracts phase of litigation, despite the limited player victories, eventually swayed in the owners' favor.[141] After *Lajoie*, injunctions became increasingly available to owners, thereby erecting a significant roadblock to players and competing leagues.[142] As one commentator argues, "[f]or those who wished to loosen the established leagues' hold on professional sports, it was obvious that new legal strategies had to be devised. When it came to the one-on-one contract, the players were overmatched and undersized."[143]

B. *Antitrust Phase*

The contracts phase of legal development in professional baseball survived until 1914, when the formation of the Federal League of Professional Base Ball Clubs ("Federal League") brought on another flood of litigation.[144] This section explains this second wave of litigation, during which courts applied antitrust principles to professional sports for

138. *Id.* After the injunction was issued, Lajoie was traded to the American League's Cleveland Broncos, where he played in every city but Philadelphia. *Id.*

139. BERRY, *supra* note 20, at 26.

140. *Id.* at 27.

141. *Id.*

142. *Id.*

143. *Id.*

144. *See* Devine, *supra* note 20, at 42-44.

the first time.[145] First, this section provides background concerning the general principles underlying antitrust law and its corresponding implications on professional sports. Second, this section examines the history of employment relations in baseball during the antitrust phase.

1. The Sherman Act

Congress passed the Sherman Antitrust Act of 1890[146] ("Sherman Act") in order to temper the spread of industrial monopolies that many believed would consume the nation's economy.[147] The Sherman Act's sponsors believed that the most effective way to regulate economic activity was to preserve free and unfettered competition.[148] The Sherman Act did not outlaw every type of agreement or restraint on competition—only those which unreasonably restrain trade and competition.[149]

The application of antitrust principles to professional sports raises a deceptively simple question—who should the

145. *See* discussion *infra* part I.B.2 (discussing the application of the antitrust principles to professional baseball).

146. Sherman Antitrust Act of 1890, ch. 647, §§ 1-7, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. §§ 1-7 (1994)). Section 1 of the Sherman Act forbids contracts, combinations, and conspiracies that are in restraint of trade. 15 U.S.C. § 1. Section 2 of the Sherman Act prohibits monopolization, attempts to monopolize, and conspiracies to monopolize. 15 U.S.C. § 2.

147. United States v. Aluminum Co. of Am., 148 F.2d 416, 428 (2d Cir. 1945); BERRY, *supra* note 20, at 27. During the nineteenth century, monopoly power emerged as a legitimate threat to economic order. KERMIT L. HALL, THE MAGIC MIRROR 206 (1989). Fierce competition among maturing industries created pinched profit margins that prompted corporate managers to consolidate control over greater portions of the market. To do so, they turned to new legal devices—first the trust and, in the 1890s, the holding company—that permitted a single company to control the pricing and market structure of several "foreign" corporations. The new national corporate structure of the economy depended heavily for its growth on law and legal institutions. *Id.*

148. *See* Northern Pacific Railway Co. v. United States, 356 U.S. 1, 4-5 (1958); *see also* Standard Oil Co. v. FTC, 340 U.S. 231, 247 (1951); WARREN FREEDMAN, PROFESSIONAL SPORTS AND ANTITRUST 4 (1987).

149. 15 U.S.C. §§ 1-7. Through its application by the courts, the Sherman Act prohibits all price-fixing arrangements or horizontal restraints on trade and all other unreasonable restraints on trade. *See id.*

Sherman Act protect: players, owners, or neither?[150] The quandaries raised by this question are abundant, and include: (1) whether the administration of antitrust laws that protect athletes lessens competition among teams;[151] (2) whether the administration of antitrust laws that protect teams and leagues necessarily hinders competition among players for positions on teams paying the highest salaries;[152] (3) whether administration of antitrust laws that promote free competition for player resources causes the quality of competition within the leagues to drop;[153] and (4) whether administration of antitrust laws that protect the interests of a particular team or league against newcomers gives the protected team or league a monopoly of the sport.[154] Courts deciding sports labor disputes during the antitrust phase were forced to confront all of these difficult questions which, by their very complicated nature, have led to an inconsistent application of antitrust law to professional sports.[155]

2. The Antitrust Phase of Baseball Employment Relations

This subsection examines the origination and development of baseball's antitrust exemption. First, this subsection analyzes the New York Supreme Court's decision in *American League Baseball Club of Chicago v. Chase*,[156] which first espoused the reasoning underlying baseball's antitrust exemption. Second, this subsection discusses the United States Supreme Court's decision in *Federal Baseball Club of Baltimore*

150. *See also* Ross, *supra* note 20; Dodge, *supra* note 20; JENNINGS, *supra* note 81; *cf.* Allyn Young, *The Sherman Act and the New Anti-trust Legislation*, *in* A CENTURY OF THE SHERMAN ACT: AMERICAN ECONOMIC OPINION, 1890-1990 19 (1992) (discussing the policy rationales underlying the Sherman Act).

151. FREEDMAN, *supra* note 148, at 4.

152. *Id.*

153. *Id.*

154. *Id.*

155. *See* discussion *infra* part I.B.2 (discussing the application of antitrust principles to professional baseball); *infra* part II.A (discussing the application of antitrust principles to professional football).

156. 86 Misc. 441 (N.Y. Sup. Ct. 1914).

v. National League of Professional Baseball Clubs,[157] which adopted the reasoning of *Chase* to exempt baseball from antitrust rules. Third, this subsection examines the Second Circuit Court of Appeals decision in *Gardella v. Chandler*,[158] which held that baseball was interstate commerce under the Sherman Act, and the Supreme Court's rejection of *Gardella* in *Toolson v. New York Yankees*.[159] Finally, this subsection analyzes the Supreme Court's decision in *Flood v. Kuhn*,[160] which rejected the Court's definition of interstate commerce formulated in *Federal Baseball*.

a. The Genesis of Baseball's Antitrust Exemption

In 1914, the formation of the Federal League triggered another exodus of National League players, and with it, a renewed wave of sports litigation.[161] The first case in the antitrust phase arose when Hal Chase, a well-known first baseman, signed with the Federal League's Buffalo franchise, despite being under contract to play for the American League's Chicago team.[162] The Chicago club successfully obtained a preliminary injunction, which Chase sought to vacate in *Chase*.[163] In *Chase*, the New York State Supreme Court once again examined the mutuality of the ten-day termination and the reserve option clauses.[164] The court held that the contract evinced an "absolute lack of mutuality," and therefore was not enforceable.[165]

In addition to the issue of mutuality, the *Chase* court examined the state and federal antitrust implications of league

157. 259 U.S. 200 (1922).

158. 172 F.2d 402 (2d Cir. 1949).

159. 346 U.S. 356, *reh'g granted*, 346 U.S. 917 (1953).

160. 407 U.S. 258 (1972).

161. *See* McCormick, *supra* note 20, at 1146-47; Devine, *supra* note 20, at 41-45; BERRY, *supra* note 20, at 28.

162. *See* Devine, *supra* note 20, at 44; BERRY, *supra* note 20, at 28.

163. 86 Misc. 441 (N.Y. Sup. Ct. 1914).

164. *Id.* at 445-58. As explained above in Part I.A, the New York Supreme Court previously considered the ten-day termination and reserve clauses in *Ward*, 9 N.Y.S. 779 (S. Ct. 1890). *See supra* notes 108-14 (discussing *Ward*).

165. *Chase*, 86 Misc. at 455-56.

operations.[166] The court decided that "organized baseball" was as complete a monopoly "as a[ny] monopoly can be created among free men . . . ."[167] The court reasoned not only that organized baseball was an illegal combination under the Sherman Act,[168] but also that it violated, as property rights, both the right to labor[169] and the right to contract.[170] Nonetheless, the *Chase* court, relying on the United States Supreme Court's definition of interstate commerce,[171] concluded that there was no violation of the Sherman Act.[172] The court reasoned that baseball was not interstate commerce because it was not a commodity or an article of mer-

---

166. *Id.* at 458-67. In his motion to vacate the injunction, Chase raised the question of whether the rules and regulations adopted pursuant to the league's national agreement violated the Sherman Act. *Id.* at 441-42, 458-59.

167. *Id.* at 459. The court stated:

> It is apparent from the analysis already set forth of the agreement and rules forming the combination of the baseball business, referred to as 'organized baseball,' that a monopoly of baseball as a business has been ingeniously devised and created in so far as a monopoly can be created among free men . . . .

Id.

168 *Id.* at 461.

169. *Id.*

170. *Id.*

171. United States v. E.C. Knight Co., 156 U.S. 1 (1895). In *E.C. Knight*, the Court limited the regulation of commerce to "the subjects of commerce, and not to matters of internal police." *Id.* at 13. The Court defined the subjects of commerce to include contracts to buy, sell, or exchange goods transported among the states, and the instrumentalities of their transportation. *Id.* The Court held: "Contracts to buy, sell or exchange goods transported among the several States, the transportation and its instrumentalities, and articles bought, sold or exchanged for the purposes of such transit among the States, or put in the way of transit, may be regulated." *Id.* The *E.C. Knight* Court added that "the intent of the manufacturer does not determine when an article passes from the control of the state and belongs to commerce." *Id.* Finally the Court also held:

> The fact that an article is manufactured for export to another state does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the state and belongs to commerce.

Id.

172. *Chase*, 86 Misc. at 459. The court stated: "I cannot agree to the proposition that the business of baseball for profit is interstate trade or commerce, and therefore subject to the provisions of the Sherman Act." *Id.*

chandise.[173]

b. Federal Approval of Baseball's Antitrust Exemption

Notwithstanding its victory in *Chase*, the Federal League did not last much longer than the Brotherhood League.[174] Out of the Federal League's ashes, one owner brought suit against each of the sixteen teams in the National and American Leagues, the National Commission,[175] and three former Federal League owners.[176] The complaint alleged a conspiracy by the defendants, in violation of the Sherman Act, to damage the owner's attempts to operate a baseball team.[177] The plaintiff-owner was successful at the trial level, and won a verdict for $80,000, which was trebled under the provisions of the Sherman Act.[178] On appeal, the Court of Appeals for the District of Columbia Circuit reversed, holding that the defendants' activities were not within the scope of the Sher-

173. *Id.* at 460. The court held: "Baseball is an amusement, a sport, a game that comes clearly within the civil and criminal law of the state, and it is not a commodity or an article of merchandise subject to the regulation of congress on the theory that it is interstate commerce." *Id.* The court rejected the argument that baseball players, by virtue of being bought and sold and dealt in among the several states, are thus reduced and commercialized into commodities. *Id.* at 459. The court held:

> A commodity is defined as "that which is useful; anything that is useful or serviceable; particularly an article of merchandise; anything movable that is a subject of trade or of acquisition." We are not dealing with the bodies of the players as commodities or articles of merchandise, but with their services as retained or transferred by contract.

Id. at 459-60.

174. *See* BERRY, *supra* note 20, at 50. The Federal League struggled through two seasons, 1914 and 1915, before it collapsed amid allegations that the established leagues engaged in activities that went beyond holding players to allegedly improper contracts. *See* Ross, *supra* note 20, at 692.

175. National League of Professional Baseball Clubs v. Federal Baseball Club of Baltimore, 269 F. 681, 683 (D.C. Cir. 1920), *aff'd*, 259 U.S. 200 (1922). The National Commission is an administrative body composed of the presidents of the two leagues and a third person, selected by them. *Id.*

176. *Id.* at 681-82.

177. *Id.*

178. *See id.* at 682. The lower court awarded treble damages pursuant to section 7 of the Sherman Act.

Sherman Act.[179]

The United States Supreme Court addressed the Sherman Act's applicability to baseball in *Federal Baseball*.[180] Justice Holmes, writing for a unanimous Court, employed the same reasoning as the *Chase* court—that baseball, although a business, did not involve interstate commerce because the sport was strictly a state matter.[181] In addition, Justice Holmes concluded that baseball was not "trade or commerce" for the purposes of the Sherman Act.[182] Therefore, the Sherman Act did not apply to the National League's restrictive practices.[183] One commentator has explained that the Court's decision in *Federal Baseball* "removed all legal obstacles to the continued maintenance of the reserve system and sustained the system against all challenges for an additional fifty years."[184]

c. Subsequent Challenges and Reaffirmances of Baseball's Antitrust Exemption

One of the first challenges to *Federal Baseball* was the 1949 case, *Gardella v. Chandler*.[185] In *Gardella*, the Court of Appeals for the Second Circuit held that the advent of television and radio broadcasting of baseball games had sufficiently changed the nature of the sport so as to bring it under the

179. *Federal Baseball*, 269 F. at 687-88.

180. 259 U.S. 200 (1922).

181. *Id.* at 208-09. Justice Holmes wrote:

> The business is giving exhibitions of base ball [sic], which are purely state affairs. . . . [T]he fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business. . . . [T]he transport is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words. As it is put by the defendants, personal effort, not related to production, is not a subject of commerce.

Id.

182. *Id.* at 209.

183. *Id.* at 208-09.

184. McCormick, *supra* note 20, at 1146-47.

185. 172 F.2d 402 (2d Cir. 1949).

Sherman Act.[186] Judge Frank concurred in *Gardella*, and recognized that the Supreme Court had considerably broadened the definition of "interstate" activities and "trade or commerce" for purposes of the Sherman Act during the intervening years since *Federal Baseball*.[187] Nevertheless, the parties in *Gardella* settled the case before they could appeal the Second Circuit's opinion to the Supreme Court.[188]

The validity of baseball's exemption from antitrust remained unresolved until the Supreme Court revisited it in *Toolson v. New York Yankees*.[189] In *Toolson*, the Court ignored the Second Circuit's reasoning in *Gardella*, and reaffirmed its holding in *Federal Baseball* that baseball did not fall within the scope of the Sherman Act.[190] The Court held that *Federal Baseball* still controlled, reasoning that Congress, rather than the courts, should remedy any antitrust concerns arising in professional baseball.[191]

---

186. *Id.* at 407-08.

187. *Id.* at 412 (Frank, J., concurring). Judge Frank wrote:

> In the Federal Baseball case, the Court assigned as a further ground of its decision that the playing of the games, although for profit, involved services, and that services were not "trade or commerce" as those words were used in the Sherman Act. But I think that such a restricted interpretation of those words has been undeniably repudiated in later Supreme Court decisions concerning medical services and motion pictures. I believe, therefore, that we will not trespass on the Supreme Court's domain if we hold that the rationale of the Federal Baseball case is now confined to the insufficiency of traveling, when employed as a means of accomplishing local activities, to establish the existence of interstate commerce.

Id. (footnotes omitted). *See* American Med. Ass'n v. United States, 317 U.S. 519 (1943); Binderup v. Pathe Exch., Inc., 263 U.S. 291 (1923); Paramount Famous Lasky Corp. v. United States, 282 U.S. 30 (1930); United States v. First Nat'l Pictures 282 U.S. 44 (1930); Interstate Circuit, Inc. v. United States, 306 U.S. 208 (1939); North Am. Co. v. SEC 327 U.S. 686 (1946).

188. McCormick, *supra* note 20, at 1148. Professor McCormick contends that after *Gardella*, Justice Holmes' conclusion in *Federal Baseball*, that the Sherman Act did not apply to professional baseball, was untenable. *Id.*

189. 346 U.S. 356, *reh'g granted*, 346 U.S. 917 (1953).

190. *Id.* at 357.

191. *Id.* at 357. The court explained:

> Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective

In 1972, the Supreme Court examined and affirmed baseball's antitrust exemption for a third time in *Flood v. Kuhn*.[192] Although the Court ultimately bowed to precedent, it did concede that the narrow definition of interstate commerce employed in *Federal Baseball* was no longer valid,[193] and that baseball, as an industry, was "engaged in interstate commerce."[194] Acknowledging that other professional sports fell under the Sherman Act, the Court maintained that baseball, "[w]ith its reserve system enjoying exception from the federal antitrust law . . . is, in a very distinct sense, an exception and an anomaly."[195] The Court explained the incongruity between its current expanded definition of interstate commerce and baseball's exemption as an aberration, "fully entitled to the benefit of *stare decisis*," which rested on the recognition and acceptance of the sport's unique characteristics

---

> effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. The present cases ask us to overrule the prior decision and, with retrospective effect, hold the legislation applicable. We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation. Without re-examination of the underlying issues, the judgments below are affirmed on the authority of *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs* . . . .

Id.

192. 407 U.S. 258 (1972).

193. *Id.* at 282-83. The U.S. Constitution grants Congress the power to regulate trade "among the several States." U.S. CONST. art. I, § 8, ch.3. In early cases, this provision was interpreted to exempt intrastate activity from congressional regulation unless it had a direct effect on interstate commerce. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935). The Supreme Court departed from this strict standard in National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937), where it applied a more lenient and practical necessary effect test in upholding the constitutionality of the National Labor Relations Act. Subsequent cases further expanded Congress's regulatory power to include all activities having a substantial effect on interstate commerce. *See* United States v. Sullivan, 332 U.S. 689 (1948) (holding that pharmaceutical drugs shipped interstate fall under federal regulations); United States v. Darby, 312 U.S. 100 (1941) (holding that the Fair Labor Standards Act of 1938 applies to employees for the production of goods for interstate commerce) (citation omitted).

194. *Flood*, 407 U.S. at 282.

195. *Id.*

and needs.[196] Along this line, the Court again stated that it would adhere to legal precedent, leaving any inconsistency to be remedied by Congress, not the Court.[197]

After *Flood*, the antitrust exemption ceased to play an active role in defining employment relations between owners and players.[198] It became clear to baseball players that they needed to find a new approach to their legal challenges of the owners.[199] Although contract principles had provided limited assistance, that help quickly faded after *Lajoie*.[200] An-

196. *Id.* The court explained:

> It is an aberration that has been with us now for half a century, one heretofore deemed fully entitled to the benefit of *stare decisis*, and one that has survived to the Court's expanding concept of interstate commerce. It rests on a recognition and an acceptance of baseball's unique characteristics and needs.

Id.

197. *Id.* at 284.

198. Baseball's antitrust exemption has not been invoked or challenged in the area of employment relations between owners and players since *Flood*. The exemption, however, has been invoked, challenged, and limited in the context of a number of other areas. *See, e.g.*, Finley v. Kuhn, 569 F.2d 527, 530, 532, 540-41 (7th Cir. 1978) (examining the exemption in the context of a baseball club owner's claim that the Commissioner of Baseball, by disapproving the club's agreement to sell its contract rights for player services, conspired to eliminate the club from baseball in violation of federal antitrust laws); Henderson Broadcasting, Corp. v. Houston Sports Ass'n, 541 F. Supp. 263, 264 (S.D. Tex. 1982) (invoking exemption to challenge a claim by a radio station involving a contract dispute over broadcast rights); Postema v. National League of Professional Baseball Clubs, 799 F. Supp. 1475, 1477 (S.D.N.Y. 1992) (invoking the exemption to bar state antitrust claims in discrimination suit by female umpire), *rev'd*, 998 F.2d 60 (2nd Cir. 1993); Piazza v. Major League Baseball, 831 F. Supp. 420, 421 (E.D. Pa. 1993) (invoking exemption in response to claim that Major League Baseball frustrated the plaintiff's efforts to purchase the San Francisco Giants and relocate it to Tampa Bay, Florida); McCoy v. Major League Baseball, 911 F. Supp. 454, 455-56 (W.D. Wash 1995) (invoking exemption in response to class action suit by fans of baseball and businesses that operate within the vicinity of baseball stadiums claiming that the league's actions in the 1994 strike violated antitrust laws); Butterworth v. National League of Professional Baseball Clubs, 644 So. 2d 1021, 1021 (Fla. 1994) (examining applicability of exemption to cases involving the sale and location of baseball franchises); Morsani v. Major League Baseball, 663 So. 2d 653, 654 (Fla. Dist. Ct. App. 1995) (invoking exemption in claim alleging tortious interference with attempt to purchase a baseball franchise), *review denied*, 673 So. 2d 29 (Fla. 1996).

199. *See* BERRY, *supra* note 20, at 31; McCormick, *supra* note 20, at 1150.

200. *See* BERRY, *supra* note 20, at 30.

titrust actions were almost entirely unsuccessful because of the Supreme Court's reluctance to overturn a fifty year-old interpretation of the Sherman Act.[201] Thus, the baseball players' first two waves of legal challenges had failed; but from this impasse was born the third wave of legal challenge—labor law.[202]

C. *Labor Phase*

The limited victories that baseball players gained in the contracts and antitrust phases prompted a new approach to player-owner relations in baseball.[203] This section examines the labor law phase, which, along with collective bargaining, had become central by the mid-1970s in shaping the future of employment relations in professional sports.[204] First, this section reviews some of the underlying principles of the National Labor Relations Act and the National Labor Relations Board, and their respective implications on professional sports employment relations during the labor phase. Second, this section examines the development of employment relations in professional baseball during the labor phase. During this phase, player victories in arbitration hearings, the courts, and collective bargaining negotiations brought professional baseball employment relations completely under the jurisdiction of labor law.

1. The National Labor Relations Act and the National Labor Relations Board

The National Labor Relations Act ("NLRA")[205] and the National Labor Relations Board ("NLRB") play a fundamental role in the still current labor phase of employment rela-

201. *See Flood*, 407 U.S. 258 (1972); *Toolson*, 346 U.S. 356, *reh'g granted*, 346 U.S. 917 (1953); *Federal Baseball*, 259 U.S. 200 (1922); *Gardella*, 172 F.2d 402 (2d Cir. 1949).

202. BERRY, *supra* note 20, at 30.

203. *Id.* at 31.

204. *Id.*

205. The National Labor Relations Act was first enacted as the Wagner Act, ch. 372, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-168 (1994)).

tions in professional baseball. First, this subsection provides background concerning the general principles of the NLRA. Second, this subsection briefly examines how the NLRB administers the NLRA's principles. Finally, this subsection explains how professional sports came under the jurisdiction of the NLRA.

a. The National Labor Relations Act

The NLRA and the NLRB play a large role in defining the labor phase of professional sports employment relations.[206] The NLRA covers workers involved in interstate commerce, including professional team sports.[207] Section 7 of the NLRA provides for three basic rights of U.S. labor relations policy: (1) the right to self-organization; (2) the right to bargain collectively through representatives of the employees' own choosing; and (3) the right to engage in "concerted activities" for employees' mutual aid or protection.[208] In short, the NLRA protects workers' rights to unionize, bargain collectively, and use pressure tactics, including strikes and pickets, to achieve legitimate objectives.[209]

b. The National Labor Relations Board

The NLRB carries out the administration of the NLRA's principles.[210] The NLRA established the NLRB to protect workers from unfair employer labor practices, to oversee elections for union representatives, and to enforce collective bargaining agreements ("CBA").[211] In addition, the NLRA gives the NLRB punitive powers to enforce its findings.[212] The NLRB enforces the law by policing unfair labor practices

206. *See id.*
207. *Id.* § 152.
208. *Id.* § 157.
209. *Id.*; *see* BERRY, *supra* note 20, at 32.
210. 29 U.S.C. § 151; *see* NLRB v. Seven-Up Bottling Co., 344 U.S. 344, 348 (1953) (holding that the business of the NLRB is to give coordinated effect to the policies of the federal labor relations acts); HALL, *supra* note 147, at 275.
211. 29 U.S.C. §§ 153, 159-160; *see* Hall, *supra* note 147, at 275.
212. 29 U.S.C. §§ 160, 162.

committed either by management or labor.[213] The NLRB also reviews questions concerning whether issues are subject to collective bargaining under the law.[214] The majority of the NLRB's work in sports involves resolving unfair labor practices and defining the scope of bargaining.[215]

The two most common allegations of unfair labor practices in sports are that the employer has disciplined or discharged players for engaging in union activities, and that the employer has refused to bargain in good faith.[216] The principles of good faith bargaining require that the parties communicate through proposals and counter-proposals, and that they make every reasonable effort to come to an agreement.[217]

The NLRB has divided the subjects of collective bargaining into three groups: mandatory, permissive, and illegal.[218] Mandatory subjects include wages, hours, and working conditions, all of which must be negotiated in good faith.[219] Permissive bargaining subjects include those that management may, but is not obligated, to negotiate.[220] Illegal subjects of bargaining are those prohibited from being negotiated.[221] The NLRB is often called upon to determine whether an issue, such as wage scales or the use of artificial turf, is subject to collective bargaining negotiation.[222]

c. Professional Sports Come Under the

213. 29 U.S.C. § 158.

214. 29 U.S.C. § 151. This process is generally referred to as defining the scope of bargaining. *See* PAUL D. STAUDOHAR, THE SPORTS INDUSTRY AND COLLECTIVE BARGAINING 11 (2d ed. 1989).

215. *See* STAUDOHAR, *supra* note 214, at 11.

216. *Id.*

217. *Id.*

218. *See id.*

219. 29 U.S.C. §§ 151, 158; *see* STAUDOHAR, *supra* note 214, at 11.

220. STAUDOHAR, *supra* note 214, at 11-12. Permissive subjects are management rights or prerogatives that the employer has an exclusive right to determine. *Id.*

221. *Id.* at 12.

222. *Id.*

Jurisdiction of the National Labor Relations Act

To benefit from the NLRA's protection, a labor group must convince the NLRB that it is entitled to coverage under the NLRA.[223] It was not clear whether the NLRB had jurisdiction in the sports industry until 1969, when baseball umpires sought NLRB recognition (the "umpires' case").[224] Despite the Supreme Court's *Federal Baseball* holding, the NLRB concluded that professional baseball was an industry affecting interstate commerce, and thus was within the NLRB's jurisdiction.[225] In addition, the Court's subsequent decision in *Flood* buttressed the NLRB's decision, despite its holding which affirmed baseball's antitrust immunity.[226] Although the *Flood* Court expressed fidelity to the principles of *stare decisis*, it specifically stated that baseball was engaged in interstate commerce.[227] The Court thus subjected the league to the NLRA's protections and requirements as established in the umpires' case.[228]

2. Baseball in the Labor Phase

The 1969 victory for major league umpires coincided with the first CBAs forged between players' unions and the various leagues.[229] The NLRB's decision to bring baseball within its jurisdiction opened an avenue of advancement to the players that was not obstructed by antitrust baggage.[230]

---

223. 29 U.S.C. § 159.

224. The American League of Professional Baseball Clubs and Association of National Baseball League Umpires, 180 N.L.R.B. 190 (1969).

225. *Id.* at 192.

226. *See* McCormick, *supra* note 20, at 1152; BERRY, *supra* note 20, at 33.

227. *Flood*, 407 U.S. at 282.

228. *See supra* notes 224-25 and accompanying text (discussing the umpires' case).

229. BERRY, *supra* note 20, at 33; *see infra* note 246 and accompanying text (discussing baseball's first CBA).

230. *See* BERRY, *supra* note 20, at 33; *cf.* McCormick, *supra* note 20, at 1152 (explaining that because the umpires' case subjected professional baseball to the provisions of the NLRA, owners were forced to bargain in good faith with players concerning the terms and conditions of employment).

To illustrate the effect of this decision, this subsection examines the growth of the baseball players' union and the impact of collective bargaining on the employment relationship.

In 1954, the Major League Baseball Players Association ("MLBPA") was formed.[231] The MLBPA faced many early obstacles.[232] Principal among them was a bolstering of the owners' institution—an organization challenged by the MLBPA—by Supreme Court rulings upholding organized baseball's exemption from the Sherman Act.[233] The owners' strength was reflected in player contracts, which one commentator described as "unilateral instruments" that read like "real estate leases."[234]

Baseball players were slow to use their union as an effective bargaining tool.[235] They resisted the idea that the MLBPA was a labor union because they scoffed at the notion of being associated with the manual laborers, who at that time comprised the majority of labor unions.[236] Bob Feller, a Hall of Fame pitcher and the first MLBPA president, overtly questioned whether collective bargaining could be carried into baseball.[237] Bob Friend, Feller's successor as MLBPA president, went even further and stated, "I firmly believe a

---

231. Katz, *supra* note 20, at 381.

232. *See supra* part I.C.2 (discussing baseball players' early challenges to league practices).

233. *See supra* part I.B (discussing the evolution and implementation of baseball's antitrust exemption).

234. BERRY, *supra* note 20, at 52. One commentator describes the inequity of the player contracts as follows:

> On signing a contract, a player swore to abide by the rules set down by management and to conform to any changes in management's rules, without even receiving a copy of these rules. The contract entitled team owners to administer discipline and required players' grievances to be appealed to the commissioner of baseball, and employee of the owners.

Id.

235. *See* McCormick, *supra* note 20, at 1150-51; BERRY, *supra* note 20, at 52.

236. *See* McCormick, *supra* note 20, at 1150-51; BERRY, *supra* note 20, at 52.

237. *American League Changes Rule on Play-Off of Tie for Pennant*, N.Y. TIMES, Dec. 11, 1956, at 52.

union, in the fullest sense of the word, simply would not fit the situation in baseball."[238]

In 1966, it was clear to the players that they possessed no effective negotiating power with the owners.[239] To remedy this situation, they hired Marvin Miller as executive director of the MLBPA.[240] Miller had served as chief economist and bargainer for the United States Steelworkers of America for sixteen years, and had been a member of several presidential labor/management boards.[241] As a result, Miller was well respected by union, management, and government leaders.[242] The players believed their interests to be in capable hands.[243]

The MLBPA won great gains for its members with Miller as its executive director.[244] In the first eight years of Miller's tenure (1966-74), players' pensions more than tripled, the minimum salary rose from $6,000 to $16,000, and the average salary more than doubled to $40,956.[245] The key year for players during this period was 1968, when they came to terms with the owners and negotiated baseball's first CBA.[246] As one commentator has pointed out, "[t]he stage was set for a new assault by the players, not through the lengthy and largely unsuccessful route of litigation, but through negotiation, some intimidation, and, above all, arbitration."[247]

In 1970 and 1973, the MLBPA negotiated arbitration pro-

238. Brady, *Player Rep Friend Raps Proposal That Athletes Form Labor Union*, SPORTING NEWS, Aug. 3, 1963, at 4.

239. BERRY, *supra* note 20, at 53.

240. McCormick, *supra* note 20, at 1152.

241. *Id.*; BERRY, *supra* note 20, at 53.

242. McCormick, *supra* note 20, at 1152.

243. *See* BERRY, *supra* note 20, at 53.

244. *See infra* note 245 and accompanying text (discussing the benefits won for players during Marvin Miller's first eight years as executive director of the MLBPA); McCormick, *supra* note 20, at 1152; BERRY, *supra* note 20, at 53.

245. *See* BERRY, *supra* note 20, at 53.

246. Chalian, *supra* note 20, at 606; BERRY, *supra* note 20, at 53.

247. BERRY, *supra* note 20, at 53.

visions into the CBAs.[248] In the 1970 agreement, the MLBPA negotiated a provision creating a tripartite grievance arbitration panel with a permanent impartial chairman.[249] In the 1973 agreement, the MLBPA negotiated a clause providing for neutral arbitrators to determine players' salaries, in the event that the player and team were unable to come to terms.[250] Therefore, in 1974, when a dispute between Oakland A's pitcher Jim "Catfish" Hunter and Oakland's owner Charles O. Finley reached an impasse, the matter was brought to arbitration.[251]

Hunter had previously made an agreement with Finley that half of his 1974 salary was to be set aside in an insurance trust.[252] When the season ended, Finley, despite numerous requests, had failed to make the required payments.[253] Hunter maintained that Finley's refusal to pay was a breach of contract enabling Hunter to exert his right to terminate the contract,[254] and subsequently announced that he was a free agent.[255] Finley insisted that there was no free agent question, but only a question of contract interpretation concerning the method of payment.[256] The matter was then submitted to an arbitrator, Peter Seitz, pursuant to the grievance arbitration provision of the 1973 CBA.[257]

Seitz found no ambiguity in the contract and ruled in Hunter's favor.[258] As a result, Hunter became a free agent

248. STAUDOHAR, *supra* note 214, at 25.

249. *Id.* This replaced a system under which disputes over the interpretation of the CBA were finally ruled on by the commissioner of baseball, an employee of the owners. *Id.*

250. *Id.*

251. Devine, *supra* note 20, at 81-82.

252. BERRY, *supra* note 20, at 54.

253. Devine, *supra* note 20, at 82.

254. BERRY, *supra* note 20, at 54.

255. *Id.*; *see* Devine, *supra* note 20, at 82.

256. BERRY, *supra* note 20, at 54.

257. Devine, *supra* note 20, at 81-82; BERRY, *supra* note 20, at 54.

258. BERRY, *supra* note 20, at 81 n.33 (citing In the Matter of arbitration between American and National Leagues of Professional Baseball Clubs (Oakland Athletics) and Major League Baseball Players Association (James A. Hunter), De-

and was allowed to consider offers from any team.[259] By the end of the year, Hunter had accepted an offer from the New York Yankees for an "unprecedented" salary, including a $1 million signing bonus, a $150,000 annual salary for five years, life insurance benefits worth $1 million, and a substantial amount of deferred compensation.[260]

In 1975, the baseball players again resorted to the arbitration system to attenuate the owners' control over player mobility.[261] This time, the target of their collective assault was the restrictive reserve rule,[262] which contained a renewal year provision that gave owners the option to renew a player's contract under the terms of the previous contract, in the event that the player and owner failed to reach an agreement on a new contract.[263] The first arbitration challenge to the reserve rule occurred in 1975, when pitchers Andy Messersmith of the Los Angeles Dodgers and Dave McNally of the Montreal Expos played for their respective clubs for one year under the renewal provision of their contracts.[264] Upon conclusion of the baseball season, both players contended that their employment status could not be extended per the reserve rule, and declared themselves free agents.[265] When their requests for free agency status were denied, Messersmith and McNally filed grievances with the league and forced the owners to arbitration.[266]

---

cision No. 23, Grievance Nos. 74-18 and 74-20, Dec. 13, 1974. Seitz, Impartial Chair of Panel).

259. BERRY, *supra* note 20, at 54.

260. *Id.*

261. *See id.* at 56.

262. *Id.*; *see supra* note 47 (discussing baseball's reserve rule).

263. McCormick, *supra* note 20, at 1155. The Uniform Player's Contract provided: "If [prior to the beginning of the season] the Player and the Club have not agreed upon the terms of [a] contract, . . . the Club shall have the right . . . to renew this contract for the period of one year on the same terms. . . ." Uniform Player's Contract, clause 10(a), *reprinted in Flood*, 407 U.S. at 259-61 n.1.

264. Katz, *supra* note 20, at 382 n.58.

265. BERRY, *supra* note 20, at 56.

266. Professional Baseball Clubs, 66 L.A. 101 (1975) (Seitz, Arb.). Because Messersmith and McNally submitted their grievances on the same grounds, the grievances were heard together. *Id.* at 101-02.

The owners contested the merits of the grievances, arguing that the contracts had not expired because, under the reserve clause, the contracts created annual options to renew themselves under the terms of the latest contracts, provided that the club duly reserved the player.[267] Therefore, under the owners' interpretation of the reserve clause, as long as the club reserved its players each year, new options to retain reserved players would be created perpetually.[268] Alternatively, the owners argued that the players' grievances were not a proper subject for arbitration because Article 15 of the 1973 CBA,[269] which the players used as the basis for their complaints, expressly stipulated that the agreement did "not deal with the reserve system."[270] Consequently, in the owners' opinion, Article 15 prohibited arbitration of issues that focused on the reserve system's core.[271] Peter Seitz once again headed the arbitration and agreed with the players, concluding both that he had the authority to hear the matter and that Messersmith and McNally were free agents.[272]

The owners promptly appealed Seitz's decision to federal court, contending that Seitz had exceeded his authority as arbitrator by nullifying the reserve system.[273] Nonetheless, the Eighth Circuit Court of Appeals upheld Seitz's decision in *Kansas City Royals Baseball Corp. v. Major League Baseball Players' Ass'n*.[274] The court, through an examination of the 1968, 1970, and 1973 baseball CBAs, concluded that the owners had, in fact, permitted the arbitration of grievances relating to the reserve system, and that, as a result, Seitz did have

267. *Id.* at 102.
268. *Id.* at 113.
269. Basic Agreement between the American League of Professional Baseball Clubs and the National League of Professional Baseball Clubs and Major League Baseball Players Association, art. 15. (1973).
270. *Professional Baseball Clubs*, 66 L.A. at 101-02.
271. *Id.* at 103.
272. *Id.* at 110, 117.
273. STAUDOHAR, *supra* note 214, at 35.
274. 532 F.2d 615 (8th Cir. 1976).

jurisdiction to resolve the issue.[275] This ruling left the owners with little choice but to negotiate vigorously with the MLBPA in the upcoming 1976 collective bargaining concerning changes in the administration of the reserve system.[276]

The Eighth Circuit's decision in *Kansas City Royals* forced owners and players to focus on free agency and the reserve rule during the 1976 collective bargaining negotiations.[277] In general, the players were content with the status quo established by the Messersmith and McNally arbitration: free agency after playing for one year under the renewal provision of the reserve rule.[278] Although the owners recognized that the old reserve system was lost, they refused to grant unfettered free agency to the players as provided by Seitz's arbitration decision.[279] For the most part, the owners were motivated by the fear that a player-friendly free agency system would result in unrestrained player movement, dramatic salary increases, and a shift in competitive balance favoring the teams with the most money.[280] As a result, the owners attempted to win back some of what they had lost in arbitration by assuming a hard line position in the negotiations.[281]

The owners' hard stance, and the players' new-found strength, led the negotiations to an impasse; in March of

---

275. *Id.* at 629-32. The owners had expressly authorized the arbitration of grievances relating to the reserve system in the 1968 CBA. *Id.* at 629. The court suggested that the reason the team owners had agreed to arbitrate such grievances was because the 1968 CBA designated the Commissioner of Baseball as the arbitrator, and that he, recognizing the importance of the reserve system to baseball, would interpret the disputed provisions to allow teams perpetual control over their players. *Id.*

276. *See* BERRY, *supra* note 20, at 57; STAUDOHAR, *supra* note 214, at 35.

277. *See* Smith, *supra* note 76, at 124; JENNINGS, *supra* note 81, at 35-36.

278. BERRY, *supra* note 20, at 57-58; *see* JENNINGS, *supra* note 81, at 35-36; *see also* STAUDOHAR, *supra* note 214, at 35.

279. *See* JENNINGS, *supra* note 81, at 35-39; STAUDOHAR, *supra* note 214, at 35; BERRY, *supra* note 20, at 60-62.

280. *See* BERRY, *supra* note 20, at 61; JENNINGS, *supra* note 81, at 37.

281. *See* BERRY, *supra* note 20, at 61; JENNINGS, *supra* note 81, at 35-37.

1976, the owners shut down training camps—a lockout which lasted seventeen days.[282] The resulting CBA bound players to their respective teams for six years, plus a one year renewal option.[283] In exchange for this concession, the players received increases in their pension fund and a raise in minimum salary.[284] By the end of the 1976 season, twenty-four of the 600 players in the major leagues had become free agents.[285] In 1977, three players each received multi-year contracts for more than $2 million.[286]

In the end, the 1976 lockout had a negligible effect on the baseball season.[287] Although the players missed some spring training practice, the fans witnessed a full regular-season schedule of 162 games.[288] Notwithstanding this fact, the 1976 CBA significantly modified the free agency system.[289] That is, the agreement provided an equitable amount of freedom for players and restraint for owners.[290] Nonetheless, any satisfaction that the owners' derived from this new system quickly disappeared, when player salaries sharply rose in the years following the agreement.[291]

With these escalating salaries in mind, the owners took issue once again with free agency, when the 1976 CBA expired on January 1, 1980, and negotiations for the new CBA

---

282. JENNINGS, *supra* note 81, at 36-37; BERRY, *supra* note 20, at 61. A lockout—the "employer's withholding of work from employees in order to gain concession from them"—is the employer's correlative to the employee's strike. BLACK'S LAW DICTIONARY 940 (6th ed. 1990).

283. BERRY, *supra* note 20, at 61; JENNINGS, *supra* note 81, at 39.

284. BERRY, *supra* note 20, at 61-62; JENNINGS, *supra* note 81, at 39.

285. STAUDOHAR, *supra* note 214, at 35.

286. *Id.*

287. BERRY, *supra* note 20, at 62.

288. *Id.*

289. *Id.* Under the new system, players were eligible for free agency after 6 years. *Id.* In addition, teams losing free agents were compensated with amateur draft choices, regardless of the free agent. *See* JENNINGS, *supra* note 81, at 39.

290. BERRY, *supra* note 20, at 62; *see* JENNINGS, *supra* note 81, at 39.

291. BERRY, *supra* note 20, at 62; *see* JENNINGS, *supra* note 81, at 41; STAUDOHAR, *supra* note 214, at 35.

began one month later.[292] In this latest round of negotiations, the owners sought a system of increased compensation for clubs that lost players to free agency.[293] Such a system, in the owners' opinion, would deter free agency and help retard the runaway growth of salaries.[294] The owners brought in Ray Grebey, a man with a reputation for a hard-handed, "take it or leave it" style of bargaining, as their chief negotiator,.[295]

Through their prized advocate, the owners proposed a two-part offer to the players in February 1980.[296] Their proposal established both a wage scale, providing minimum and maximum salaries for players with fewer than six years of service in the major leagues, and a new free agency compensation system, whereby a team that lost a star player to free agency would get a good, though not necessarily comparable, player in return from the signing team.[297] Compensation for a team losing a non-star player to free agency would be an additional choice in the amateur draft.[298] The MLBPA, besides objecting to the wage scale system on principle, construed the owners' compensation plan as a plot to limit player mobility.[299] The union countered with a proposal that expanded the current system, reducing the qualification for free agency from six to four years.[300]

When no agreement was reached by March of 1980, the

---

292. *See* BERRY, *supra* note 20, at 62.

293. *See id.* at 62-64; JENNINGS, *supra* note 81, at 43-44.

294. *See* BERRY, *supra* note 20, at 62; JENNINGS, *supra* note 81, at 44-45.

295. *See* BERRY, *supra* note 20, at 63; JENNINGS, *supra* note 81, at 41.

296. Thomas Boswell, *Baseball Owners Set a Sweet Trap*, WASH. POST, Feb. 8, 1980, at F1.

297. *Id.* A team would be allowed to protect 15 players on its 40 man major league roster. *Id.* The team losing its player to free agency could select a player from the unprotected group of 25 players on the signing team's roster. *Id.*

298. BERRY, *supra* note 20, at 64.

299. Thomas Boswell, *Baseball Players Authorize a Strike*, WASH. POST, Mar. 5, 1980, at D1; Jane Leavy & Peter Mehlman, *Witching Hour for Baseball is Just Days Away*, WASH. POST, May 18, 1980, at F1; *see* Jane Leavy, *A Ray of Hope in Mudville*, WASH. POST, May 23, 1980, at A1.

300. JENNINGS, *supra* note 81, at 43.

players authorized a strike.[301] The owners attempted to head off this strike on March 18 by withdrawing the wage scale proposal.[302] Although the MLBPA did not accept this updated offer, the association did postpone the strike until May 22, the eve of the lucrative Memorial Day Weekend.[303] Toward the end of March, having not reached agreement, the two sides chose to go to mediation.[304] As a result, the lack of a CBA did not preclude the season from opening as scheduled.[305]

On May 16, the MLBPA offered to resolve the impasse by accepting the status quo for the present season[306] and deferring the compensation issue until later talks.[307] This proposal, however, was conditioned on the resolution of several other issues, including player pensions and minimum salaries.[308] In addition, the players suggested a joint labor/management committee to consider the future of free agency.[309] Although they initially rejected the players' proposal, the owners soon relented under the pressure of a work stoppage before Memorial Day weekend.[310] The strike was again averted.

---

301. Boswell, *supra* note 299, at D1; JENNINGS, *supra* note 81, at 45.

302. Leavy & Mehlman, *supra* note 299, at F1; Murray Chass, *Information Bank Abstracts*, N.Y. TIMES, Mar. 19, 1980, § 4, at 21; BERRY, *supra* note 20, at 65.

303. Dave Kindred, *Players Call Off Rest of Exhibition Baseball Games*, WASH. POST, Apr. 2, 1980, at D1; *see* Shirley Povich, *What Miller Wants is Usually What Players Get*, WASH. POST, Apr. 13, 1980, at N1.

304. Nancy Scannell, *Federal Mediators Join Baseball Talks*, WASH. POST, Mar. 28, 1980, at E1.

305. *Play Ball Will Ring Out Again*, WASH. POST, Apr. 9, 1980, at D1; *see* Povich, *supra* note 303, at N1.

306. *See supra* note 289 and accompanying text (discussing the free agency system under the 1976 agreement).

307. Murray Chass, *Information Bank Abstracts*, N.Y. TIMES, May 16, 1980, at 21; *see* Jane Leavy, *Baseball's Strike is Almost Certain After Talks Stall*, WASH. POST, May 22, 1980, at D1.

308. BERRY, *supra* note 20, at 66; *see* Jane Leavy, *Strike Is Off, Study Set on Compensation*, WASH. POST, May 24, 1980, at C1.

309. BERRY, *supra* note 20, at 66; *see* Leavy, *supra* note 308, at C1.

310. BERRY, *supra* note 20, at 66. The May 22 deadline was allowed to pass by the players. *Id.* On May 30, both sides reached a four year agreement. *Id.*

The four-year labor agreement reached in 1980 left open the possibility of a strike in 1981 or 1982.[311] The joint labor/management committee was to report its conclusions by January 1, 1981.[312] If no agreement on free agent compensation was reached on the basis of that report, the players and owners would negotiate the issue for thirty days.[313] If no agreement was reached after that time, the owners would be allowed to unilaterally adopt their final compensation proposal from the 1980 negotiation.[314] In that case, the players had three options: (1) to accept the owners' compensation proposal outright; (2) to accept the proposal only for the 1981 draft, if the owners allowed the players the right to strike in 1982; or (3) to strike by June 1, 1981.[315]

Perhaps not surprisingly, the joint committee did not resolve the free agency issue by January 1, 1981.[316] As a result, the owners announced in February 1981 their decision to implement their free agency compensation plan.[317] Following this announcement, the MLBPA declared its intention to strike on May 29, 1981, unless the two sides could reach a compromise.[318] When no compromise followed, the strike began on June 12, 1981.[319]

Fifty days of hostile negotiations eventually led to an agreement on July 31, 1981.[320] In this agreement, the owners

---

311. Leavy, *supra* note 308, at C1.

312. *Id.*

313. *Id.*

314. *Id.*

315. *Id.*

316. *See* Joseph Durso, *Free Agent Stalemate Is Hinted*, N.Y. TIMES, Jan. 4, 1981, § 5, at 3; *Baseball Talks Stalled Over Compensation Issue*, N.Y. TIMES, Feb. 18, 1981, at B6.

317. Red Smith, *A Shot Heard Round Baseball*, N.Y. TIMES, Feb. 20, 1981, at B9.

318. Murray Chass, *Player Union Sets May 29 Deadline*, N.Y. TIMES, Feb. 26, 1981, at D21.

319. Murray Chass, *Long Strike is Feared as Baseball Shuts Down*, N.Y. TIMES, June 13, 1981, §1, at 1.

320. Murray Chass, *Strike Over, Baseball Resumes August 9*, N.Y. TIMES, Aug. 1, 1981, § 1, at 1; Jane Leavy, *Baseball Begins Again on August 9*, WASH. POST, Aug. 1, 1981, at A1.

established a free agent compensation plan while the players preserved a free agent system that allowed substantial mobility.[321] The free agent system divided premiere free agents into two groups, based on player performance over the past two years.[322] When a team signed a type A free agent, the team had to place all but twenty-four of its players in a league-wide compensation pool.[323] When a team lost a type A free agent, that team received an extra selection in the subsequent year's amateur draft and a player from the compensation pool, although not necessarily from the free agent's new team.[324] In contrast, when a team lost a type B free agent, that team was compensated by two extra selections in the subsequent year's amateur draft.[325]

The 1981 agreement expired at the end of 1984,[326] triggering negotiations during the 1985 season.[327] The 1985 negotiations demonstrated a shift in focus from free agency and compensation to the owners' concerns over rapidly escalating salaries.[328] The owners, claiming financial losses that threatened several franchises, entered the negotiations with proposals for a salary cap and free agent restrictions.[329] On July 15, 1985, frustrated by the lack of significant progress in the negotiations during the preceding months, the MLBPA

321. Thomas Boswell, *Owners Pay Maximum For Minimal Victory*, WASH. POST, Aug. 2, 1981, at F6; Red Smith, *The Fight That Nobody Won*, N.Y. TIMES, Aug. 2, 1981, § 5, at 5; *see* Chass, *supra* note 320, at 1; Leavy, *supra* note 320, at A1.

322. Leavy, *supra* note 320, at A1. Players rated in the top 20% at their positions were rated A. *Id.* Players in the top 21% to 30% were rated B. BERRY, *supra* note 20, at 73. Players with 12 years of major league service were exempt from the rankings. Leavy, *supra* note 320, at A1.

323. Leavy, *supra* note 320, at A1.

324. BERRY, *supra* note 20, at 73.

325. *Id.* For complete terms of the settlement *see id.*; Chass, *supra* note 320, at 1; Leavy, *supra* note 320, at A1; JENNINGS, *supra* note 81, at 57-59; BERRY, *supra* note 20, at 73.

326. Chass, *supra* note 320, at 1.

327. BERRY, *supra* note 20, at 262.

328. *See* Joseph Durso, *Baseball Talks are Opened*, N.Y. TIMES, Nov. 11, 1984, at B19; Murray Chass, *Baseball's Tales of Distress*, N.Y. TIMES, Dec. 2, 1984, § 5, at 1; JENNINGS, *supra* note 81, at 61.

329. *See* Chass, *supra* note 328, at 1; BERRY, *supra* note 20, at 263.

set an August 6 strike date.[330] Despite this impetus, the players and owners resolved only peripheral issues between July 15 and the strike date.[331] When the strike date arrived, no last minute solution surfaced, and the players struck.[332]

Although many feared that the 1985 strike would be a long one, it turned out, in fact, to be very brief.[333] In just two days, both sides reached a five-year agreement.[334] The owners removed their demand for a salary cap, granted the players a portion of television revenues, and raised the minimum salary.[335] The players conceded to a three-year qualification for salary arbitration.[336] The agreement also provided for a return to the pre-1981 free agent compensation policy of awarding draft choices as the only means of compensation.[337] This concession by the owners represented a shift in position from the 1981 negotiations, during which they fought hard to implement a free agent compensation system that would cause certain free agent signings to result in a major league player being awarded to the old club as compensation.[338] The owners' decision was prompted by the

330. Ross Newhan, *Players Set the Strike Date: August 6*, L.A. TIMES, July 16, 1985, at 3-1.

331. *See* BERRY, *supra* note 20, at 263-64.

332. Kenneth Reich, *Baseball Strike Begins*, L.A. TIMES, Aug. 7, 1985, at 1-1.

333. *See* Ira Berkow, *Baseball's Noose Tightens*, N.Y. TIMES, Aug. 6, 1985, at A19; Dave Sell, *Baseball Goes Out on Strike*, WASH. POST, Aug. 7, 1985, at A1; Murray Chass, *Baseball Players Begin a Walkout; Games Called Off*, N.Y. TIMES, Aug. 7, 1985, at A1; Associated Press, *Angels' Romanick Says Owners Out to Break Union*, L.A. TIMES, Aug. 7, 1985, at 3-1.

334. Murray Chass, *Baseball Strike is Settled; Games to Resume Today*, N.Y. TIMES, Aug. 8, 1985, at A1; Kenneth Reich, *Baseball Strike Settled; Play to Resume Today*, L.A. TIMES, Aug. 8, 1985, at 1-1; *Terms of the New Baseball Contract*, L.A. TIMES, Aug. 8, 1985, 3-1; JENNINGS, *supra* note 81, at 65.

335. *See* Chass, *supra* note 334, at A1; Reich, *supra* note 334, at 1; *Terms of the New Baseball Contract*, *supra* note 334, at 1; BERRY, *supra* note 20, at 265-66; JENNINGS, *supra* note 81, at 65.

336. Chass, *supra*, note 334, at A1; Reich, *supra* note 334, at 1; *Terms of the New Baseball Contract*, *supra* note 334, at 1; BERRY, *supra* note 20, at 266.

337. Chass, *supra*, note 334, at A1; Reich, *supra* note 334, at 1; *Terms of the New Baseball Contract*, *supra* note 334, at 1; BERRY, *supra* note 20, at 267.

338. BERRY, *supra* note 20, at 267.

practical application of the 1981 provision.[339] During 1981 through 1985, only eight players were awarded as compensation.[340] Thus, the use of the player pool was sufficiently negligible to be abandoned by the owners.[341] The issue that had sparked the 1981 strike was eviscerated.[342]

Free agency had a dramatic effect on player salaries.[343] The average salary, which had been $51,501 before the birth of free agency in 1976, became $76,066 the following year, and nearly tripled by 1980, reaching $143,756.[344] By 1984, the average player's salary had climbed to $329,408.[345] Top players were paid between $1 and $2 million a season.[346] This upward spiral left owners in a difficult position: as a result of their spending, player salaries were rising dramatically, but the owners were desperate to protect their bottom lines.[347] Each team realized, however, that the most direct solution—saving money by choosing not to acquire free agents—would have an equally deleterious effect on their bottom lines, because such free agents produced revenue by improving the team and thus filling the stands.[348] In 1985, after unsuccessful attempts to impede salary escalation through free agent compensation, restricted player mobility, collective bargaining, and litigation, the owners devised a new plan to reverse this trend.[349]

---

339. *Id.*
340. *Id.*
341. *Id.*
342. *Id.*
343. *See* JENNINGS, *supra* note 81, at 190-91.
344. JERRY GORMAN & KIRK CALHOUN, THE NAME OF THE GAME 152 (1994).
345. *Id.*
346. *Id.*
347. *Id.* at 152-54. Top players in 1985 were paid between $1 million and $2 million a season. *Id.* In addition, most had long-term deals. *Id.* at 152. For example, in 1981, Dave Winfield signed a ten-year contract with the Yankees, with a base salary of $1.4 million, and cost of living adjustments every two years starting in 1982 plus various incentives. *Id.* In 1985, his base salary was up to $1.7 million. *Id.*; *see also* JENNINGS, *supra* note 81, at 191-92.
348. GORMAN & CALHOUN, *supra* note 344, at 153.
349. *See id.*; JENNINGS, *supra* note 81, at 192.

Upon the conclusion of the 1985 season, sixty-two players became free agents.[350] Fifty-seven players re-signed with their former teams, while five players signed with new teams—all for salaries less than their original teams had offered.[351] Donald Fehr, president of the MLBPA, charged the league with collusion, arguing that each player would no longer be dealing with one team, but would now have to deal with all twenty-six teams working together.[352] Fehr cited the following evidence of collusion: (1) the simultaneous decision by all teams to carry one less player during the 1985 season in order to save money; (2) the unanimous decision to limit contracts to three-year terms, shortly after the owners' Player Relations Committee circulated a negative analysis of player performance after signing long-term contracts; (3) the refusal to include incentive clauses in player contracts; and (4) the attempt to insert drug-testing clauses.[353] These practices continued for two more years, prompting the MLBPA to annually file a grievance alleging collusion by the owners.[354]

These grievances, known as Collusion I, Collusion II, and Collusion III, were resolved through arbitration in the summer of 1990.[355] The arbitrators, Tom Roberts in Collusion I, and George Nicolau in Collusions II and III, observed sudden changes in the owners' behavior in 1985—during the winter of 1984-85, twenty-six of the forty-six free agents changed clubs; in 1985-86, only one of thirty-two free agents received an offer from a new team.[356] Therefore, in each of the decisions, the arbitrators found the owners to be in viola-

350. JENNINGS, *supra* note 81, at 193.

351. *Id.*

352. Hal Lancaster, *Baseball Players, Owners, Gear Up for New Fight Over Free Agency*, WALL ST. J., Oct. 10, 1986, at 31.

353. *Id.*

354. *See* JENNINGS, *supra* note 81, at 194-99.

355. *Id.*

356. *Id.* at 194-95.

tion of Article XVIII-H of the 1985 labor agreement.[357] Consequently, the owners were forced to pay $280 million in damages to the players by December 31, 1990.[358]

The expiration of the 1985 agreement in 1990 once again raised concerns of a work stoppage.[359] This time, the owners were intent on implementing a new salary system, which was based on a revenue sharing plan.[360] The owners' proposal would give players forty-eight percent of gross income derived from ticket sales, and radio and television rights.[361] This money would be distributed to players on the basis of a wage scale, by which players with less than six years experience would be paid according to an index tied to performance, while players with six years or more of major league experience would be free to negotiate their own salaries, limited by the interested team's payroll.[362] If a team exceeded the designated percentage, it could not sign free agents from other teams.[363] The players immediately, and vehemently,

---

357. GORMAN & CALHOUN, *supra* note 344, at 154. Article XVIII-H states:

> The utilization or non-utilization of rights under this Article XVIII is an individual matter to be
> determined solely by each Player and each Club for his or its own benefit. Players shall not act in concert with other Players and Clubs shall not act in concert with other Clubs.

JENNINGS, *supra* note 81, at 194. The 1986 free agent Jack Morris—baseball's most successful pitcher from 1980 to 1986—commented on the arbitrator's decision:

> Hey, it's foolish for a guy making $1.85 million to look for sympathy and I'm not doing that . . . . My salary is not the issue here. The issue is that the owners were found guilty of collusion.
>
> I know that George Steinbrenner wanted to hire me. I could see it in his face. I could hear it in his voice. He finally had to say, 'Sorry buddy, I can't do it.' Steinbrenner said no one told him what to do. In fact, he swore on his mother's name about it. All I can say now is, 'poor mom.'

Id. at 195.

358. GORMAN & CALHOUN, *supra* note 344, at 154.

359. Murray Chass, *Chill of Labor Impasse Threatens Baseball's Spring*, N.Y. TIMES, Feb. 9, 1990, at A1.

360. *Id.*

361. *Id.* Income from these sources accounted for 82% of the owners' total revenue. *Id.*

362. *Id.*

363. Chass, *supra* note 359, at A1.

rejected the proposal as a thinly veiled salary cap.[364] The players countered by proposing liberalized arbitration eligibility, increased minimum salaries, expanded minimum roster size, and built-in collusion protection.[365] Once again, the collective bargaining negotiations left the two sides diametrically opposed.[366] Baseball seemed headed for yet another work stoppage.[367]

On February 15, 1990, the owners implemented a lockout.[368] The negotiations that followed throughout the thirty-two day stoppage were intense, but, for the first time, the two sides approached the negotiations with mutual respect and an absence of hostility and recriminations.[369] The labor strife of the past twenty years forced the owners and players to realize that neither side possessed a marked negotiating advantage any longer.[370] Both sides believed that bad faith bargaining would be fruitless, and would threaten the well-being of the sport.[371]

The players and owners reached a four-year agreement on March 18, 1990.[372] The owners dropped their demand for a salary cap, and the players agreed to the owners' minimum salary and pension contribution proposal.[373] Nonetheless, the key issue in reaching the agreement was salary arbi-

---

364. *See id.*

365. *Id.*

366. *See id.*

367. *See id.*

368. Helene Elliot, *The Sounds of Silence Haunt Those Waiting for Angels to Take the Field*, L.A. TIMES, Feb. 16, 1990, at C8; Murray Chass, *Negotiations Exchange Outlooks on Talks*, N.Y. TIMES, Feb. 16, 1990, at A26; Richard Justice, *Negotiators Hit Salary Arbitration; Baseball Camps Closed as Talks Narrow Focus*, WASH. POST, Feb. 16, 1990, at F1.

369. *See* Paul Staudohar, *Baseball Impasse: Looking Out for No. 1*, N.Y. TIMES, Mar. 11, 1990, § 8, at 10.

370. *See id.*

371. *See id.*

372. Murray Chass, *Baseball's Labor Dispute Settled With Compromise on Arbitration*, N.Y. TIMES, Mar. 19, 1990, at A1; Ross Newhan, *Lockout Ends*, L.A. TIMES, Mar. 19, 1990, at C1.

373. Chass, *supra* note 372, at A1.

tration.[374] The agreement liberalized eligibility requirements for salary arbitration by extending eligibility to players with two years of experience.[375] In addition, the agreement provided that either side might reopen negotiations on certain key economic issues, such as free agency, arbitration, and minimum salary, after three years.[376]

The 1990 season was not significantly affected by the lockout.[377] Nonetheless, any optimism generated by the 1990 agreement was quickly stifled on December 7, 1992, when the owners exercised their option to reopen the agreement for the 1993 season in the areas of free agency, salary arbitration, and minimum salary.[378] When the negotiations began on January 13, 1993, owners' representative Richard Ravitch announced that he would recommend that

374. *See id.*; Joseph Durso, *Back To Work With Mixed Views*, N.Y. TIMES, Mar. 20, 1990, at B15; Murray Chass, *Baseball Negotiators Cleaning Up Loose Ends*, N.Y. TIMES, Mar. 20, 1990, at B11; Ross Newhan, *Major League Baseball: The Lockout Aftermath; Anatomy of a Compromise; Behind the Scenes: With Progress on Arbitration Seemingly Hopeless, a Brainstorm Sweeps Away the Last Barrier*, L.A. TIMES, Mar. 20, 1990, at C1.

375. Chass, *supra* note 372, at A1; Durso, *supra* note 374, at B15; Newhan, *supra* note 374, at C1. This agreement demonstrated significant compromise by both sides. Chass, *supra* note 372, at A1; Durso, *supra* note 374, at B15; Newhan, *supra* note 374, at C1. During the negotiations, the players insisted that the salary arbitration requirement be reduced from three to two years, as it had been before the 1985 negotiations. Chass, *supra* note 372, at A1; Durso, *supra* note 374, at B15; Newhan, *supra* note 374, at C1. The owners adamantly resisted reducing the salary arbitration eligibility requirement from three years. Chass, *supra* note 372, at A1; Durso, *supra* note 374, at B15; Newhan, *supra* note 374, at C1.

376. Newhan, *supra* note 374, at C1; Chass, *supra* note 374, at B11; Chass, *supra* note 372, at A1.

377. The start of the 1990 season was postponed from April 2 until April 9. Richard Justice, *Focus Shifts to Schedule; Season May Run Late*, WASH. POST, Mar. 21, 1990, at F3. Nevertheless, the season was extended three days to allow each team to play a full 162 game schedule. Ross Newhan, *Season Will Be Longer to Stay 162*, L.A. TIMES, Mar. 23, 1990, at C1.

378. Mark Maske, *Baseball Owners Reopen Labor Talks; Spring Lockout Uncertain*, WASH. POST, Dec. 8, 1992, at E1; Murray Chass, *Baseball Owners Vote to Reopen Talks*, N.Y. TIMES, Dec. 8, 1992, at B17; Ross Newhan, *Baseball Owners Open Door to Talks; Contract: With Lockout Looming, They Vote, 15-13, to Resume Player Negotiations*, L.A. TIMES, Dec. 8, 1992, at C1.

the owners decline to impose a lockout in 1993.[379] Although no agreement was reached, the 1993 season began as scheduled on April 5.[380] Despite the absence of an agreement, neither the players nor owners implemented a work stoppage throughout the 1993 season.[381] Furthermore, on August 12, 1993, the owners pledged not to impose a lockout or unilaterally change the terms of the CBA before the end of the 1994 season.[382] Nonetheless, when the agreement expired on December 31, 1993, the parties were no closer to an agreement than they were a year earlier. The negotiations continued through the winter, and the 1994 season began on time. Negotiations continued throughout the year, and, on June 15, the owners presented a salary cap proposal to the players.[383] On July 19, the MLBPA rejected the owners' proposal, but the owners refused to rescind their demand for a salary

379. Murray Chass, *Owners' Labor Agent Doesn't Favor Lockout*, N.Y. TIMES, Jan. 14, 1993, at B13; Ross Newhan, *Baseball Lockout Deemed Unlikely; Negotiations: Owners' Representative Reopens Bargaining by Saying He Will Recommend Against Hostile Threats*, L.A. TIMES, Jan. 14, 1993, at C2; Mark Maske, *Chance of Lockout Downplayed; Negotiator Says Owners Want Salary Cap Based on Revenue*, WASH. POST, Jan. 14, 1993, at D1.

380. Claire Smith, *Baseball: Opening Day; Ball Drops, Year Starts: Time for Baseball 93*, N.Y. TIMES, Apr. 5, 1993, at C1.

381. The 1993 season culminated in a dramatic World Series finish, in which the Toronto Blue Jays defeated the Philadelphia Phillies, four games to two, to capture their second consecutive Title. The Blue Jays won the deciding game eight to six, on Joe Carter's three-run home run, with one out in the bottom of the ninth inning. Bob Nightengale, *World Series; Toronto Blue Jays vs. Philadelphia Phillies; Carter Sends Everyone Home; Blue Jays Repeat Crown on Homer in Ninth, 8-6*, L.A. TIMES, Oct. 24, 1993, at C1; Mark Maske, *Carter's Swing Gives Series Smashing Finish; Jays Win 2nd Title on Homer in 9th*, WASH. POST, Oct. 24, 1993, at D1.

382. Ross Newhan, *Owners Still Not in Agreement; Baseball: They Claim They are Closer on Revenue Sharing and Vow For No Lockout in '94*, L.A. TIMES, Aug. 13, 1993, at C7; Murray Chass, *No Lockout, but a War of the Words*, N.Y. TIMES, Aug. 14, 1993, § 1, at 27; Mark Maske, *'93 Strike Unlikely; Pledge Soothes Baseball Players*, WASH. POST, Aug. 14, 1993, at F1.

383. Ross Newhan, *Owners' Proposal Seeks Salary Cap, 50-50 Revenue Split; Baseball: Plan Also Would End Arbitration; Fehr Not Impressed*, L.A. TIMES, June 15, 1994, at C5; Murray Chass, *Owners Unveil Salary Cap Proposal to a Chilly Reception From Players*, N.Y. TIMES, June 15, 1994, at B13; Richard Justice, *Baseball Proposes Salary Cap; Move Heats Up Talk of a Strike*, WASH. POST, June 15, 1994, at D1.

cap.[384] As the end of the season approached, the players threatened a strike.[385] On August 12, 1994, after one last unproductive bargaining session, the players went on strike.[386] On September 14, after several unsuccessful negotiating sessions, the season was canceled.[387]

II. THE HISTORY OF EMPLOYMENT RELATIONS IN PROFESSIONAL FOOTBALL

In contrast to the more structured legal development in professional baseball, the employment relationship in professional football can be characterized by a simultaneous application of contract, antitrust, and labor law principles.[388] Part II of this Note provides an overview of the development of the employment relationship in professional football. First, this part examines the early years of the National Football League ("NFL"), and its attempt to obtain the same antitrust immunity as professional baseball. Second, this part

384. Richard Justice, *Strike All But Certain; Baseball Players, Owners Won't Yield on Salary Cap*, WASH. POST, July 19, 1994, at E1; Murray Chass, *Baseball; Owners and Players Stand Still; Clock Runs*, N.Y. TIMES, July 19, 1994, at B9; Ross Newhan, *Players' Union Rejects Owners' Salary Cap; Baseball: Negotiations Will Continue Wednesday, But a Strike Date is Expected By July 31*, L.A. TIMES, July 19, 1994, at C4.

385. *See* Ross Newhan, *Players Call For Aug. 12 Walkout Date; Baseball: With Season In Jeopardy, Players Have $175-Million Strike Fund, and Owners Face Loss of $140 Million in Postseason Revenue*, L.A. TIMES, July 29, 1994, at C1; Murray Chass, *Players' Association Sets Strike Date of Aug. 12*, N.Y. TIMES, July 29, 1994, at B9.

386. Murray Chass, *No Runs, No Hits, No Errors: Baseball Goes on Strike*, N.Y. TIMES, Aug. 12, 1994, at A1; Richard Justice, *With Baseball's Last Out; a Strike, Players Walk Off Job After Failing to Agree With Owners*, WASH. POST, Aug. 12, 1994, at A1; Ross Newhan, *Owners Gripe as Baseball Strike Begins*, L.A. TIMES, Aug. 12, 1994, at A1.

387. Murray Chass, *Owners Terminate Season, Without the World Series*, N.Y. TIMES, Sept. 15, 1994, at A1; Mark Maske, *Baseball Season Wiped Out; Team Owners Cancel Remaining Schedule and World Series*, WASH. POST, Sept. 15, 1994, at A1; Ross Newhan, *Baseball Season, Series Canceled; Sports: Owners Say Failure to Reach Bargaining Accord and 34-Day Players' Strike Made it Impossible to Resume Play. World Series Won't Be Played for First Time Since 1904*, L.A. TIMES, Sept. 15, 1994, at A1.

388. *Cf.* BERRY, *supra* note 20, at 87-123 (discussing the history of employment relations in professional football).

considers the nonstatutory labor exemption to the Sherman Act, which the NFL employed to circumvent antitrust constraints. Finally, this part examines the development of employment relations between owners and players from the inception of the National Football League Players' Association ("NFLPA") to the present.

A. *The National Football Leagues' Early Struggles and It's Press for Antitrust Immunity*

The NFL, which first commenced operations in 1920,[389] did not appear in labor litigation until the 1950s.[390] The first twelve years of the league's existence were largely dominated by the sport's quest for professional viability.[391] During this period, there was little stability in the league.[392] Owners constantly formed and dissolved league franchises throughout the "season," which often lacked a set schedule.[393] This constant state of flux dominated the league until 1936, the first year in which the NFL finished the season with all of the franchises with which it had started and the first year in which all the teams in the league played the same number of games.[394] Given the turmoil of this period, the NFL imposed virtually no mobility restraints on players.[395]

During the 1950s, football's popularity and profitability

389. Lee Goldman, *Sports, Antitrust, and the Single Entity Theory*, 63 TUL. L. REV. 751, 756-57 (1989). The league was founded in 1920 under the name "American Professional Football Association". *Id.* In 1922 the league adopted its current name, "National Football League." *Id.*

390. BERRY, *supra* note 20, at 96.

391. *Id.* at 89.

392. *Id.*

393. *Id.*

394. *Id.* at 91.

395. *See* BERRY, *supra* note 20, at 89-90. During the early years of the NFL, teams were more concerned with financial viability than success. *See id.* During the 1921 season, several teams disbanded, and others formed to begin play as the season was in progress. *Id.* Twenty-three different teams played all or part of the year. *Id.* From 1922 to 1932 there was constant franchise movement in and out of the league. *Id.* The NFL membership grew to 22 teams in 1926 and dropped to eight during the 1932 season. BERRY, *supra* note 20, at 89-90.

swelled.[396] In the wake of this growing public interest in the sport, the NFL pressed courts for the same antitrust immunity that baseball enjoyed.[397] In *United States v. National Football League*,[398] a federal court in Pennsylvania held that radio and television broadcasts of professional football were subject to the Sherman Act.[399] In *National Football*, the government sought to enjoin the enforcement of Article X of the NFL By-laws,[400] which provided teams with exclusive broadcast rights within their respective home territories.[401] Finding that Article X was illegal under the Sherman Act, the court explained that radio and television, which broadcasted NFL games across state lines, clearly affected interstate commerce.[402] As a result, the court held that Article X was subject to antitrust constraints.[403] In so holding, the court rejected the notion that professional football, like professional

396. *Id.* at 91.

397. *See id.* at 92. During this period all of the major professional team sports pressed for antitrust immunity and failed. *See* Philadelphia World Hockey Club v. Philadelphia Hockey Club, 351 F. Supp. 462 (E.D. Pa. 1972); Boston Professional Hockey Ass'n v. Cheevers, 348 F. Supp. 261 (D. Mass. 1972), *rev'd*, 472 F.2d 127 (1972); Denver Rockets v. All-Pro Management, 325 F. Supp. 1049 (C.D. Cal. 1971).

398. 116 F. Supp. 319 (E.D. Pa. 1953).

399. *Id.* at 321, 327-28, 330.

400. *Id.* at 321.

401. *Id.*

402. *Id.* at 327. The court reached this conclusion without considering whether professional football itself was engaged in interstate commerce. *National Football League*, 116 F. Supp. at 327. The court also stated that "[s]ince the League by-laws restrict substantially something which is in interstate commerce it is immaterial whether professional football by itself is commerce interstate commerce." *Id.* at 327-28. On this point, the court quoted the United State Supreme Court's decision in United States v. Women's Sportswear Ass'n, 336 U.S. 460, 464 (1949):

> Restraints, to be effective, do not have to be applied all along the line of movement of interstate commerce. The source of the restraint may be intrastate, as the making of a contract or combination usually is; the application of the restraint may be intrastate, as it often is; but neither matters if the necessary effect is to stifle or restrain commerce among the states. If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze.

Id. at 328.

403. *Id.* at 327-28.

baseball, was exempt from antitrust law.[404]

In 1957, the NFL's quest for antitrust immunity reached the Supreme Court in *Radovich v. National Football League*.[405] Bill Radovich, a player blacklisted by the NFL, sued the league for treble damages, alleging a conspiracy to monopolize interstate commerce in the business of professional football.[406] The Ninth Circuit Court of Appeals had dismissed the complaint, relying on *Federal Baseball*, and held that football was not interstate commerce under the Sherman Act.[407] The Supreme Court reversed, holding that *Federal Baseball*'s antitrust exemption was expressly limited to professional baseball.[408] The Court reasoned that its determination in *Federal Baseball* of whether a particular business is subject to the Sherman Act was based on the volume of interstate activity involved in the business under review.[409] The *Radovich* Court held that the amount of interstate activity involved in

---

404. *Id.* at 328. The court, discussing the Supreme Court's decisions in *Federal Baseball* and *Toolson*, said:

> The only question involved in those cases was whether professional baseball itself is interstate commerce. No question of restrictions on the sale of radio and television rights was involved in those cases. The present case, on the other hand, primarily concerns restrictions imposed by the National Football League on the sale of radio and television rights. Therefore, the present case basically concerns the League's restraint of interstate commerce in the radio and television industries. It is obvious that whether professional football itself is or is not engaged in interstate commerce is immaterial in the present case and that the decisions in the baseball cases referred to do not control the present case.

Id.

405. 352 U.S. 445 (1957).

406. *Radovich*, 352 U.S. at 445.

407. Radovich v. National Football League, 231 F.2d 620, 623 (9th Cir. 1956), *rev'd*, 352 U.S. 445.

408. *See Radovich*, 352 U.S. at 451. The Court reiterated its holding in United States v. International Boxing Club, 348 U.S. 236 (1955), that the decision in *Federal Baseball* "could not be relied upon as a basis of exemption for other segments of the entertainment business, athletic or otherwise. . . ." *International Boxing Club*, 348 U.S. at 242-43, *quoted in Radovich*, 352 U.S. at 451. In addition, the Court once again failed to address baseball's antitrust exemption and added that any inconsistency in their decision was to be resolved by Congress. *Radovich*, 352 U.S. at 449-52.

409. *Radovich*, 352 U.S. at 451.

professional football, unlike professional baseball, was sufficient to draw the sport within the protection of the Sherman Act.[410] The Court based this determination on the fact that the league scheduled a great number of games in various metropolitan areas, and that the revenues raised from interstate radio and television broadcast contracts produced a significant portion of the league's gross profits.[411]

Despite the players' victory in *Radovich*, the NFL was still able to unilaterally control the employment relationship.[412] After *Radovich*, the owners restricted the rights of players with devices such as the Rozelle Rule,[413] and the amateur draft,[414] both of which were implemented under the nonstatutory labor exception to the Sherman Act.[415] It was not until the players resorted to union tactics that the gains of *Radovich* were realized.

B. *The Nonstatutory Labor Exemption to the Sherman Act*

The Supreme Court has encouraged collective bargaining under the NLRA[416] by creating a nonstatutory labor exemption to the Sherman Act.[417] This exemption extends antitrust immunity to collective bargaining agreements made by labor

410. *Id.* at 452.

411. *Id.* at 449, 453-54.

412. *See infra* part II.C (discussing development of the employment relations between owners and players in professional football after the formation of the NFLPA).

413. *See infra* notes 455-66 and accompanying text (discussing football's Rozelle Rule).

414. *See supra* note 58 (describing the draft); *infra* notes 498-502 and accompanying text (discussing the invalidation of the draft on antitrust grounds).

415. Under the nonstatutory labor exception to the Sherman Act, agreements that would otherwise constitute illegal combinations in restraint of trade are immunized from antitrust law if they were reached through collective bargaining. *See* WARREN FREEDMAN, PROFESSIONAL SPORTS AND ANTITRUST 49-52 (1987).

416. *See supra* part I.C.1 (discussing the NLRA).

417. Connell Constr. Co. v. Plumbers & Steamfitters Local Union No. 100, 421 U.S. 616, 622 (1975) (holding that the nonstatutory labor exemption finds the proper balance between two competing congressional policies, collective bargaining under the NLRA and free competition in business markets).

unions and nonunion groups.[418] The Supreme Court has defined the scope of the exemption in three leading cases: *United Mine Workers v. Pennington*,[419] *Local Union No. 189, Amalgamated Meat Cutters & Butcher Workmen v. Jewel Tea Co.*,[420] and *Connell Construction Co. v. Plumbers & Steamfitters Local No. 100*.[421]

In *Pennington*, the Court rejected the assertion that a collective bargaining agreement would automatically receive a nonstatutory labor exemption from antitrust laws.[422] The case arose out of an attempt to control the production of coal through an agreement between the United Mine Workers and various coal producers.[423] The Court held that an agreement between a union and an employer cannot affect an entire industry.[424] The Court reasoned that the protection provided by the federal labor policy encouraged by the nonstatutory labor exemption extended only to legitimate union goals.[425] As a result, the *Pennington* Court concluded that union control of product markets was not a legitimate goal.[426]

The Court's reasoning in *Pennington* was clarified in *Jewel Tea*. In *Jewel Tea*, the Court held that a restriction on market-

418. *Id.*

419. 381 U.S. 657 (1965).

420. 381 U.S. 676 (1965) (superseded by statute as stated in Brotherhood of Maintenance of Way Employees v. Guilford Transp. Indus., Inc., 803 F.2d 1228 (1st Cir. 1986), *cert. denied*, Delaware H.R. Co. v. Brotherhood of Maintenance of Way Employees, 481 U.S. 1037 (1987)).

421. 421 U.S. 616 (1975).

422. *Pennington*, 381 U.S. at 664-65.

423. *Id.* at 659-60. The mine workers and several large coal producers considered overproduction of coal a serious concern, and agreed to eliminate smaller companies with this agreement. *Id.* The agreement included increased wages, which the union agreed to impose on other coal producers regardless of their ability to pay the increased costs. *Id.* at 660.

424. *Id.* at 666. The Court stated, "there is nothing in the labor policy indicating that the union and the employers in one bargaining unit are free to bargain about the wages, hours, and working conditions of other bargaining units or to attempt to settle these matters for the entire industry." *Id.*

425. *Id.* at 665-67.

426. *Id.* at 664-64.

ing hours included in a CBA between the union and various meat retailers qualified for a nonstatutory labor exemption.[427] The Court employed a balancing test that weighed the relative impact of the agreement on the product market against the agreement's benefits to the union members.[428] The Court held that because the agreement resulted from bona-fide, arms-length negotiations and did not involve a non-labor group, its ancillary effects on the product market were insufficient to negate the agreement.[429]

The Supreme Court further refined the *Jewel Tea* balancing test in *Connell*.[430] In evaluating a hot cargo agreement,[431] the *Connell* court determined that the market restraints imposed by the agreement exceeded those allowable under the *Jewel Tea* balancing approach.[432] The Court held that a collective bargaining agreement that substantially affected market conditions, without promoting legitimate union interests, was not entitled to antitrust immunity.[433]

The standard of applicability of the nonstatutory labor exemption can therefore be condensed into three requirements: (1) the restraint must primarily affect only the parties to the agreement; (2) the restraint must be concerned with a mandatory subject of bargaining; and (3) the restraint must be a product of bona-fide arms-length negotiations.[434] Although these requirements limit the availability of the exemption, they have nevertheless provided owners with a means for implementing restrictive measures that otherwise

427. *Jewel Tea Co.*, 381 U.S. at 689-90.

428. *Id.* at 690-92; *see id.* at 690 n.5.

429. *Id.* at 689-90.

430. *Connell*, 421 U.S. at 622.

431. *Id.* at 618-21. The hot cargo agreement was a collective bargaining agreement between the union and local contractors requiring the contractors to hire only subcontractors who were parties to the agreement. *Id.*

432. *Id.* at 621-26.

433. *Id.* at 626.

434. Mackey v. National Football League, 543 F.2d 606, 614 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977).

would violate antitrust laws.[435]

C. *The Players Unionize*

In an effort to overcome the restrictions imposed by the owners and to protect their interests against the owners, the players unionized in 1956.[436] The strength of the players' union, the National Football League Players Association ("NFLPA"), however, has been limited due to weak player solidarity since its inception.[437] Strike attempts in 1956 and 1959 were aborted by the NFLPA when it became clear that the players were not unified.[438] It was not until 1968 that the NFL experienced its first full scale strike.[439] In 1968, disputed issues included player mobility, minimum salary, and owner pension contributions.[440] When negotiations reached an impasse during preseason training camp, the players went on strike.[441] The owners retaliated with a lockout.[442] The strike and lockout ended quickly, resulting in an agreement between the parties after only ten days.[443]

The expiration of the 1968 agreement in January 1970 resulted in another work stoppage.[444] The players demanded increased pension contributions, increased postseason com-

435. *See infra* notes 455-66 and accompanying text (discussing football's Rozelle Rule); *infra* note 58 and accompanying text (discussing football's draft).

436. *See* BERRY, *supra* note 20, at 96.

437. *See infra* note 438 and accompanying text (discussing aborted strike attempts in 1956 and 1959); *infra* notes 467-70 and accompanying text (discussing the 1974 strike); *infra* notes 473-78 (discussing the 1975 strike); *infra* notes 540-48 and accompanying text (discussing the 1987 strike).

438. *See* BERRY, *supra* note 20, at 124.

439. Glen St. Louis, *Keeping the Playing Field Level: The Implications, Effects and Application of the Nonstatutory Labor Exemption on the 1994 National Basketball Association Collective Bargaining Process*, 1993 DET. C.L. REV. 1221, 1229 (1993).

440. BERRY, *supra* note 20, at 124.

441. *Id.*

442. *Id.*; *see supra* note 282 (defining lockout as the employer's correlative to the employee's strike).

443. *See* BERRY, *supra* note 20, at 124. The focus of the 1968 agreement was the pension contribution, and the settlement was primarily a coming together of the owners' and players' demands. *Id.* The free agency issue was secondary and did not factor into the settlement. *See id.*

444. St. Louis, *supra* note 439, at 1229.

pensation, and a grievance procedure.[445] After fruitless negotiations, the players struck again during their July training camp.[446] The owners imposed a lockout three days later.[447] The strike and lockout ended after twenty days, when the owners agreed to increased pension contributions over four years.[448] Once again, the issue of player mobility did not factor into the settlement.[449]

When the 1970 agreement expired in 1974, the players went on strike for the third time.[450] This time, however, issues concerning player mobility were the focus of the NFLPA's efforts.[451] The players sought to eliminate measures such as the reserve list, the option clause, the college draft, and the waiver system.[452] The primary focus of the NFLPA's efforts, however, was the elimination of the Rozelle Rule,[453] which had severely restricted player movement in the 1960s and 1970s.[454]

---

445. *Id*; BERRY, *supra* note 20, at 125. Unlike baseball players, NFL players had no grievance avenue through which to further their interests at this point. *Id*.

446. *Id*.

447. *Id*.

448. *Id*.

449. *See* St. Louis, *supra* note 439, at 1229. The players raised objections to the Rozelle Rule, but it remained when the strike was settled. *Id*.

450. Dickerson, *supra* note 70, at 169.

451. *See id*.; St. Louis, *supra* note 439, at 1229.

452. *See* Dickerson, *supra* note 70, at 169.

453. The Rozelle Rule was embodied in § 12.1(H) of the NFL Constitution & Bylaws. Section 12.1(H) stated:

> Any player, whose contract with a League club has expired, shall thereupon become a free agent, and shall no longer be considered a member of the team of that club following the expiration date of such contract. Whenever a player, becoming a free agent in such manner, thereafter signed a contract with a different club in the League, then, unless mutually satisfactory arrangements have been concluded between the two League clubs, the Commissioner may name and then award to the former club one or more players, from . . . the acquiring club as the Commissioner in his sole discretion deems fair and equitable; any such decision by the commissioner shall be final and conclusive.

NFL Constitution and Bylaws 12.1(H), *quoted in* Mackey v. National Football League, 543 F.2d 606, 610-11 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977).

454. *See* BERRY, *supra* note 20, at 125.

The Rozelle Rule was conceived by, and named after, then-NFL commissioner Alvin Ray "Pete" Rozelle in 1963.[455] The Rozelle Rule bound a player to a team for two years, after which time he could become a free agent.[456] The Rozelle Rule, however, required any club signing a free agent to compensate the player's former team.[457] If the two teams could not reach an agreement, the commissioner had discretion to unilaterally award "equal compensation" to the player's former team.[458] Such compensation could include players, draft choices, or cash.[459]

In practice, the Rozelle Rule denied players the opportunity to market their services to other teams in the league.[460] Signing a player who had played out his option was risky because teams never knew what penalty the commissioner would impose.[461] For example, Dave Parks, an all-pro wide receiver for the San Francisco Forty-Niners, played out the option year of his contract and subsequently signed with the New Orleans Saints.[462] As compensation for the team's loss, Commissioner Rozelle ordered the Saints to give the Forty-Niners the team's first-round draft choices for both 1968 and 1969.[463] Harsh penalties, such as the one suffered by the Saints, made teams reluctant to sign free agents, and effectively stifled player movement among teams.[464] In fact, from 1963 to 1976, 176 players played out their options.[465] Of

455. Staudohar, *supra* note 214, at 87.

456. Truelock, *supra* note 20, at 1925-26; STAUDOHAR, *supra* note 214, at 87-88; *see Mackey*, 543 F.2d at 610.

457. Truelock, *supra* note 20, at 1926; *see* NFL Constitution and Bylaws, *supra* note 453, 12.1(H).

458. Truelock, *supra* note 20, at 1926; *see* NFL Constitution and Bylaws, *supra* note 453, 12.1(H); STAUDOHAR, *supra* note 214, at 87-88.

459. STAUDOHAR, *supra* note 214, at 87-88.

460. *See id.*; BERRY, *supra* note 20 at 125.

461. *See* Truelock, *supra* note 20, at 1926; STAUDOHAR, *supra* note 214, at 88.

462. STAUDOHAR, *supra* note 214, at 88.

463. *Id.*

464. *See* Truelock, *supra* note 20, at 1926; STAUDOHAR, *supra* note 214, at 87-88.

465. STAUDOHAR, *supra* note 214, at 87-88.

these 176 players, however, only four signed with other clubs under circumstances in which the Commissioner awarded compensation.[466]

Despite the NFLPA's ambitious approach in 1974, the strike did not go as planned.[467] Rookies and free agents frequently "crossed the picket lines."[468] Within a month, approximately 311 out of 1200 veteran players had rejoined NFL teams.[469] After forty-two days, in the face of overwhelming public support for the owners, the strike quietly ended.[470]

The players completed the 1974 season without a CBA.[471] As the start of the 1975 season approached, the sides were far from reaching an agreement.[472] Once again the players voted to strike.[473] The initial decision to strike was made by five individual teams acting independently.[474] In the wake of these initial strike votes, each of the twenty-six teams in the league conducted independent strike votes.[475] Eleven teams voted not to strike.[476] The players' inability to act collectively left the union in a weak position.[477] Neither the public nor the owners took the players' demands seriously, and consequently the strike quickly ended before a single

466. The players were Pat Fischer, David Parks, Phil Olson, and Dick Gordon. STAUDOHAR, *supra* note 214, at 87-88. Only 34 of the 176 players signed with other teams, with the clubs reaching mutually agreed upon compensation in 27 of those cases. *Mackey*, 543 F.2d at 611.

467. *See* BERRY, *supra* note 20, at 125-26.

468. *Id.*

469. *Id.* at 126.

470. *See id.*; Dickerson, *supra* note 70, at 167 n.6; St. Louis, *supra* note 439, at 1229.

471. *See* Ethan Lock, *The Scope of the Labor Exemption in Professional Sports*, 1989 DUKE L.J. 339, 359 (1989).

472. BERRY, *supra* note 20, at 126.

473. Lock, *supra* note 471, at 360.

474. BERRY, *supra* note 20, at 126. The initial teams to strike were the New England Patriots, Detroit Lions, Washington Redskins, New York Giants, and New York Jets. *Id.*

475. *Id.*

476. *Id.*

477. *Id.*

regular season game was canceled.[478] Once again the owners and players failed to reach an agreement.[479]

The NFL operated without a CBA from 1974 to 1977.[480] The NFLPA, realizing that the players lack of solidarity had rendered union tactics ineffective, opted to revisit the antitrust challenge through litigation.[481] The prime targets were the league's two primary restrictions on player mobility: the draft and the Rozelle Rule.[482]

The first legal challenge to the Rozelle Rule was the 1974 case, *Kapp v. National Football League*.[483] In *Kapp*, a federal court in California held that the Rozelle Rule placed an unreasonable restraint on trade due to its scope, duration, and the excessive power given to the Commissioner.[484] The court noted, however, that while the monopolistic combinations utilized by the NFL would constitute *per se* antitrust violations in other businesses, the uniqueness of professional sports required the application of a reasonableness standard.[485] The court applied a reasonableness test and con-

---

478. BERRY, *supra* note 20, at 126.

479. *Id.*

480. *See* Lock, *supra* note 471, at 359. During this period the league operated under the terms of the expired 1970 agreement. BERRY, *supra* note 20, at 126.

481. *See* BERRY, *supra* note 20, at 126.

482. *Id.*

483. 390 F. Supp. 73 (N.D. Cal. 1974), *aff'd*, 586 F.2d 644 (9th Cir. 1978), *cert. denied*, 441 U.S. 907 (1979). Joe Kapp, a quarterback for the Minnesota Vikings, played out his contract in 1969 and became a free agent when he declined to re-sign with the Vikings. *Id.* Although other teams were interested in his services, no offers were forthcoming. *Id.* Kapp eventually signed with the New England Patriots, who compensated the Vikings, but he was later forced to sit out because he refused to sign a Standard Player Contract which would bind him to all of the league's rules. *Id.* at 77.

484. *Id.* at 82. According to the *Kapp* court:

> [A] rule imposing restraint virtually unlimited in time and extent, goes far beyond any possible need for fair protection of the interests of the club-employers or the purposes of the NFL and . . . imposes upon the player-employees such undue hardship as to be an unreasonable restraint.

390 F. Supp. at 82.

485. *Id.* at 81. Kapp argued that the draft, the option rule, the Rozelle Rule, and other restrictive rules of the NFL constitution and by-laws constituted a

cluded that the contractual restrictions on Kapp's right to pursue his profession were patently unreasonable.[486] On appeal, the Ninth Circuit Court of Appeals upheld this decision.[487]

In 1975, the NFLPA challenged the Rozelle Rule in *Mackey v. National Football League*.[488] In *Mackey*, a federal court in Minnesota held that the Rozelle Rule violated the Sherman Antitrust Act and was therefore an illegal restraint of trade.[489] The *Mackey* court based its decision primarily on the *per se* rule,[490] but alternately held that the Rozelle Rule was invalid under the reasonableness standard.[491] Furthermore, the court dismissed the league's contention that the rule was immune from antitrust law under the nonstatutory labor exception of the Sherman act.[492]

The basic holding of the trial court in *Mackey* was upheld on appeal,[493] but the Eighth Circuit Court of Appeals explicitly rejected the *per se* approach and adopted the reasonable-

---

combination among defendants to refuse to deal with players except under the stated condition—in effect a boycott or blacklist—and as such was a per se violation of the Sherman Act. *Id*. Kapp alternately argued that the rules in question constituted an illegal combination under a reasonableness interpretation of the Sherman Act, which allows only combinations that are reasonably necessary to achieve the business goals of the employer. *Id.* The league countered by arguing that the rules did not constitute a per se violation of the Sherman Act, and that even if they amounted to an antitrust violation under the reasonableness standard, they were immunized from antitrust laws by having been the subject or result of collective bargaining (The Nonstatutory Labor Exception). *Id.* at 78-79.

486. *Kapp,* 390 F. Supp. at 86.

487. *Kapp*, 586 F.2d at 650.

488. 407 F. Supp. 1000 (D. Minn 1975), *aff'd in part, rev'd in part*, 543 F.2d 606 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977).

489. *Id.* at 1007.

490. *See supra* note 485 and accompanying text (discussing the *per se* standard).

491. *Mackey*, 407 F. Supp. at 1007; *see supra* note 485 and accompanying text (discussing the rule of reason standard).

492. *Mackey*, 407 F. Supp. at 1008-10. The court reasoned that the nonstatutory labor exemption could not be applied where an anti-competitive provision was unilaterally imposed upon a weak union. *Id.* at 1010; *see supra* note 415 and accompanying text (discussing the nonstatutory labor exemption).

493. *Mackey*, 543 F.2d at 623.

ness standard for all player restraints.[494] The appellate court agreed with *Kapp*, holding that the Rozelle Rule violated antitrust law as an unreasonable restraint of trade, as it was unreasonably broad in its application, lacked procedural safeguards, and substantially restricted player mobility.[495] In addition, the appellate court set forth three prerequisites for the application of the nonstatutory labor exception, requiring that the restraint: (1) primarily affect only the parties to the collective bargaining relationship; (2) concern a mandatory subject of collective bargaining; and (3) be the product of bona fide, arms-length negotiation.[496] In *Mackey*, the NFL's failure to satisfy the third prong prevented it from claiming the benefit of the exemption.[497]

On the heels of the *Mackey* decision, the owners suffered another defeat in *Smith v. Pro-Football*.[498] In *Smith*, the NFL's college draft system was held to violate the Sherman Act.[499] The owners' attempt to fit the draft within the nonstatutory

---

494. *Id.* at 619. Chief Judge Lay explained:

> [T]he NFL assumes some of the characteristics of a joint venture in that each member club has a stake in the success of the other teams . . . . Although businessmen cannot wholly evade the antitrust laws by characterizing their operation as a joint venture, we conclude that the unique nature of the business of professional football renders it inappropriate to mechanically apply per se illegality rules . . . . This is particularly true where, as here, the alleged restraint does not completely eliminate competition for players' services . . . . In similar circumstances, when faced with a unique or novel business situation, courts have eschewed a per se analysis in favor of an inquiry into the reasonableness of the restrain under the circumstances.

Id. (citations omitted). According to the *Mackey* court, "[i]t may be that some reasonable restrictions relating to player transfers are necessary for the successful operation of the NFL." *Id.* at 623.

495. *Id.* at 622.

496. *Mackey*, 543 F.2d at 614.

497. *Id.* at 616. Applying the three prong test to the facts in *Mackey*, the court concluded that the Rozelle Rule satisfied the first two prongs. *Id.* at 615. However, the court accepted the lower court's findings that the Rozelle Rule was thrust upon a weak union, and that the players did not receive direct or indirect benefit for agreeing to the restraint. *Id.* at 616. Therefore, the exemption could not be applied. *Id.*

498. 420 F. Supp. 738 (D.D.C. 1976), *modified*, 593 F.2d 1173 (D.C. Cir. 1978).

499. *Id.* at 744.

labor exception of the Sherman Act failed.[500] The court found that the draft system was a mandatory subject of collective bargaining, and was qualified for antitrust immunity under the nonstatutory labor exemption.[501] The *Smith* court, however, held that the draft system was not entitled to immunity from antitrust review because it was "an outright, undisguised refusal to deal constitut[ing] a group boycott in its classic and most pernicious form."[502]

The *Mackey* and *Smith* decisions were significant victories for the NFLPA, allowing greater mobility for players.[503] Instead of fortifying their gains in the 1977 CBA, however, the NFLPA negotiated most of them away.[504]

The 1977 CBA provided for a system of free agency known as the Right of First Refusal/Compensation system ("RFR/C system").[505] Under the RFR/C system, a player be-

---

500. *Id.* at 742. The court rejected the owner's contention that any agreement resulting from union-employer negotiations relating to a mandatory subject of bargaining is automatically exempt from Sherman Act scrutiny. *Id.* The court reasoned that the policy of the nonstatutory labor exemption, "allowing the collective bargaining process, proceeding unfettered by antitrust restraints, to determine wages, hours, and terms and conditions of employment," is not served by extending the exemption to agreements unilaterally imposed by employers. *Id.*

501. *Id.* at 744.

502. *Smith*, 420 F. Supp. at 744. The court further stated:

> The essence of the draft is straightforward: the owners of the teams have agreed among themselves that the right to negotiate with each top quality graduating college athlete will be allocated to one team, and that no other team will deal with that person. This outright, undisguised refusal to deal constitutes a group boycott in its classic and most pernicious form, a device which has long been condemned as a *per se* violation of the antitrust laws .... There is no question but that the restrictions comprising the draft "are naked restraints of trade with no purpose except stifling of competition."

Id. at 744-45 (quoting White Motor Co. v. United States, 372 U.S. 253 (1963) (citations omitted).

503. *See* STAUDOHAR, *supra* note 214, at 88-92; BERRY, *supra* note 20, at 105, 127.

504. Chalian, *supra* note 20, at 616; *see* BERRY, *supra* note 20, at 127; STAUDOHAR, *supra* note 214, at 88.

505. Truelock, *supra* note 20, at 1930. After *Mackey*, the NFLPA and the NFL Management Council did collectively bargain. Robbins, *supra* note 20, at 955.

came a free agent when his contract expired or when he played out his option year.[506] Nevertheless, a free agent's mobility was limited by two restrictions: (1) the free agent's team had the option to match any offer made to a player and to retain his services, and (2) even if the free agent's team refused to match an offer, the team was still entitled to compensation from the acquiring team in the form of future amateur draft choices.[507] During the five years in which the 1977 agreement was in effect, only six of over 500 NFL players who became free agents under the agreement actually changed teams.[508] Except for stripping the Commissioner of his discretionary power to determine compensation, the RFR/C was the reincarnation of the Rozelle Rule.[509]

Professor Berry contends that the NFLPA's reason for "negotiating away" the gains of *Mackey* rest upon the assumption that free agency is of little value to football players.[510] Berry argues that this rationale is based on the economics and nature of football, compared to other professional team sports, and assumes first, that owners have little incentive to sign free agents because of their uncertain impact on winning games, and second, that revenues are secure regardless of team personnel.[511]

The RFR/C system was first developed during these negotiations. *Id.*

506. BERRY, *supra* note 20, at 127. Playing out an option usually meant that an unsigned player was retained by his club for one additional year at 110% of his salary in the previous year. Following the option year, a player could become a free agent. *Id.*

507. Truelock, *supra* note 20, at 1931.

508. BERRY, *supra* note 20, at 127. In fact, fewer than 50 players were even given offers from other NFL teams after receiving free agent status. Truelock, *supra* note 20, at 1931.

509. Robbins, *supra* note 20, at 955; *see* Chalian, *supra* note 20, at 616-17.

510. BERRY, *supra* note 20, at 134.

511. *Id.* Berry argues that the first assumption is probably valid. Unlike other team sports, in which teams are smaller and individual performance is magnified, individual football players have less impact on overall team success. For example, in baseball, a pitcher can practically win or lose a game by himself. In football, no one player can have so great an impact on the outcome of a game without help from other players. A great receiver cannot excel without a good quarterback, and conversely, a great quarterback cannot excel without a good

The 1977 agreement expired in 1982.[512] The players, with the memory of their failure in the 1977 negotiations fresh in their minds, were intent on taking a hard line.[513] A number of factors strengthened the players' resolve. One was the formation of the rival United States Football League ("USFL") in 1982.[514] The USFL, which was bolstered by wealthy owners and a two-year television contract with ABC, removed the NFL owners' monopoly on setting player salaries.[515] The NFL was faced with competition that it could not control.[516] Players could jump to the USFL when their NFL contracts expired.[517] The NFL team that suffered the loss was not entitled to any form of compensation because the USFL was not subject to the NFL's compensation rules.[518]

In addition, the players were encouraged by the success of the 1981 baseball strike.[519] After the baseball strike, player salaries continued to rise and fan attendance returned to record levels.[520] The lasting solidarity of the baseball players showed the NFL players that similar results could be achieved if they remained firm.[521] Thus, when the NFLPA approached the owners with its demands in 1982, they were more committed to their cause than ever before and they were ready to fight to achieve their goals.[522]

---

offensive line and receivers. A team which has all the best offensive personnel may still fail because it lacks a quality defense. Therefore, in football, having the highest payroll does not ensure success. In 1981, only one of the five highest paying teams in the NFL qualified for the playoffs.

512. Lock, *supra* note 471, at 361.

513. *See* BERRY, *supra* note 20, at 128.

514. *Id.*

515. *Id.* at 129.

516. *See* STAUDOHAR, *supra* note 214, at 89.

517. *See id.*

518. *Id.*

519. BERRY, *supra* note 20, at 130; *see supra* notes 318-25 and accompanying text (discussing the 1981 baseball players' strike).

520. BERRY, *supra* note 20, at 130.

521. *Id.*

522. *See id.*

In 1982, the players wanted a larger share of the NFL's revenue.[523] They demanded that a percentage of annual gross team revenues be distributed among the players via a wage scale.[524] The wage scale would have distributed the percentage of gross team revenues to the players on the basis of seniority and objective performance criteria.[525] The union hoped that this system would discourage teams from cutting older players and replacing them with younger ones.[526] In addition, the union sought to eliminate the inequity between the salaries of players who occupied high profile positions and players who did not, although both essentially did the same work—play professional football.[527]

In the 1982 negotiations, the NFLPA demanded, regarding free agency, that all cut players automatically become free agents and not go through waivers, and that a player become a free agent every three years unless he voluntarily agree to stay with his team.[528] The union did not place much emphasis on these points, however, opting instead to focus on their demands for a percentage of gross revenues and a wage scale.[529]

Although negotiations produced no agreement, the 1982 season started on time.[530] Nevertheless, on September 21, 1982, two weeks into the season, the players went out on strike.[531] After fifty-five days, the strike ended when the sides reached a five-year agreement.[532] The season resumed on November 21.[533]

---

523. *Id.* at 131.
524. Lock, *supra* note 471, at 361-62.
525. *Id.* at 362.
526. *See* BERRY, *supra* note 20, at 133-34.
527. *See id.* In 1982 the average salary for a quarterback was $160,037. *Id.* at 134. The average salary for an offensive lineman was $85,543. *Id.*
528. *Id.* at 135.
529. BERRY, *supra* note 20, at 135.
530. *See id.* at 136-37.
531. *Id.* at 137.
532. St. Louis, *supra* note 439, at 1232-33; Lock, *supra* note 471, at 362.
533. BERRY, *supra* note 20, at 146. The season was rejoined as scheduled, and

The five-year agreement favored the owners.[534] The players dropped their demand for a percentage of gross team revenues.[535] Free agency was liberalized by lowering compensation awards, but, for the most part, the RFR/C system remained unchanged.[536] In fact, during the five years in which the 1982 agreement was in effect, only one of approximately 1400 players who became free agents received an offer from another team.[537] A minimum wage scale was adopted; it established a minimum salary for players based on seniority, starting at $30,000 for rookies and ending at $200,000 for sixteen year veterans.[538] The players also received pension and insurance benefits.[539] The 1982 agreement did not alter the employment relationship much, but it did alert both the players and the owners to each other's strength.[540]

When the 1982 agreement expired in 1987, the members of the NFLPA once again went on strike.[541] This time, however, the owners were able to take an intransigent position because their bargaining position had improved significantly since 1982.[542] The USFL had collapsed the year before, and the owners no longer feared losing players and public sup-

---

one makeup game was added. *Id.* Counting the two games played prior to the strike, the regular season was nine games. *Id.* Instead of the ten teams that normally qualified for the playoffs (six division champions and four wild-card entries), the number of teams qualifying for the playoffs was increased to 16. *Id.* at 146-47. The Super Bowl was played on January 30, 1983, as originally scheduled. *Id.* at 147.

534. *See* STAUDOHAR, *supra* note 214, at 77; St. Louis, *supra* note 439, at 1233; Lock, *supra* note 471, at 365; BERRY, *supra* note 20, at 146.

535. Lock, *supra* note 471, at 365.

536. *Id.*; St. Louis, *supra* note 439, at 1233; BERRY, *supra* note 20, at 146.

537. Truelock, *supra* note 20, at 1931. In 1988, Wilbur Marshall moved from the Chicago Bears to the Washington Redskins in exchange for two first round draft choices. Chalian, *supra* note 20, at 616-17 n.161.

538. BERRY, *supra* note 20, at 144.

539. *Id.*

540. *Id.*

541. Lock, *supra* note 471, at 367; St. Louis, *supra* note 439, at 1233; Chalian, *supra* note 20, at 617; Truelock, *supra* note 20, at 1931.

542. STAUDOHAR, *supra* note 214, at 79.

port to the rival league.[543] Thus, when negotiations broke down and the union threatened to strike, the owners decided to take the hard line with a revised strategy: stonewall in negotiations, use the NFL's public relations program to persuade the fans of the validity of their position, and divide and frustrate the players by proceeding with the regular schedule, using strikebreakers.[544] These tactics proved to be effective.[545] As the strike continued, public opinion favored the owners, and player solidarity quickly eroded.[546] Although eighty-four percent of the players remained on strike for its duration, several veteran players crossed the lines as early as the first week.[547] Furthermore, when the strike was called off, it appeared that many players had been on the verge of crossing the lines.[548] On October 15, 1987 the strike ended without reaching a new agreement.[549] The league declared an impasse in the negotiations, and thus continued to operate under the terms of the 1982 agreement.[550]

The NFLPA filed an antitrust suit against the league as the strike ended.[551] In *Powell v. National Football League*,[552] the NFLPA employed antitrust tactics to challenge the college draft and restraints of free agency, such as the RFR/C system.[553] The NFLPA argued that the nonstatutory labor exemption to the Sherman Act did not apply after the expiration of an agreement, and that the owners' application of the

543. *Id.*; *cf.* Lock, *supra* note 471, at 408 (noting the dramatic increase in player salaries during the existence of the USFL: "[t]he tremendous mismatch in bargaining strengths between the NFL and NFLPA is due to the cumulative effect of the lack of intra- and inter-league competition for player services").

544. STAUDOHAR, *supra* note 214, at 79.

545. *See id.* at 79-80.

546. *See id.* at 79-81.

547. *Id.* at 81.

548. *Id.*

549. Truelock, *supra* note 20, at 1931.

550. *See id.*

551. *Id.* at 1932.

552. 678 F. Supp. 777 (D. Minn. 1988), *rev'd*, 930 F.2d 1293 (8th Cir. 1989), *cert. denied*, 498 U.S. 1040 (1991).

553. *Id.* at 777.

1982 agreement's terms therefore fell outside of the exemption.[554] A federal district court in Minnesota agreed with the players, holding that the nonstatutory labor exemption had expired when the 1987 collective bargaining negotiations reached an impasse.[555] Thus, the league's restrictive practices were subject to antitrust scrutiny so long as the league operated without a CBA.[556] The Eighth Circuit Court of Appeals overruled the decision, holding that the nonstatutory labor exception survived the impasse.[557] The court concluded that federal labor law, not antitrust law, applied.[558] The court reasoned that the remedies and procedures available under the labor laws provided sufficient protection to the parties and precluded the application of antitrust laws.[559]

---

554. *Id.* at 778.

555. *Id.* at 788. The court concluded:

> [P]roper accommodation of labor and antitrust interests requires that a labor exemption relating to a mandatory bargaining subject survive expiration of the collective bargaining agreement until the parties reach impasse *as to that issue*; thereafter, the term or condition is no longer immune from scrutiny under the antitrust laws, and the employer runs the risk that continued imposition of the condition will subject the employer to liability.

Id.

556. *Powell,* 678 F. Supp. at 788.

557. Powell v. National Football League, 930 F.2d 1293, 1304 (8th Cir. 1989), *cert. denied*, 498 U.S. 1040 (1991). The court, although it recognized that management is not forever exempt from antitrust laws once a CBA is in place, did not establish exactly when the nonstatutory labor exemption might terminate. *Id.* at 1303. In addressing this issue, the court stated: "As long as there is a possibility that proceedings may be commenced before the National Labor Relations Board, or until final resolution of Board proceedings and appeals therefrom, the labor relationship continues and the labor exemption applies." *Id.* at 1303-04.

558. *Id.* at 1295.

559. *Id.* at 1300-03. In regard to the procedures available under labor laws, the court found that: (1) there is a continuing obligation to bargain in good faith; (2) there is an obligation to maintain current wages and working conditions prior to impasse; and (3) once impasse is reached, employers may only impose new or different terms that are reasonably contemplated within the scope of the pre-impasse proposals. *Powell,* 930 F.2d at 1300-03. With regard to the remedies available under the labor laws, the court found that: (1) the union can strike; (2) the employer can lock out the employees; and (3) the parties may petition the NLRB for a cease and desist order prohibiting conduct constituting and unfair labor practice. *Id.* at 1302.

During the pendancy of the *Powell* litigation, however, the NFL owners offered the NFLPA a choice of two free agency plans.[560] In February, 1989, when negotiations over free agency failed, the owners unilaterally implemented the second proposal, known as Plan B.[561] Under Plan B, each NFL team could protect thirty-seven players on its roster, leaving the others free to negotiate with other teams.[562] The protected players, however, remained subject to the RFR/C system that applied in the 1977 and 1982 CBAs.[563] In addition, because each NFL team was allowed a forty-seven player roster,[564] the resulting quality of the unrestricted players was very low.[565] In the first season following the implementation of Plan B, only 229 of the 619 unrestricted players switched teams.[566] Conversely, not one protected player changed teams during the same period.[567] Thus, as one commentator has observed, Plan B, although not as broad as the RFR/C system, still restricted a substantial number of players from freely switching teams.[568]

On December 5, 1989, the members of the NFLPA voted to decertify the organization in an effort to overcome the nonstatutory labor exemption.[569] Less than five months later, a group of players, led by New York Jets running back Freeman McNeil, filed an antitrust lawsuit against the NFL

560. Truelock, *supra* note 20, at 1938.

561. *Id.*

562. *Id.*; GORMAN & CALHOUN, *supra* note 344, at 162.

563. Truelock, *supra* note 20, at 1938.

564. *Id.*

565. *See id.*; GORMAN & CALHOUN, *supra* note 344, at 162.

566. Craig Neff, *A Semiopen Field*, SPORTS ILLUSTRATED, Apr. 10, 1989, at 14. In fact, in the first year Plan B was implemented, fewer than half of the eligible players gained an active roster spot by opening day. GORMAN & CALHOUN, *supra* note 344, at 162.

567. Neff, *supra* note 566, at 14.

568. Truelock, *supra* note 20, at 1938.

569. *See* Bernard Pellegrino, *Assessing the Impact of the NFL Free Agency Compromise in* McNeil v. National Football League, 11 SUM. ENT. & SPORTS LAW. 3, 3 (1993); Dickerson, *supra* note 70, at 175.

in *McNeil v. National Football League*.[570] The players alleged that the Plan B free agency system violated antitrust law.[571] The NFL answered by asserting immunity from the antitrust challenge under the nonstatutory labor exemption.[572] The NFL also argued that, under the "single entity" defense, Plan B did not violate the antitrust laws because its members functioned as a single economic entity, and therefore, were incapable of forming illegal combinations within the meaning of the Sherman Act.[573] The *McNeil* court, applying the *Mackey* test,[574] held that the nonstatutory labor exemption did not apply.[575] The court reasoned that there was no "ongoing labor relationship" between the owners and players because the NFLPA had decertified itself as the players' collective bargaining representative of the players, and the contracts referred to in the suit were created after decertification.[576] In addition, the *McNeil* court rejected the NFL's "single entity" defense.[577] Thus, the NFL was no longer protected by the nonstatutory labor exemption.[578]

As a result of these holdings, the ultimate question of antitrust liability fell to the trier of fact.[579] At the close of the trial, the court instructed the jury that the Sherman Act applied to Plan B; consequently the jury returned a verdict in favor of the players on the grounds that Plan B violated Section One of the Sherman Act and awarded the plaintiffs $543,000.[580] Specifically, the jury found that Plan B substantially harmed competition for the services of professional

570. 790 F. Supp. 871 (D. Minn. 1992).
571. *Id.* at 875.
572. *Id.* at 884.
573. *Id.* at 878.
574. *Mackey*, 543 F.2d at 606.
575. *McNeil*, 790 F. Supp. at 888.
576. *Id.* at 885-87.
577. *Id.* at 880.
578. *Id.* at 886.
579. *Id.* at 883.
580. McNeil v. National Football League, Civ. No. 4-90-476, 1992 WL 315292, at *1-3 (D. Minn. Sept. 10, 1992).

football players.[581] In addition, the jury decided that, although Plan B contributed to the competitive balance in the NFL, it was more restrictive than necessary to maintain that balance.[582] Finally, the jury found that the plaintiffs had suffered economic injury as a direct result of Plan B.[583] The players had won their first antitrust battle.

On September 21, 1992, less than two weeks after the verdict in *McNeil*, five NFL players filed a class action challenging various NFL player rules and restraints.[584] Under the doctrine of collateral estoppel,[585] the NFL would have been estopped from denying liability for the imposition of Plan B; as a result, the league would thereby be liable to pay damages in the area of $211 million.[586] The players and owners, realizing the potential consequences of the class action, began negotiating a settlement agreement and a new CBA.[587] On January 6, 1993, the NFL and the players reached a tentative agreement to settle their dispute through a seven year contract, thus ending the league's five-year period of operation without a CBA.[588]

On May 6, 1993, the NFLPA and the NFL agreed on the terms of both a new CBA and a Stipulation and Settlement Agreement concerning the outstanding cases.[589] The currently applicable 1993 CBA ("1993 Agreement" or "Agreement"), which became effective on March 31, 1993, incorpo-

581. *Id.* at *1 (answering question of fact number one).

582. *Id.* (answering questions of fact numbers two and three).

583. *Id.* (answering questions of fact numbers four and five).

584. White v. National Football League, 822 F. Supp. 1389, 1394 (D. Minn. 1993).

585. Collateral estoppel is defined as a "[p]rior judgment between same parties on [a] different cause of action . . . as to those matters in issue or points controverted, on determination of which finding or verdict was rendered." BLACK'S LAW DICTIONARY, *supra* note 282, at 261.

586. Truelock, *supra* note 20, at 1944-45.

587. *See id.* at 1945.

588. Gerald Eskenazi, *N.F.L. Labor Accord Is Reached Allowing Free Agency For Players*, N.Y. TIMES, Jan. 7, 1993, at A1.

589. *See* Truelock, *supra* note 20, at 1945.

rates the terms of the Stipulation and Settlement Agreement concerning free agency.[590] The 1993 Agreement covers seven seasons, from 1993 to 1999,[591] and broadens free agency by making all players with a minimum of five years of league experience[592] unrestricted free agents once their contracts expire.[593] There are, however, restrictions to free agency drafted into the agreement. In the first year of the Agreement, each NFL team was allowed to exclude one "Franchise Player" from the free agent pool, and had the right of first refusal on two other players, considered "Transition Players."[594] In order to offset the "Franchise Player's" loss of freedom to negotiate as a free agent, the team must offer this player a contract with compensation that equals or exceeds the greater of either the average salary of the top five highest paid players at his position, or 120% of his prior years salary.[595] Similarly, the team must offer the "Transition Players" contracts with compensation that equals or exceeds the greater of either the average salary of the top ten highest paid players at his position, or 120% of his prior year's salary.[596] In the second year of the agreement, teams were

590. *See White*, 822 F. Supp. at 1412-13; *see also* NFL Collective Bargaining Agreement 1993-2000 arts. XIX, XX [hereinafter 1993 Agreement].

591. NFL Collective Bargaining Agreement 1993-2000 art. LVIII.

592. The agreement also specified that the five year free agency eligibility requirement would be reduced in 1994 to four years. GORMAN & CALHOUN, *supra* note 344, at 163.

593. 1993 Agreement art. XIX; *see* GORMAN & CALHOUN, *supra* note 344, at 162. Immediately following the agreement, 360 eligible players were declared free agents. *Id.*

594. 1993 Agreement art. XX 1, 3. The RFR/C used for Transition Players here is similar in operation to that under the previous RFR/C system. *See supra* notes 505-07 and accompanying text (discussing the RFR/C system). There are, however, two differences. First, the new RFR/C system applies only to "Restricted Free Agents," those veteran players who have played at least three, but less than five, years, and "Transition Players." 1993 Agreement arts. XIX 2, XX 3(b). Second, the qualifying offer amounts, which represent the minimum dollar amounts that must be tendered in order to invoke the RFR/C system, have been substantially raised. *Id.* art. XIX 2(b).

595. 1993 Agreement art. XX 2(c); *see* Truelock, *supra* note 20, at 1946; Pellegrino, *supra* note 569, at 3; Dickerson, *supra* note 70, at 201-03.

596. 1993 Agreement art. XX 4(a); *see* Truelock, *supra* note 20, at 1946.

permitted to name one "Franchise Player" and one "Transition Player."[597] Except in 1999, when each team will be permitted to designate one "Transition Player" in addition to the "Franchise Player," each team will be able to name only a "Franchise Player" in each season after the second year of the agreement.[598]

The 1993 Agreement, in addition to the franchise and transition limitations, restricts player mobility by implementing a salary cap.[599] The salary cap limits player salaries and benefits to sixty-seven percent of the NFL's gross revenues.[600] The salary cap, however, is only effective from 1994 to 1998.[601] This delay in the application of the salary cap was designed to allow the league and the teams to become comfortable with the concept of free agency.[602]

Initially, free agency brought substantial financial benefits and mobility to players.[603] Approximately 120 players changed teams during the free agency period in 1993.[604] These players enjoyed average pay raises in excess of 125%.[605] Despite these early gains, however, the long term effect of the salary cap served to hinder salary growth and restrict player mobility.[606] These effects have been manifested in several areas. First, free agent movement has been restricted because acquiring teams have been forced to fit

---

597. 1993 Agreement art. XX 3(a); *see* Truelock, *supra* note 20, at 1946.

598. 1993 Agreement art. XX 3(a); *see* Truelock, *supra* note 20, at 1946.

599. *See* Truelock, *supra* note 20, at 1946.

600. *See* Truelock, *supra* note 20, at 1946; GORMAN & CALHOUN, *supra* note 344, at 163. Once player salaries and benefits reach 67% of N.F.L. gross revenues, the percentage allowed to be expended the following years falls to 64% the next year, then 63% the next year, and finally 62% for each year thereafter. Truelock, *supra* note 20, at 1946-47.

601. *See* Truelock, *supra* note 20, at 1947.

602. *Id.*

603. *See* Pellegrino, *supra* note 569, at 4.

604. Peter King, *The League of the Free*, SPORTS ILLUSTRATED, July 26, 1993, at 32.

605. Truelock, *supra* note 20, at 1948.

606. *See* Dickerson, *supra* note 70, at 184-85; Pellegrino, *supra* note 569, at 5-6.

new players within their salary cap.[607] Second, the salary cap has had an immediate effect on several veteran players who were forced to take pay cuts or were released because of their team's difficulty fitting under the salary cap.[608] Third, commentators predict that player salary escalation will begin to level off as teams struggle to stay within their salary caps.[609] Finally, the average salary for players in the lowest quarter of the league's talent pool is predicted to drop.[610] It is argued that this will occur because teams will nonetheless pay their top players millions each year, and consequently be forced to save salary cap room by paying less for reserves and substitutes.[611] Thus, the 1993 Agreement's grant of free agency has been a misnomer;[612] although the Agreement gives players the opportunity to become free agents, it restricts their ability to market themselves freely throughout the league.[613]

III. LABOR LAW AND COLLECTIVE BARGAINING ARE THE CURRENT DRIVING FORCE BEHIND EMPLOYMENT RELATIONS IN BASEBALL AND FOOTBALL: BASEBALL'S ANTITRUST EXEMPTION IS A "DEAD-LETTER"

Today, collective bargaining and the principles of labor law define employment relations in professional sports. As the prevalence of collective bargaining has increased in shaping the employment relationship between owners and

607. Pellegrino, *supra* note 569, at 5-6.

608. Dickerson, *supra* note 70, at 185. For example, New York Giants all-pro quarterback Phil Simms, voted Most Valuable Player in Super Bowl XXI, signed a two-year contract in 1993 that increased his average annual salary by $900,000. *Id.* However, in 1994, Simms was released because his salary, which the Giants had willingly paid in the 1993 non-salary cap year, was now too high in the 1994 salary cap year. *Id.* San Francisco Forty-Niner Jamie Williams was forced to accept a 59% pay cut in order to continue playing in the NFL. *Id.*

609. Pellegrino, *supra* note 569, at 5-6.

610. *Id.* at 6.

611. *Id.*

612. *See id.* at 5-7; Dickerson, *supra* note 70, at 201-03.

613. Dickerson, *supra* note 70, at 201-03.

players,[614] the importance of antitrust principles has declined.[615] As a result, Part III of this Note argues that professional baseball's antitrust immunity has eroded to the point where it is a "dead-letter" in employment relations in professional sports. First, this part examines the current state of antitrust law in defining employment relations by comparing the history of antitrust challenges in baseball and football. Second, this part argues that collective bargaining and labor law have supplanted antitrust law as the driving force behind defining the terms of the employment relationship in professional sports. Finally, this Note concludes that baseball's antitrust exemption has become a "dead-letter" in defining the relationship between owners and players in professional sports.

A. *The Current Role of Antitrust Law in Professional Sports Employment Relations: A Comparative Analysis of the History of Antitrust Challenges in Baseball and Football*

This section analyzes the current role of antitrust law in professional sports employment relations by comparing the history of antitrust challenges in baseball and football. First this section examines the limited history of antitrust challenges in football. Second, this section discusses the more extensive history of antitrust challenges in baseball. Finally, this section concludes that antitrust law does not currently play an active role in defining employment relations in either sport.

1. Antitrust Challenges in Football

Professional football has always been subject to federal antitrust law. During the 1950s, courts rejected the NFL's ef-

614. *Compare supra* notes 229-387 and accompanying text (discussing collective bargaining in baseball) *with supra* notes 436-82, 505-50, 589-613 and accompanying text (discussing collective bargaining in football).

615. *Compare supra* notes 156-202 and accompanying text (discussing the development of baseball's antitrust exemption) *with supra* notes 229-387 and accompanying text (discussing collective bargaining and labor law in baseball).

forts to obtain antitrust immunity.[616] In *United States v. National Football League*, a federal court in Pennsylvania indirectly impeded the NFL's efforts by holding that the league's exclusive broadcast rights provision was subject to antitrust constraints.[617] Ultimately, the Supreme Court, in *Radovich*, emphatically quashed the NFL's attempts.[618] The *Radovich* court held that the antitrust exemption delineated in *Federal Baseball* was expressly limited to professional baseball.[619] After *Radovich*, the NFL owners abandoned their quest for antitrust immunity and focused their efforts on increasing their bargaining strength.[620] Thus, after *Radovich*, the NFL was forced to operate under the same antitrust constraints as any other business in the United States.[621]

2. Antitrust Challenges in Baseball

Baseball, unlike football, has been exempt from antitrust laws for the majority of its existence, but the fundamental rationale of baseball's antitrust exemption has been slowly eroded by the courts. In contrast to football, the Supreme Court held in *Federal Baseball* that professional baseball was

616. *See* discussion *supra* part II.A (discussing the NFL's attempts to gain antitrust immunity).

617. United States v. National Football League, 116 F. Supp. 319, 327-28 (E.D. Pa. 1953); *see supra* notes 398-404 and accompanying text (discussing *National Football*).

618. *See supra* notes 405-09 and accompanying text (discussing *Radovich*).

619. Radovich v. National Football League, 352 U.S. 445, 451 (1957).

620. *See supra* notes 436-613 and accompanying text (discussing the history of employment relations in football after *Radovich*).

621. *See Radovich*, 352 U.S. at 452 (holding that football is within the protection of the Sherman Act); Kapp v. National Football League, 390 F. Supp. 73, 82 (N.D. Cal. 1974), *aff'd*, 586 F.2d 644 (9th Cir. 1978), *cert. denied*, 441 U.S. 907 (1979) (holding that the Rozelle Rule violates antitrust laws); Mackey v. National Football League, 543 F.2d 606, 622 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977) (holding that the Rozelle Rule violates antitrust law); Smith v. Pro-Football, 420 F. Supp. 738, 744 (D.D.C. 1976), *modified*, 593 F.2d 1173 (D.C. Cir. 1978) (holding that football's college draft violates the Sherman Act); *supra* notes 436-613 and accompanying text (illustrating the interplay between antitrust laws and collective bargaining in the history of employment relations between owners and players in football).

immune from antitrust laws.[622] Underlying the *Federal Baseball* decision was the Court's determination that professional baseball did not involve interstate commerce.[623] The reasoning of *Federal Baseball*, however, was gradually undermined, as it became clear that the reasoning behind it was outdated.[624] The erosion of the *Federal Baseball* rationale is illustrated by three subsequent challenges to baseball's exemption: *Gardella*, *Toolson*, and *Flood*.

The clearest expressions of the problems that arose from *Federal Baseball* were articulated by the Court of Appeals for the Second Circuit in *Gardella*.[625] The *Gardella* court stated that the *Federal Baseball* decision did not address the possibility that the nature of baseball would change over time.[626] The Second Circuit noted that when games were broadcast on radio and television, the business of baseball assumed an interstate element that the *Federal Baseball* Court had not considered.[627] Since the court in *Federal Baseball* examined baseball before games were broadcast, its reasoning failed to consider the implications of interstate broadcast on the characterization of the sport as intrastate or interstate commerce.[628]

In a concurring opinion, Judge Frank argued that a significant expansion of the definition of interstate commerce

---

622. *See* Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 259 U.S. 200, 208-09 (1922).

623. *See Federal Baseball*, 259 U.S. at 208-09 (holding that professional baseball is purely a state affair).

624. *See, e.g.*, Gardella v. Chandler, 172 F.2d 402, 412 (2d Cir. 1949) (Frank, J., concurring) (arguing that the rationale of *Federal Baseball* was repudiated by the Supreme Court's expansion of the definition of interstate commerce); Toolson v. New York Yankees, Inc., 346 U.S. 356, 357, *reh'g granted*, 346 U.S. 917 (1953) (holding that only Congress can subject baseball to antitrust constraints); Flood v. Kuhn, 407 U.S. 258, 282-83 (1972) (conceding that the reasoning of *Federal Baseball* is no longer valid).

625. *See supra* notes 185-88 and accompanying text (discussing *Gardella*).

626. *Gardella*, 172 F.2d at 407-08.

627. *Id.*

628. *See Gardella*, 172 F. 2d at 407-08; *see also Federal Baseball*, 259 U.S. at 208-09.

had undermined the reasoning underpinning the *Federal Baseball* decision.[629] Specifically, Judge Frank noted that by 1949 the Supreme Court had extended the definition of interstate commerce to encompass services.[630] This expansion repudiated the *Federal Baseball* court's reasoning that baseball games involved services, and that traveling from game to game was merely incident to those services.[631] As a result, Judge Frank concluded that the rationale of *Federal Baseball* should be limited to the insufficiency of traveling to establish the presence of interstate commerce.[632]

In *Toolson*, the Supreme Court subsequently failed to respond to the issues raised in *Gardella* and upheld *Federal Baseball* on *stare decisis* grounds.[633] The Court in *Toolson*, rather than addressing *Federal Baseball* directly, deflected the issue to Congress.[634] The Court reasoned that baseball's exemption had been in place too long to be overruled by anyone other than Congress.[635]

Finally, the Supreme Court once again upheld *Federal Baseball* in it's 1972 *Flood* decision.[636] The *Flood* Court, however, acknowledged that the narrow definition of interstate commerce employed in *Federal Baseball* was no longer valid, and that baseball was a business which was engaged in interstate commerce under its contemporary definition.[637] In addition, the *Flood* Court again refused to rule on baseball's exemption; instead the Court noted that any incongruity or "inconsistency" should be resolved by Congress, not the Court.[638]

---

629. *Gardella* 172 F.2d at 412 (Frank, J., concurring).
630. *Id.*
631. *Id.*
632. *Id.*
633. *Toolson*, 346 U.S. at 357, *reh'g granted*, 346 U.S. 917 (1953).
634. *Id.*
635. *Id.*
636. *Flood*, 407 U.S. at 282.
637. *Id.*
638. *Id.* at 284.

3. Antitrust Law Does Not Currently Play an Active Role in Defining Employment Relations in Either Baseball or Football

The *Flood* decision marked the end of the active significance of baseball's antitrust exemption in employment relations between owners and players.[639] In fact, *Flood* marks the final invocation of baseball's exemption in the context of employment relations.[640] Baseball players, after fifty years and two defeats in the Supreme Court, looked to other legal means of protecting their interests.[641] Conversely, the owners, for whom the exemption had become a comfortable precedent, realized that it rested on the shakiest of grounds and became hesitant to use it.[642] Thus, after 1972, baseball and football conducted employment relations on common ground: collective bargaining and labor law.[643]

B. *Labor Law and Collective Bargaining: The Current Driving Force Behind Employment Relations in Baseball and Football*

Baseball's antitrust exemption does not provide its owners with an advantage over football owners, because collective bargaining and labor law currently define the employment relationship in both sports. In football, this has been the case since the 1950s, when football players first union-

639. *See supra* note 198 (illustrating that invocations of baseball's antitrust exemption in courts after *Flood* are limited to matters outside of the employment relationship between owners and players).

640. *See supra* note 198 (illustrating that every use of the exemption since *Flood* has been in cases that deal with matters outside of the employment relationship).

641. *See supra* notes 201-04 and accompanying text (discussing the players' decision to look for new ways to advance their interests after *Flood*); *see also* notes 229-387 and accompanying text (discussing collective bargaining and labor law in baseball).

642. *See supra* note 198 (showing that since *Kuhn*, baseball's exemption has only been raised in cases involving issues outside of the employment relationship).

643. *Compare supra* notes 436-613 and accompanying text (discussing collective bargaining and labor law in football) *with supra* notes 223-387 and accompanying text (discussing collective bargaining and labor law in baseball).

ized.[644] Conversely, professional baseball, which was not subject to NLRB jurisdiction until 1969,[645] did not reach its first CBA until 1968.[646] This section analyzes the emergence of collective bargaining and labor law as the primary impetus behind employment relations in football and baseball. First, this section examines the history of collective bargaining and labor law in football employment relations. Second, this section surveys the history of collective bargaining and labor law in baseball employment relations. Finally, this section concludes that baseball's antitrust exemption is a "dead-letter" because collective bargaining and labor law currently define the employment relationship in both football and baseball.

1. Labor Law and Collective Bargaining in Football

Collective bargaining and labor law have defined the employment relationship in football since the 1950s.[647] The NFL, which failed to obtain antitrust immunity from the courts, has been forced to engage in collective bargaining with its players since they first unionized in 1956.[648] Although there were a number of significant antitrust challenges during this period,[649] collective bargaining and labor

644. BERRY, *supra* note 20, at 96, 124.

645. *See supra* notes 224-25 (discussing the umpires' case).

646. Chalian, *supra* note 20, at 606.

647. *See supra* part II.A (discussing the NFL's failure to gain antitrust immunity); *supra* part II.C (discussing the history of employment relations between owners and players in the NFL since the players unionized in 1956).

648. *See supra* part II.A (examining the rejection of the NFL's efforts to obtain antitrust immunity in *National Football* and *Radovich*); *supra* part II.C (surveying the history of employment relations in football since the formation of the NFLPA).

649. *See, e.g.*, *Kapp*, 390 F. Supp. at 82 (holding that the Rozelle Rule violates federal antitrust law as an unreasonable restraint of trade); Mackey v. National Football League, 407 F. Supp. 1000, 1007 (D. Minn 1975), *aff'd in part*, *rev'd in part*, 543 F.2d 606 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977) (holding that the Rozelle Rule constituted an illegal restraint of trade in violation of the Sherman Act, rejecting the league's contention that the rule was protected by the nonstatutory labor exemption and establishing a three prong standard for application of the nonstatutory labor exemption); *Smith*, 420 F. Supp. at 744 (holding that the NFL's college draft violated the Sherman Act, and rejecting the contention that

law have remained the primary impetus in defining the employment relationship.[650] This is due largely to the disparity between the bargaining strength of the owners and players.[651] Football players, due to their relatively weak bargaining power,[652] have been unable to exploit their antitrust victories in subsequent collective bargaining negotiations.[653] The NFLPA's repeated failures to maintain a united front in negotiations and labor stoppages has allowed the owners to dictate the terms of the employment relationship.[654] Consequently, the owners negotiated one-sided agreements that

---

the draft is protected by the nonstatutory labor exemption); Powell v. National Football League, 930 F.2d 1293, 1303-04 (8th Cir. 1989), *cert. denied*, 498 U.S. 1040 (1991) (holding that the nonstatutory labor exemption survives a negotiations impasse so long as there is a possibility of proceedings before the NLRB); McNeil v. National Football League, 790 F. Supp. 871, 886 (D. Minn. 1992) (holding that the nonstatutory labor exemption did not apply after the NFLPA decertified).

650. *See, e.g.*, *supra* notes 439-43 and accompanying text (discussing the 1968 strike); *supra* notes 444-49 and accompanying text (discussing the 1970 work stoppage and subsequent agreement); *supra* notes 467-70 and accompanying text (discussing the 1974 strike); *supra* notes 473-78 and accompanying text (discussing the 1975 strike); *supra* notes 505-07 and accompanying text (discussing the 1977 CBA); *supra* notes 512-39 and accompanying text (discussing the 1982 strike and subsequent CBA); *supra* notes 541-50 and accompanying text (discussing the 1987 strike); *supra* notes 589-613 and accompanying text (discussing the 1993 CBA).

651. This disparity is illustrated by the NFLPA's fortune in work stoppages and collective bargaining negotiations. *See, e.g.*, *supra* note 438 and accompanying text (discussing aborted strike attempts in 1956 and 1959 due to weak players solidarity); *supra* notes 467-70 and accompanying text (discussing the unsuccessful 1974 strike, which failed after many players crossed the picket lines and public support swayed in favor of the owners); *supra* notes 473-78 and accompanying text (discussing the 1975 strike by independent teams); *supra* notes 505-09 and accompanying text (discussing the 1977 CBA, in which the NFLPA negotiated away the fruits of its antitrust victory in *Mackey* by accepting the RFR/C system); *supra* notes 541-50 and accompanying text (discussing the failed 1987 strike which was called off when player solidarity dissolved); *supra* notes 589-613 and accompanying text (discussing the 1993 CBA, which features a salary cap).

652. *See supra* note 651 and accompanying text (illustrating the weakness of the NFLPA by examining its fortunes in collective bargaining negotiations and work stoppages).

653. *See supra* notes 503-09 and accompanying text (discussing the 1977 CBA, in which the NFLPA's agreed to another reserve system, the RFR/C system, in the wake of its victory over the Rozelle Rule in *Mackey*).

654. *See supra* note 651 (illustrating the NFLPA's repeated failures in work stoppages and collective bargaining negotiations).

were immunized against antitrust challenge by the nonstatutory labor exception.[655]

The Rozelle Rule provides the clearest example of the plight of the NFLPA during this period.[656] The NFLPA's attempts to eliminate the Rozelle Rule with strikes in 1974 and 1975 failed quietly.[657] It was not until the NFLPA returned to antitrust litigation that the Rozelle Rule was invalidated.[658] In *Mackey*, the Eighth Circuit Court of Appeals held that the Rozelle Rule did not qualify for the nonstatutory labor exemption.[659] Therefore, the *Mackey* court applied an antitrust analysis to the Rozelle Rule, and held that it violated the Sherman Act.[660] In the wake of this antitrust victory, however, the NFLPA, failed to fortify its gains.[661] Instead, the NFLPA negotiated the 1977 CBA, which provided for the RFR/C free agency system, a virtual reincarnation of the Rozelle Rule.[662]

The NFLPA's weakness persisted until the players voted to decertify the union in 1989.[663] In *McNeil*, the court held that decertification terminated the labor relationship between owners and players.[664] This effectively rendered the owners most useful tool, the nonstatutory labor exemption,

---

655. *See* discussion *supra* part II.B (discussing the nonstatutory labor exemption).

656. *See supra* notes 455-66 and accompanying text (discussing the Rozelle Rule).

657. *See supra* notes 465-77 and accompanying text (discussing the NFLPA's unsuccessful strikes in 1974 and 1975).

658. *See Kapp*, 390 F. Supp. at 82 (holding that the Rozelle Rule violates federal antitrust law as an unreasonable restraint of trade); *Mackey*, 407 F. Supp. at 1007 (holding that the Rozelle Rule constituted an illegal restraint of trade in violation of the Sherman Act, rejecting the league's contention that the rule was protected by the nonstatutory labor exemption.).

659. *Mackey*, 543 F.2d at 616.

660. *Id*. at 622.

661. *See* Chalian, *supra* note 20, at 616; BERRY, *supra* note 20, at 127; STAUDOHAR, *supra* note 214, at 79.

662. *See supra* notes 505-09 and accompanying text (discussing the RFR/C system).

663. *See* Pellegrino, *supra* note 569, at 3.

664. *McNeil*, 790 F. Supp. at 886-87.

useless.[665] Following *McNeil*, neither the owners nor the players approached negotiations with a legal advantage over the other.[666] Thus, after a cavalcade of unsuccessful strikes in 1968, 1970, 1974, 1982, and 1987, football players finally achieved relatively equal bargaining strength with the owners.[667]

Today, football owners possess relatively stronger bargaining power than the players, despite the loss of the nonstatutory labor exemption.[668] Nevertheless, after *McNeil*, both the owners and players enter negotiations on the same legal footing.[669] The rules of collective bargaining and labor law, therefore, define the parameters of their employment relationship.

2. Labor Law and Collective Bargaining in Baseball

Labor law and collective bargaining currently define the employment relationship in professional baseball. Once the NLRB found professional baseball to be within its jurisdiction,[670] the relationship between the MLBPA and the owners became centered on collective bargaining.[671] Thus, all of the major changes in the employment relationship during the 1970s, 1980s, and 1990s were achieved through arbitration,

665. *See id*. at 886.

666. *See id*. at 886 (concluding that football is no longer protected by the nonstatutory labor exemption); *see also supra* notes 589-613 and accompanying text (discussing the terms of the 1993 CBA).

667. *See supra* part II.C (discussing the repeated failures of the NFLPA in work stoppages); *see also supra* notes 589-613 and accompanying text (discussing the 1993 CBA).

668. This disparity in relative bargaining strength is directly attributable to the players' continued inability to remain unified. *See supra* part II.C (discussing the players repeated failure to remain unified). The persistence of this disparity is clearly demonstrated by the 1993 CBA, which restricts player mobility with a salary cap and several other measures. *See supra* notes 589-602 and accompanying text (discussing the terms of the 1993 CBA).

669. *See McNeil*, 790 F. Supp. at 886 (holding that the nonstatutory labor exemption no longer protects the NFL).

670. *See supra* notes 224-25 (discussing the umpires' case).

671. *See* discussion *supra* part I.C.2 (discussing the history of employment relations between owners and players since the formation of the MLBPA).

negotiations, and union pressure tactics.[672]

The elimination of the reserve rule[673] was the most significant victory by baseball players during this period.[674] The reserve rule, which hindered player mobility since baseball's inception in the 1870s, had withstood challenges in the courts under contract law[675] and antitrust law.[676] Ultimately, however, the reserve rule was eliminated in a grievance arbitration hearing[677] which had been secured through collective bargaining.[678]

The demise of the reserve system focused the attention of both owners and players on collective bargaining, as it became clear that any significant changes would result from

672. *See, e.g.*, *supra* notes 244-46 and accompanying text (discussing increases in minimum salaries, pension benefits, and average salaries during Marvin Miller's first years as executive director of the MLBPA); *supra* notes 264-72 and accompanying text (discussing the elimination of the reserve rule in the Messersmith and McNally arbitration); *supra* notes 320-25 and accompanying text (discussing the free agent compensation plan implemented by the 1981 agreement); *supra* notes 326-42 and accompanying text (discussing the 1985 negotiations and 1985 strike; the 1981 compensation plan was abandoned, the owners demands for a salary cap were rescinded, minimum salaries were increased, players were granted a portion of television revenues, and the service requirement for salary arbitration was reduced); *supra* notes 343-48 and accompanying text (discussing the effect of free agency on player salaries).

673. *See supra* notes 264-72 and accompanying text (discussing the elimination of the reserve rule in the Messersmith and McNally arbitration).

674. *See supra* notes 343-48 and accompanying text (discussing the dramatic escalation of player salaries after the advent of free agency).

675. *See supra* part I.A (discussing challenges to the reserve system under contract law principles in Metropolitan Exhibition Co. v. Ewing, 42 F. 198 (C.C.S.D.N.Y. 1890); Metropolitan Exhibition Co. v. Ward, 9 N.Y.S. 779 (Sup. Ct. 1890); Philadelphia Base Ball Club, Ltd. v. Lajoie, 202 Pa. 210, 51 A. 973 (Pa. Sup. Ct. 1902)).

676. *See supra* part I.B (discussing antitrust challenges to the reserve rule in *Chase*, *Federal Baseball*, *Gardella*, *Toolson*, and *Flood*).

677. *See supra* notes 264-72 (discussing the elimination of the reserve rule in the Messersmith and McNally arbitration hearing).

678. *See supra* notes 248-50 and accompanying text (discussing grievance arbitration provision in 1970 CBA); *see also* Kansas City Royals Baseball Corporation v. Major League Baseball Players' Association, 532 F.2d 615, 629 (8th Cir. 1976) (holding that the grievance arbitration provision expressly authorized the arbitration of grievances relating to the reserve system).

such negotiations.[679] Thereafter, disputes over free agency, salaries, the amateur draft, pensions, and any other matter relating to the employment relationship in professional baseball were resolved through collective bargaining power struggles between the owners and players.[680]

Due to the relatively equal bargaining strength of the owners and players, their power struggles were most visibly manifested in the numerous work stoppages the sport has endured.[681] Although the specific issues of each confrontation have differed, the dynamics of the conflicts have remained the same: the owners sought to limit free agency and retard salary growth, the players tried to increase their mobility, salaries, and benefits, and the two sides eventually reached a compromise.[682] For example, the 1976 collective bargaining negotiations, which immediately followed the elimination of the reserve rule, led to a lockout.[683] The owners feared the ramifications of unfettered free agency, and

679. *See supra* note 276 and accompanying text (explaining the impact of the *Kansas City Royals* decision).

680. *see supra* part I.C.2 (discussing the subjects of collective bargaining between the owners and players since the inception of the MLBPA).

681. *See supra* notes 277-84 and accompanying text (discussing the 1976 negotiations and the 1976 lockout); *supra* notes 292-320 and accompanying text (examining the 1981 negotiations and the 1981 strike); *supra* notes 326-34 and accompanying text (discussing the 1985 negotiations and the 1985 strike); *supra* notes 359-72 and accompanying text (examining the 1990 negotiation, the 1990 lockout and the settlement negotiations); *supra* notes 378-87 and accompanying text (discussing the 1994 negotiations, the 1994 strike, and the subsequent cancellation of the 1994 season).

682. *See, e.g.*, *supra* notes 277-84 and accompanying text (discussing the 1976 lockout); *supra* notes 292-320 and accompanying text (discussing the 1981 strike); *supra* notes 326-34 and accompanying text (discussing the 1985 strike); *supra* notes 359-72 and accompanying text (discussing the 1990 lockout); *supra* notes 378-87 and accompanying text (discussing the 1994 strike). Every work stoppage in baseball has ended with each party making significant concessions, with the exception of the 1994 strike. *See, e.g.*, *supra* notes 283-84 and accompanying text (discussing the terms of 1976 the agreement); *supra* notes 321-25 and accompanying text (examining the terms of the 1981 agreement); *supra* notes 335-37 and accompanying text (discussing the terms of the 1985 agreement); *supra* notes 373-76 and accompanying text (examining the terms of the 1990 agreement).

683. *See supra* notes 277-84 and accompanying text (discussing the 1976 lockout).

they insisted upon the establishment of limits on eligibility for free agency.[684] The lockout ended in a compromise:[685] the players conceded to limited free agency, and the owners, in return, increased pension funds and minimum salary.[686]

Professional baseball has endured numerous work stoppages since 1976.[687] The 1981 strike resulted in an agreement that modified free agency by allowing substantial mobility and by providing compensation to teams losing free agents.[688] The two-day strike in 1985 also resulted in a compromise.[689] The owners relinquished demands for a salary cap and agreed to a reduced system of free agent compensation.[690] The players conceded to an increased eligibility requirement for salary arbitration.[691] The 1990 lockout ended when the owners dropped their demands for a salary cap and the players agreed to the owners' salary and pension contribution proposals.[692]

Since the early 1970s, every major change in the employment relationship in baseball can be attributed to collective bargaining and labor law.[693] Neither the owners nor the

---

684. *See supra* notes 279-80 and accompanying text (discussing the owners' objectives and motivations in the 1976 negotiations).

685. *See supra* notes 283-84 and accompanying text (discussing the terms of the 1976 agreement).

686. *Id.*

687. *See supra* notes 292-320 and accompanying text (examining the 1981 negotiations and the 1981 strike); *supra* notes 326-34 and accompanying text (discussing the 1985 negotiations and the 1985 strike); *supra* notes 359-72 and accompanying text (examining the 1990 negotiation, the 1990 lockout and the settlement negotiations); *supra* notes 378-87 and accompanying text (discussing the 1994 negotiations, the 1994 strike, and the subsequent cancellation of the 1994 season).

688. *See supra* notes 321-25 (discussing the terms of the 1981 settlement).

689. *See supra* notes 335-37 and accompanying text (examining the terms of the 1985 settlement).

690. *Id.*

691. *Id.*

692. *See supra* notes 373-76 and accompanying text (discussing the terms of the 1990 settlement).

693. *See, e.g.*, *supra* notes 244-46 and accompanying text (discussing increases in minimum salaries, pension benefits, and average salaries during

players have evoked the exemption since *Flood*.[694] Thus, the employment relationship between baseball team owners and baseball players is currently defined by the principles of collective bargaining and labor law.[695]

3. Labor Law and Collective Bargaining Currently Define the Employment Relationship in Football and Baseball

In the 1970s, when collective bargaining and labor law replaced antitrust law as the defining principle of employment relations in professional sports, the antitrust exemption ceased to play a significant role in defining the employment relationships in either sport. Given the expediency of dispute resolution through labor law, collective bargaining, and union activities, players have no longer utilized long antitrust litigation as an efficient means of effecting change.[696] Consequently, antitrust litigation has been all but forsaken in the area of employment relations since the Supreme Court's decision in *Flood*.[697] Thus, since 1972, baseball's antitrust ex-

---

Marvin Miller's first years as executive director of the MLBPA); *supra* notes 264-72 and accompanying text (discussing the elimination of the reserve rule in the Messersmith and McNally arbitration); *supra* notes 320-25 and accompanying text (discussing the free agent compensation plan implemented by the 1981 agreement); *supra* notes 326-42 and accompanying text (discussing the 1985 negotiations and 1985 strike; the 1981 compensation plan was abandoned, the owners demands for a salary cap were rescinded, minimum salaries were increased, players were granted a portion of television revenues, and the service requirement for salary arbitration was reduced); *supra* notes 343-48 and accompanying text (discussing the effect of free agency on player salaries).

694. *See supra* note 198 (demonstrating that every use of the antitrust exemption since *Flood* has dealt with issues outside of the employment relationship); *see also* notes 229-387 and accompanying text (discussing collective bargaining, labor law, and the history of work stoppages in baseball).

695. *See supra* notes 229-387 and accompanying text (discussing employment relations in baseball since the inception of the MLBPA).

696. *See supra* note 247 and accompanying text (explaining that the emergence of collective bargaining and union tactics supplanted lengthy antitrust litigation as the players' primary avenue of challenging the owners).

697. *See supra* note 198 (showing that evocations of baseball's antitrust exemption in courts since *Flood* have been limited to issues outside of the employment relationship).

emption has been moot in employment relations.[698]

Although baseball owners theoretically still enjoy the exemption's protection in the courts, they are unlikely to implement it in the context of the employment relationship.[699] The reasoning underlying the exemption has been exposed as outdated and rejected by the Court.[700] Thus, the validity of *Federal Baseball* rests upon precarious ground. The Court has decided to uphold *Federal Baseball* on the basis of *stare decisis*, yet it openly rejects its reasoning.[701] Consequently, any direct invocation of the exemption in the context of employment relations by the owners runs a serious risk of having *Federal Baseball* overturned.

When the NLRB found professional baseball to be within its jurisdiction,[702] the unique status conferred onto Major League Baseball by *Federal Baseball* was reduced to existing in name only. Today, professional baseball and football stand on relatively equal ground; the owners and players in each sport have relatively equal bargaining strength.[703] Neither league possesses a legal advantage over the other. Baseball owners have abandoned the antitrust exemption in

698. *See supra* note 198 (illustrating that the exemption has not appeared in antitrust litigation in the context of employment relations since 1972); *see also Flood*.

699. *See supra* note 198 (demonstrating that since 1972 the antitrust exemption has only been raised in response to matters outside of the employment relationship).

700. *See generally Toolson*, 346 U.S. 356; *Flood*, 407 U.S. 258; *Gardella*, 172 F.2d 402.

701. *See Toolson*, 346 U.S. at 357 (upholding the exemption, but failing to discuss the rationale of *Federal Baseball*, and instead deferring to Congress); *Flood*, 407 U.S. at 282 (acknowledging that the reasoning of *Federal Baseball* was no longer valid); *see also Gardella*, 172 F.2d at 407-08 (holding that the advent of television and radio broadcasting of games changed the nature of baseball sufficiently to bring it under the Sherman Act).

702. *See* The American League of Professional Baseball Clubs and Association of National Baseball League Umpires, 180 N.L.R.B. 190 (1969).

703. *Compare supra* notes 229-387 and accompanying text (discussing collective bargaining negotiations in baseball) *with supra* notes 436-82, 505-50, 589-613 and accompanying text (discussing collective bargaining negotiations in football).

employment relations.[704] Football owners have lost the benefit of the nonstatutory labor exemption.[705] Collective bargaining, governed by labor law, between relatively equal parties to the negotiations, is now the primary force behind employment relations in both sports.

CONCLUSION

Baseball's antitrust exemption has been undermined in the courts and in practice. The erosion of the reasoning of *Federal Baseball*, culminating in the outright rejection of the reasoning in *Flood*, left baseball's exemption a "dead letter." Although the Supreme Court rejected *Federal Baseball*'s reasoning, it refused to overrule the decision. Instead, the Court deferred to Congress, which has proven to be equally reluctant to overturn the exemption. So what is left of baseball's antitrust exemption? Would *Federal Baseball* withstand a direct challenge today? These questions are unlikely to be answered, because in practice, the antitrust exemption is currently a "dead letter." The owners, for whom the exemption has become a comfortable precedent, realize that the exemption lies on the shakiest of legal ground, and are unlikely to jeopardize it by invoking it. The players, who confronted the exemption for fifty years with lengthy antitrust litigation, no longer need to do so, because collective bargaining and labor law afford them a quicker, more efficient means of advancing their interests. Thus, the move to collective bargaining and labor law has allowed baseball players to abandon antitrust litigation, and has rendered the exemption a "dead letter."

---

704. *See supra* notes 699-701 and accompanying text (discussing baseball owners' abandonment of the exemption in the context of employment relations); *see also supra* note 198 (showing that the exemption has not been evoked in the context of employment relations since *Flood*).

705. *See McNeil*, 790 F. Supp. at 886-87.