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## Labor Pains: Why Contraction Is Not the Solution to Major League Baseball's Competitive Balance Problems

Bryan Day

*Salt Lake Organizing Committee for the Olympic Winter Games of 2002*

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# Labor Pains: Why Contraction Is Not the Solution to Major League Baseball's Competitive Balance Problems

Bryan Day\*

Two years ago, Kansas City was the site of a large-scale protest that made headlines across the nation.<sup>1</sup> Thousands of participants united in a massive march that went off peacefully and was deemed a success.<sup>2</sup> Surprisingly, however, this particular demonstration was not over traditional hot topics such as animal rights or corporate globalization<sup>3</sup>—no, it was inspired by baseball.<sup>4</sup> To protest the inequity between large- and small-revenue baseball franchises, thousands of Kansas City Royals fans descended on Kauffman Stadium, the site of an early season game between the financially barren Royals and the ultra-rich New York Yankees.<sup>5</sup> The protesters marched to the Stadium wearing T-shirts that read, “Share The Wealth” and greeted the Yankees’ team bus by waving dollar bills at the players.<sup>6</sup> Once the game started, the protesting fans turned their

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\* Bryan Day received his B.A. at Tulane University and his J.D. at Boston College Law School. He is a lawyer in the legal department for the Salt Lake Organizing Committee.

<sup>1</sup> See Dennis Dodd, *Baseball Inequity a Big Deal for Small Markets*, CBS.SPORTSLINE.COM (Apr. 28, 1999) (stating that the Associated Press, *The New York Times*, *USA Today*, and several other newspapers ran the story of Kansas City’s fan protest against the New York Yankees), at [http://www.cbs.sportsline.com/u/ce/multi/0,1329,967091\\_52,00.html](http://www.cbs.sportsline.com/u/ce/multi/0,1329,967091_52,00.html) (last visited Jan. 31, 2002).

<sup>2</sup> See *id.*; Buster Olney, *Torre Not Ready to Manage Yanks; Zimmer to Stay On*, N.Y. TIMES, May 1, 1999 (describing how about 2,000 fans staged a protest and walked out in the fourth inning during a baseball game between the New York Yankees and the Kansas City Royals).

<sup>3</sup> See Dodd, *supra* note 1 (explaining that sports radio talk show host Kevin Kietzman organized a walkout during the Kansas City Royals-New York Yankees game on April 30, 1999 to protest the inequity between large and small market franchises in Major League Baseball).

<sup>4</sup> See *id.*

<sup>5</sup> See Olney, *supra* note 2 (describing the demonstration staged by Kansas City Royals fans to protests the financial and competitive disparity between large and small market franchises).

<sup>6</sup> See *id.* (detailing how fans greeted the Yankees outside Kauffman Stadium chanting “Share The Wealth” and waving one-dollar bills).

backs to the field while the Yankees batted.<sup>7</sup> Finally, after the first out of the fourth inning, the protesters left the stadium en masse, but not before taping paper skeletons to their seats that read, "Small markets are dying."<sup>8</sup>

Royals fans are not the only ones disillusioned with the current state of Major League Baseball (hereinafter "MLB"), where large-revenue teams like the Yankees dominate. Minnesota Twins fans certainly understand just how MLB has changed in a small period of time.<sup>9</sup> From opening day 1987 to the day the 1994 players' strike began, the Twins won two world championships, and set an American League attendance record outdrawing even the Yankees.<sup>10</sup> Since the strike, the Twins have finished in last place, had six losing seasons, tried to move to North Carolina, lost their best player to glaucoma and been occasionally outdrawn by the St. Paul Saints, an independent league team with a pig mascot.<sup>11</sup>

The Montreal Expos also understand baseball's current ills. Back in 1982, Montreal led the National League in attendance with 2.3 million fans.<sup>12</sup> Twelve years later, a star-studded Expos squad entered August with the best record in baseball.<sup>13</sup> Unfortunately, the

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<sup>7</sup> *Id.*

<sup>8</sup> *See id.* (stating that the protesters departed *en masse* during the top of the fourth inning).

<sup>9</sup> *See* Sean McAdam, *The Rich Get Richer*, ESPN.COM (Feb. 1999) (describing how the Twins went from World Series Champions to perennial loser in less than a decade), at <http://www.spfldcol.edu/Faculty.nsf/79932f4124ead269852567240054ad7f9fdec84ab0e9206852568b6005b693f?OpenDocument> (last visited Feb. 1, 2002).

<sup>10</sup> *See id.*

<sup>11</sup> *See* The Glaucoma Foundation, *The Glaucoma Foundation Congratulates Kirby Puckett* (noting, upon his election to the Hall of Fame, that Kirby Puckett was forced to retire from baseball as a result of glaucoma), at <http://www.glaucoma-foundation.org/features/kpinduction.htm> (last visited Feb. 1, 2002); Press Release, Northern League Sets Attendance Records in 1999 (Dec. 28, 1999) (reporting that "[t]he Saints sold out all 42 dates, posting a per game average of 6,329, the highest mark in independent baseball."), available at <http://www.northernleague.com/releases/122899.html> (last visited Feb. 1, 2002); St. Paul Saints (referring to their pig mascot, known as "Kevin Bacon."), at <http://www.spsaints.com> (last visited Feb. 1, 2002).

<sup>12</sup> *See* Chris Isidore, *Why 'Out' is the Wrong Call*, CNNFN.COM (Oct. 5, 2001), at [http://money.cnn.com/2001/10/05/living/column\\_sportsbiz](http://money.cnn.com/2001/10/05/living/column_sportsbiz) (last visited Jan. 31, 2002).

<sup>13</sup> *See* Hal Bodley, *Will Expos Bid Adieu to Canada?*, USA TODAY, Nov. 6, 2001, at 4C (stating that the Montreal Expos had the best record in August 1994 when the players' strike began).

strike wiped out the end of that season along with any hope Montreal had of postseason success.<sup>14</sup> Post-strike economics forced the club to unload premier players such as Pedro Martinez, John Wetteland, Larry Walker and Moises Alou, and as a result the team plummeted in the standings.<sup>15</sup> It became increasingly obvious that the Expos had turned into a glorified Triple-A team, and fan apathy soon followed.<sup>16</sup> During this past season the club had its lowest home attendance ever, averaging only 7,648 paying fans per home game.<sup>17</sup> Thirteen minor league clubs, including “major” markets such as Round Rock, Texas and Kane County, Illinois, drew more fans on a typical night than the Expos.<sup>18</sup> Montreal no longer cares about the Expos, leading to an uncomfortable situation for the team’s players.<sup>19</sup> As current Expo Geoff Blum noted, “It’s frustrating when you’re trying to get into a game and there’s 3,000 people. . . . When there’s 3,000, you can hear every boo, every put-down that comes from the stands.”<sup>20</sup>

Such is the state of the game today. Baseball should be in a renaissance period, sparked by one of the best World Series ever, record-breaking performances by Barry Bonds and the Seattle Mariners, and touching farewells to Cal Ripken, Jr., Tony Gwynn, and Mark McGwire.<sup>21</sup> Unfortunately, despite these memorable events, the growing chasm between low-revenue teams and their wealthy compatriots is a curse upon the national pastime that won’t go away. Competitive imbalance is undermining the game, as

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<sup>14</sup> See *id.* (stating that the players’ strike in 1994 put an end to one of the Montreal Expos’ best seasons).

<sup>15</sup> *Id.*

<sup>16</sup> See Scott Samples, *Best year? Some Points to Ponder*, PRESS J., Dec. 28, 1998, at B1 (“The best year ever in sports? Not when teams like . . . the Montreal Expos—proud teams who were title contenders just a few short years ago—are reduced to glorified Triple-A franchises because they can’t afford to cough out wads of dough like big-market teams.”).

<sup>17</sup> See Isidore, *supra* note 12.

<sup>18</sup> See *id.*

<sup>19</sup> See Bill Beacon, *Expos Play Final Home Game Wondering if They’ll Be Back Next Year*, CANADIAN PRESS, Sept. 27, 2001, available at 2001 WL 28545182 (noting that some Expos veterans are affected by the apathy and/or negativity of Montreal fans).

<sup>20</sup> *Id.*

<sup>21</sup> See Paul White, *Is 2002 Doomed to Fall Short?*, BASEBALL WEEKLY, Jan. 9, 2002, at 4 (noting the concurrence of events that made the 2001 season memorable).

America's most beloved sport has evolved into an unfair system of haves and have-nots.

In an attempt to fix baseball's current ailments, team owners recently announced a plan to eliminate two struggling franchises before the start of the 2002 season.<sup>22</sup> Although specific clubs were not identified, not surprisingly the aforementioned Twins and Expos seem to be the two franchises in MLB's crosshairs.<sup>23</sup> While drastic action is necessary to restore competitive balance to baseball, contraction most certainly is not the answer. This article first addresses the game's biggest problem, competitive imbalance, and explains how the current economic system creates a situation in which only a few teams have realistic chances of winning the World Series. Next, the owners' contraction proposal, or lack thereof, is analyzed. The legal headaches that contraction creates are then reviewed, followed by a close look at the "practical problems" created by the plan. Finally, a recommendation is made that contraction be scrapped once and for all, and real solutions that would solve baseball's competitive balance problems be implemented instead.

#### I. COMPETITIVE IMBALANCE AND THE SYSTEM THAT CREATES IT

Major League Baseball clearly has some serious issues to confront in order to improve the state of the game. Among the many problems that need to be addressed, competitive imbalance is the most important. Fortunately, identifying the root of competitive imbalance is not difficult. Under baseball's current economic system, great disparities in local revenues lead to great disparities in club payrolls, which in turn ensure that certain franchises will have no chance to be competitive on the field.<sup>24</sup>

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<sup>22</sup> See Ken Daley, *Baseball Owners Vote to Cut Two Teams*, DALLAS MORN. NEWS, Nov. 7, 2001, at 1A (explaining that on November 6, 2001, the owners of Major League Baseball voted to eliminate two of the financially weakest franchises prior to the start of the next season).

<sup>23</sup> See *id.* (citing ownership sources who indicated that the Montreal Expos and Minnesota Twins will be the two teams to be eliminated).

<sup>24</sup> The Report of the Independent Members of the Commissioner's Blue Ribbon Panel

*A. Competitive Imbalance*

Baseball fans used to subscribe to the theory that hope springs eternal.<sup>25</sup> Even if their beloved team endured a disastrous year, the fans' rallying cry was always "wait 'til next year," as a new season brought renewed hope.<sup>26</sup> Unfortunately, you will not hear too many cries of "wait 'til next year" these days from fans in cities like Montreal, Kansas City, Tampa Bay, and Pittsburgh. The sad state of today's game is a recent phenomenon, whereas in the past bad teams stayed bad only because they were ineptly run.<sup>27</sup> With new management and a fresh approach, anything was possible, and fans knew that if they persevered, their faith eventually would be rewarded.<sup>28</sup> Obviously, such is not the case now. The Yankees, with their endless revenue streams and post-strike success on the field, have become popular targets for those concerned with the state of the game. However, baseball's big problem these days is not that the Yankees are a virtual juggernaut; the dilemma is that so many other clubs have no chance to compete. As the Blue Ribbon Panel on Baseball Economics pointed out, modern day baseball is now essentially divided into three groups of unequal size: 1) clubs that expect to perform well in the postseason; 2) clubs that hope for an occasional "dream season" to reach the postseason; and 3) clubs that know going into spring training that they will not make the playoffs.<sup>29</sup>

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on Baseball Economics, July 2000 (R. Levin, G. Mitchell, P. Volcker, G. Will) [hereinafter Blue Ribbon Panel] (on file with author) (noting that many teams enter spring training knowing that their chances of reaching the postseason are virtually nonexistent). The Panel was comprised of Yale University President Richard C. Levin, former Senate Majority Leader George J. Mitchell, political commentator George F. Will, and former Federal Reserve Chair Paul A. Volcker.

<sup>25</sup> See *id.* at 13 ("One of baseball's oldest and cherished notions is that hope springs eternal, and that every club is a contender at least in spring training. If a club's season ended in futility, the fan's rallying cry was always, "Wait 'til next year," because a new season always brought renewed hope.").

<sup>26</sup> See *id.*

<sup>27</sup> See Frank Blackman, *Brother, Can You Spare A Dime? Baseball's Haves Are Running Circles Around Have-Nots*, S.F. EXAMINER, Jan. 25, 1999, at B1.

<sup>28</sup> See *id.*

<sup>29</sup> See Blue Ribbon Panel, *supra* note 24, at 12.

It was not always this way, as one need only look back a few years to see the game in a healthier state.<sup>30</sup> During the 1980s nine different teams won the World Series (only the Dodgers repeated), and only two teams managed to win consecutive division titles (Kansas City in 1984 and 1985, Oakland in 1988 and 1989).<sup>31</sup> Before the 1994 strike, anyone, it seemed, could win, and almost every team did win something.<sup>32</sup> The Reds, Royals, and A's, all current members of baseball's low-revenue club, have all won championships in the last twenty years.<sup>33</sup> The Twins won the World Series in 1987 and 1991.<sup>34</sup> The Pirates won three straight division titles in the early nineties.<sup>35</sup> In 1994, Montreal had the best record in baseball at the time of the strike.<sup>36</sup> Unfortunately, as we begin a new millennium, a repeat of these achievements seems utterly laughable.

The absence of competitive balance in baseball has hit the fans of the game hard. Commissioner Bud Selig claims, "The two things a fan has to have are hope and faith."<sup>37</sup> However, even Selig reluctantly admits that hope and faith are scarce commodities in many cities these days.<sup>38</sup> Unless baseball changes the way it does business, it risks seeing its fans drift away, tired of their teams' futility. Even fans in championship cities do not benefit from baseball's lack of competitiveness—when it becomes obvious that a few teams will be perennial winners, excitement in those cities will decline.<sup>39</sup> For example, a superb Atlanta team, which has won ten straight division titles and featured one of the best pitching rotations

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<sup>30</sup> See Rob Neyer, *All about Competition*, ESPN.COM, Feb. 5, 1999 (reporting on the increasing competitive imbalance over the past few years).

<sup>31</sup> *See id.*

<sup>32</sup> *See id.*

<sup>33</sup> *See id.*

<sup>34</sup> See Jim Caple, *Hankies No Longer for Homers in Twin Cities*, ESPN.COM, Feb. 4, 1999.

<sup>35</sup> See Mike Vaccaro, *For All Baseball's Glory This Year, Selig Still Faces A Budding Problem*, STAR-LEDGER, Sept. 22, 1998, at 51.

<sup>36</sup> *See id.*

<sup>37</sup> Blackman, *supra* note 27.

<sup>38</sup> *See id.*

<sup>39</sup> See John Moores, *Manager's Journal: Bring Competition Back to Baseball*, WALL ST. J., Apr. 5, 1999.

in recent memory, could not even sell out all its home games in this year's National League Championship Series.<sup>40</sup>

“A reasonably level playing field, on which clubs representing markets that are quite diverse geographically, demographically, and economically can compete with at least periodic opportunities for success, is fundamental to MLB's continued growth and popular appeal.”<sup>41</sup> That opportunity exists in the other major sports.<sup>42</sup> Bob Costas has pointed out that while the Yankees were in the midst of their late-nineties run through Big-Market Baseball, the San Antonio Spurs won an NBA title and the Green Bay Packers went to back-to-back Super Bowls.<sup>43</sup> According to Costas, no one in football believes that the Packers, from tiny Green Bay, are at a significant disadvantage relative to the Giants or Jets, New York City's entries in the NFL.<sup>44</sup> Unfortunately, all those associated with baseball know that just down the road from Lambeau Field the Milwaukee Brewers—with or without a new stadium—might as well be on a different planet from the Yankees or Mets.<sup>45</sup>

### *B. What Creates Competitive Imbalance?*

Baseball's current lack of competitive balance can be traced to three related concepts: the sport's wide disparity in overall team

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<sup>40</sup> See Joseph Duarte, *Braves-Diamondbacks Summary*, HOUSTON CHRON., Oct. 22, 2001, available at 2001 WL 23638325 (stating that although the Atlanta Braves have won ten straight division titles, the Braves have failed to sell out nine of the last fifteen home playoff games); Jeff Gordon, *Looking at Who's In and Who's Out in the World of Sports*, ST. LOUIS POST-DISPATCH, Oct. 22, 2001 (stating that the Atlanta Braves did not sell out Game Three of the 2001 National League Championship Series); Drew Olson, *Trouble Ahead for Braves?*, MILWAUKEE J. SENT., Oct. 23, 2001 (noting that the Braves failed to sell out a single one of their four postseason games in 2001).

<sup>41</sup> Blue Ribbon Panel, *supra* note 24, at 12 (advocating a relatively level playing field for teams of different market sizes).

<sup>42</sup> See BOB COSTAS, FAIR BALL 184 (2000) (arguing there must be some reasonable equality of opportunity to build and maintain a contending team for true competition to exist and that such reasonable equality of opportunity does not exist in Major League Baseball).

<sup>43</sup> *Id.* (comparing the parity that exists in football to its lack in Major League Baseball).

<sup>44</sup> *See id.*

<sup>45</sup> *See id.*



revenues, the correlation between overall revenue and team payroll, and the impact that team payroll has on a team's success on the field.

### *1. Disparities in Overall Revenues*

Overall club revenues “come primarily from three sources: 1) so-called local revenues . . . 2) Central Fund revenues generated by industry-wide contracts, such as national television contracts and licensing arrangements . . . and 3) revenue sharing . . . [which] transfers locally generated money from high-revenue clubs to low-revenue clubs.”<sup>46</sup>

Local revenues are the largest single component of most clubs' overall annual revenue.<sup>47</sup> “Local revenue [streams] consist [primarily] of gate receipts, television, radio and cable fees, ballpark concessions, advertising and publications, parking, suite rentals, postseason,” and spring training revenues.<sup>48</sup> While the sources of revenue vary, for most clubs the largest single source of local revenue comes from home-game gate receipts.<sup>49</sup> Unlike the NFL, which has a sixty-forty home-away split of gate receipts for regular season games, baseball allows home clubs to keep 100% of ticket profits from their home dates.<sup>50</sup> Another significant component of local revenue is local broadcasting fees.<sup>51</sup> “Unlike other professional sports, in which a [large] portion of television rights fees are pooled and distributed equally among all teams, most MLB television and radio rights are negotiated and sold locally in each individual market.”<sup>52</sup> “Because local markets vary greatly in size, the local TV and radio revenues flowing to each club vary in size by large

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<sup>46</sup> Blue Ribbon Panel, *supra* note 24, at 15 (detailing the sources of club revenues).

<sup>47</sup> *See id.* at 17 (stating that local revenue constituted approximately 79% of total industry revenue from 1996 to 1999).

<sup>48</sup> *Id.* at 59 (listing the sources of local revenue).

<sup>49</sup> See Major League Baseball 2001 Consolidated Industry Forecast [hereinafter 2001 Forecast], available at <http://www.mlb.com/mlb/hearings/downloads/overview.pdf> (last visited Jan. 31, 2002).

<sup>50</sup> *See* COSTAS, *supra* note 42, at 55.

<sup>51</sup> *See* Blue Ribbon Panel, *supra* note 24, at 18.

<sup>52</sup> *Id.*

amounts.”<sup>53</sup> “Media market rank also affects other local revenues available to clubs, including the amount they can charge for ballpark naming rights, signage, sponsorships,” and other revenue producers.<sup>54</sup>

Central Fund revenue, the second component of a club’s overall revenue, is the “money distributed [by MLB] to clubs from national licensing fees.”<sup>55</sup> This revenue has historically been distributed equally to all clubs, and in 2001 all clubs (with the exception of recent expansion teams Arizona and Tampa Bay) received \$24.401 million in Central Fund payments.<sup>56</sup> Due in large part to MLB’s current six-year, \$2.5-billion national television contract with Fox and six-year, \$850-million cable deal with ESPN, Central Fund distributions have risen every year, but not as quickly as the local revenues of some of the richest clubs.<sup>57</sup> The converse is true as well—Central Fund distributions now are a primary source of revenue for small market teams unable to generate sufficient local revenue.<sup>58</sup> In fact, in 2001 the poverty-stricken Expos made approximately \$15 million more from their portion of the Central Fund than from all of their local revenues combined.<sup>59</sup>

In an attempt to negate the effects of this disadvantage to small-market teams, baseball instituted a modest revenue-sharing arrangement in 1996.<sup>60</sup> Revenue-sharing payments currently constitute the third and final portion of a club’s overall revenue.<sup>61</sup> During the 2001 season, approximately \$167 million in local revenue was sent from the top revenue producers to their poorer brethren.<sup>62</sup> Under the current system, every club places 20% of its local revenue

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 19.

<sup>55</sup> *Id.* at 59.

<sup>56</sup> See 2001 Forecast, *supra* note 49.

<sup>57</sup> See Richard Tedesco, *MLB Blues: TV Black Eye?*, BROADCASTING & CABLE, Nov. 12, 2001, at 36 (reporting on the television contracts of Major League Baseball).

<sup>58</sup> See Blue Ribbon Panel, *supra* note 24, at 21.

<sup>59</sup> See 2001 Forecast, *supra* note 49.

<sup>60</sup> See Blue Ribbon Panel, *supra* note 24, at 21.

<sup>61</sup> See *id.* at 15.

<sup>62</sup> See 2001 Forecast, *supra* note 49 (reporting the transfer mandated by the current revenue-sharing plan).

into a pool.<sup>63</sup> While 75% of this pool is redistributed evenly among the clubs, the remaining 25% is divided among some clubs on a sliding scale.<sup>64</sup> The only clubs eligible for this sliding scale payment are those that generated less local operating revenue than that season's league-wide average.<sup>65</sup>

A comparison between the high-revenue Yankees and low-revenue Expos demonstrates the great disparity in overall revenue. As noted above, local revenue streams are, for most teams, the largest single component of overall revenue.<sup>66</sup> In 2001, the Yankees generated over \$217 million in local revenues, while the Expos could only manage \$9.7 million.<sup>67</sup> This figure is not at all surprising, as the Yankee's lucrative local television, radio, and cable deal was worth nearly \$57 million, while the Expos could only manage \$536,000 for their local broadcast rights.<sup>68</sup> Like the rest of the non-expansion clubs, both the Yankees and Expos received \$24.401 million from MLB's Central Fund.<sup>69</sup> Revenue sharing, meanwhile, took a chunk out of the Yankees' revenues and added to Montreal's bottom line.<sup>70</sup> In 2001, the Yankees were forced to contribute \$26.54 million to the revenue-sharing pool, while the Expos were on the receiving end of a \$28.517 million payment.<sup>71</sup> Therefore, when accounting for local revenue, Central Fund payments, and revenue sharing, the Yankees' final 2001 overall revenue stood at over \$215 million, while the Expos' overall revenue totaled \$62.69 million.<sup>72</sup>

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<sup>63</sup> See Mychael Urban, *Revenue Sharing: How It Works, Is It Working?*, MLB.COM (Dec. 6, 2001) (describing the current formulation by the league mandating that every team put 20% of its local revenue into a pool, 75% of which is redistributed evenly among the thirty teams, with the remaining 25% to be divided on a sliding scale among those teams generating revenues less than the league-wide average), at [http://www.mlb.com/NASApp/mlb/mlb/news/mlb\\_news\\_story.jsp?article\\_id=mlb\\_20011206\\_urban2\\_news&team\\_id=mlb](http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=mlb_20011206_urban2_news&team_id=mlb) (last visited Feb. 11, 2002).

<sup>64</sup> See *id.*

<sup>65</sup> See *id.*

<sup>66</sup> See Blue Ribbon Panel, *supra* note 24, at 17 (noting the relative importance of local revenue streams).

<sup>67</sup> See 2001 Forecast, *supra* note 49.

<sup>68</sup> See *id.*

<sup>69</sup> See *id.*

<sup>70</sup> See *id.*

<sup>71</sup> See *id.*

<sup>72</sup> See 2001 Forecast, *supra* note 49.

## 2. *The Correlation Between Overall Revenue and Team Payroll*

The amount of a club's overall revenue is a key factor in determining the amount of that club's payroll.<sup>73</sup> Therefore, the increase in club revenue disparity has been mirrored by a similar disparity in team payrolls.<sup>74</sup> For example, back in 1995 the top quarter of revenue-producing teams had an average team payroll of \$43.86 million while the bottom quarter of revenue producers averaged a team payroll of \$21.92 million.<sup>75</sup> Although this 2:1 ratio does create a distinct advantage for the top revenue-producing clubs, a similar level of payroll disparity exists in the NFL and NBA.<sup>76</sup> By 1999, however, the top quarter of revenue producers averaged a team payroll of \$71.86 million while the bottom quarter of teams averaged \$26.13 million.<sup>77</sup> This 3:1 payroll advantage for high-revenue clubs creates serious inequities.<sup>78</sup> Since the Blue Ribbon Panel released these figures, things have only grown worse. As a demonstration of this, the Yankees, traditionally the sport's highest revenue producer, had a team payroll nearly four times greater than the low-revenue Twins in 2001.<sup>79</sup>

There are four key reasons why a team's payroll is strongly related to its overall revenue.<sup>80</sup> First of all, higher revenue clubs have the financial resources and thus a better opportunity to "sign high-salaried free agents from other clubs."<sup>81</sup> Low revenue teams have little hope of immediate improvement, since, due to overwhelming financial constraints, they have lost the ability to sign any of the

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<sup>73</sup> See Blue Ribbon Panel, *supra* note 24, at 25 (noting that revenue is the starting point for clubs when deciding how much they can spend on player salaries).

<sup>74</sup> See *id.* (noting that payroll disparity is a logical outgrowth of revenue disparity).

<sup>75</sup> See *id.*

<sup>76</sup> See COSTAS, *supra* note 42, at 95 (stating that no single National Football League or National Basketball Association team has a payroll more than double that of its competitors).

<sup>77</sup> See Blue Ribbon Panel, *supra* note 24, at 25.

<sup>78</sup> See *id.*

<sup>79</sup> See 2001 Forecast, *supra* note 49.

<sup>80</sup> See Blue Ribbon Panel, *supra* note 24, at 26 (detailing the relationship between revenue and payroll).

<sup>81</sup> *Id.*

sport's top free agents.<sup>82</sup> As an example, this past year the Yankees, traditionally the most aggressive team in the free agent market, had ten players on their roster earning \$6 million or more.<sup>83</sup> At the other end of the spectrum, the Twins and Royals each had just one player making over \$6 million.<sup>84</sup> With the current top free agents seeking deals worth between \$10 and \$20 million per year, low-revenue clubs have lost any hope of signing an established superstar.<sup>85</sup> The rich teams essentially decide who among them will sign the game's best players when they become available, as they are the only ones capable of entering the bidding.<sup>86</sup>

The second reason that club payroll is so heavily influenced by overall revenue is a club's ability to "retain their own high-salaried players."<sup>87</sup> Even if a low-revenue club does develop a potential superstar, he likely will leave after six years, when he is eligible to become a free agent and can accept a huge offer his original team is unable to match.<sup>88</sup> Low-rent teams are in effect becoming farm teams for the game's plutocrats, a notion demonstrated by Oakland's current plight. The A's had the fifth-lowest payroll in baseball last year and were sixth from the bottom in overall revenue generated.<sup>89</sup> Nevertheless, solid management over the years helped create a young, successful team that finished the regular season with baseball's second best record.<sup>90</sup> First baseman Jason Giambi, the

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<sup>82</sup> *See id.*

<sup>83</sup> *See* Amy Shipley, *Major League Baseball Enters Foul Territory*, WASH. POST, Nov. 11, 2001, at D1 (stating that the Yankees' \$125 million payroll includes ten players each earning at least \$6 million per season).

<sup>84</sup> *See id.* (contrasting the Yankees' wealthy payroll to that of lower-wealth teams including the Minnesota Twins and Kansas City Royals who each have only one player on their payroll making over \$6 million).

<sup>85</sup> *See Baseball Winter Meetings, A Look At Who's Available*, BOSTON HERALD, Dec. 11, 2001, at 74 (reporting on the most sought-after free agents and their projected salaries).

<sup>86</sup> *See* McAdam, *supra* note 9.

<sup>87</sup> Blue Ribbon Panel, *supra* note 24, at 26.

<sup>88</sup> *See* Blackman, *supra* note 27 (describing the disparity in teams' ability to bid for superstar players leading to the wealthy teams monopolizing the free agent market as the poorer teams are generally incapable of entering the bidding and as a result once a player becomes a free agent he will often leave his team for the highest bidding team).

<sup>89</sup> *See* 2001 Forecast, *supra* note 49.

<sup>90</sup> *See* Susan Slusser, *A's Rode Roller Coaster to Earn Wild-Card Berth*, S.F. CHRON., Oct. 2, 2001, at E1 (chronicling the team's up-and-down year that concluded in a postseason match-up with the Yankees).

2000 AL MVP, closer Jason Isringhausen, and outfielder Johnny Damon all played key roles in Oakland's success, but, sadly for the A's, once the season ended they all became free agents.<sup>91</sup> Predictably, the low revenue A's lost all three players to wealthier clubs.<sup>92</sup> Isringhausen signed a four-year, \$27-million deal with the St. Louis Cardinals, and Giambi signed a huge seven-year contract with the Yankees.<sup>93</sup> It was only a matter of time before Damon followed his former teammates out of Oakland, as he had made it clear that he would consider staying with the A's only if the team re-signed Giambi.<sup>94</sup> Damon should have known better, as based on the club's financial plight there was no way that the A's could afford to re-sign two of the hottest commodities in baseball.

Team payroll is also affected by overall revenue due to the fact that low-revenue clubs are unlikely even to attempt to enter the bidding for high-priced international free agents.<sup>95</sup> Under the Major League Rules, only players from the U.S., Canada, Puerto Rico and other U.S. territories are eligible for selection in the First Year Player Draft.<sup>96</sup> In recent years, though, "international talent has begun to flow into the game."<sup>97</sup> Players from the Far East, Australia, the

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<sup>91</sup> See Eric Gilmore, *Loss of Giambi Won't Derail A's*, CONTRA COSTA TIMES, Dec. 29, 2001.

<sup>92</sup> See Free Agent Scorecard (reporting the departures from the Oakland Athletics of Johnny Damon, Jason Giambi, and Jason Isringhausen), at [http://www.mlb.com/NASApp/mlb/mlb/events/freeagent2001/mlb\\_free\\_agent\\_scorecard.jsp](http://www.mlb.com/NASApp/mlb/mlb/events/freeagent2001/mlb_free_agent_scorecard.jsp) (last visited Jan. 29, 2002).

<sup>93</sup> See Mark Feinsand, *It's Official: Giambi a Yankee; Slugger Signs Seven-Year Deal*, MLB.COM (Dec. 13, 2001) (reporting Jason Giambi's seven-year, \$120 million contract with the New York Yankees), at [http://www.mlb.com/NASApp/mlb/mlb/news/mlb\\_news\\_story.jsp?article\\_id=mlb\\_20011213\\_giambi\\_news&team\\_id=mlb](http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=mlb_20011213_giambi_news&team_id=mlb) (last visited Jan. 31, 2002); see also Patrick Mulrenin, *Cards Close the Deal on Isringhausen*, MLB.COM (Dec. 10, 2001) (reporting Jason Isringhausen's signing of a four-year contract with the St. Louis Cardinals), at [http://www.mlb.com/NASApp/mlb/mlb/news/mlb\\_news\\_story.jsp?article\\_id=mlb\\_20011210\\_isringhausensigns\\_news&team\\_id=stl](http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=mlb_20011210_isringhausensigns_news&team_id=stl) (last visited Jan. 31, 2002).

<sup>94</sup> See Mychael Urban, *Damon Signs with Red Sox; Free-Agent Outfielder Ends One-Year Stint with A's*, MLB.COM (Dec. 21, 2001) (noting the snowball effect that occurs when a team is unable to retain a high-profile free agent), at [http://www.mlb.com/NASApp/mlb/mlb/news/mlb\\_news\\_story.jsp?article\\_id=oak\\_20011221\\_damongone\\_news&team\\_id=oak](http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=oak_20011221_damongone_news&team_id=oak) (last visited Feb. 10, 2002).

<sup>95</sup> See Blue Ribbon Panel, *supra* note 24, at 26.

<sup>96</sup> See *id.* at 41.

<sup>97</sup> Sean McAdam, *Looking For Answers*, ESPN.COM (Feb. 4, 1999) (advocating a

Dominican Republic, Venezuela, and Cuba, all exempt from the draft, have migrated to the U.S., making a dramatic impact on the game.<sup>98</sup> Unfortunately, the international market prices out the small-revenue teams in much the same way the free agent market does.<sup>99</sup> “It’s getting to the point now,” Oakland General Manager Billy Beane has said, “where the best foreign players go to big-market teams because agents recruit kids, then hold a tryout where the highest bidder gets his services.”<sup>100</sup> That’s exactly what happened when Orlando “El Duque” Hernandez fled Cuba.<sup>101</sup> When Hernandez’s agent arranged a workout in Costa Rica to showcase the pitcher, A’s scouting director Grady Fuson called Beane to find out whether he should go.<sup>102</sup> “I asked Grady if he knew what clubs were going,” Beane said. “Would the Yankees and Braves be there? If those guys are going down there, why waste the money? If he can play, we’re not going to get him. Those clubs will just outbid us. If he can’t play, we spent \$2,000 for nothing.”<sup>103</sup> So the A’s stayed home, Hernandez signed a lucrative deal with the Yankees, and “El Duque” led the Bronx Bombers to three World Series triumphs in his first three seasons.<sup>104</sup>

Finally, overall revenue’s effect on team payroll can be seen with low-revenue clubs’ attempts to sign top prospects selected from the First Year Player Draft.<sup>105</sup> Baseball’s current draft system enables rich, powerful teams to become even richer and more powerful by cornering the young talent pool.<sup>106</sup> “The Rule 4 draft, originally designed in the early 1960s to distribute the best new talent to poorly

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world-wide draft).

<sup>98</sup> *See id.*

<sup>99</sup> *See id.*

<sup>100</sup> *See* Blackman, *supra* note 27 (describing the decrease in the poorer teams’ ability to recruit foreign players who were once a cheap and reliable talent source which is now inundated by the higher bidding potential of the wealthier teams).

<sup>101</sup> *See id.*

<sup>102</sup> *See id.*

<sup>103</sup> *Id.*

<sup>104</sup> *See id.* (noting the great impact international players can have on the success of a team that can afford to bid for their services).

<sup>105</sup> *See* Blue Ribbon Panel, *supra* note 24, at 26 (noting the difficulty low-revenue teams have in signing the “premium players” they draft).

<sup>106</sup> *See id.*

performing clubs, has evolved into an inefficient mechanism with perverse effects.<sup>107</sup> High-revenue clubs now have a significant advantage in the acquisition of first-year players, as the spiraling cost of signing players has moved the focus of the draft from assessing talent to assessing signability.<sup>108</sup> An example from the 1998 draft best illustrates this point.<sup>109</sup> The A's had the second pick in that season's draft and, if their decision had been based on talent, outfielder J.D. Drew was the obvious choice.<sup>110</sup> There was a problem, though. At the urging of agent Scott Boras, Drew had refused a \$4-million offer from Philadelphia the year before, instead choosing to hold out and play in an independent pro league.<sup>111</sup> This time around, the Phillies, who had the top pick, passed, not willing to be burned twice in a row.<sup>112</sup> The A's were next but also passed on Drew, opting to draft left-hander pitcher Mark Mulder.<sup>113</sup> The A's could not afford to meet Drew's demands either.<sup>114</sup> When the White Sox also passed, it seemed possible baseball might be willing to teach Drew and Boras a lesson about greed, but St. Louis, selecting fourth, chose Drew and quickly signed him for \$7 million.<sup>115</sup> Drew's signing also skewed the entire draft, because if he was worth \$7 million, then the No. 1 pick was not going to settle for less.<sup>116</sup> The top pick wound up getting a package worth \$8 million, which also meant the No. 2 pick could now demand substantially more.<sup>117</sup> The A's were forced to invest more than \$4 million in Mulder, even though pitchers traditionally are the riskiest selections in the draft and some of the money could have been spent improving the big-league roster.<sup>118</sup> Thus, not only did the low-revenue A's pass on what was widely considered the best player available, they were

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<sup>107</sup> *Id.* at 41.

<sup>108</sup> *See id.*

<sup>109</sup> *See* Blackman, *supra* note 27.

<sup>110</sup> *See id.*

<sup>111</sup> *See id.*

<sup>112</sup> *See id.*

<sup>113</sup> *See id.*

<sup>114</sup> *See id.*

<sup>115</sup> *See* Blackman, *supra* note 27.

<sup>116</sup> *See id.*

<sup>117</sup> *See id.*

<sup>118</sup> *See id.*



forced to overpay their less heralded selection (although Mulder has certainly proved that he was worth every penny).<sup>119</sup>

### *C. The Correlation Between Team Payroll and On-Field Success*

“The . . . number of games won is . . . closely related to the club’s payroll. That is, the higher the payroll, the more games a club is likely to win.”<sup>120</sup> Occasionally, a low payroll club like the A’s does well on the field, and, as the Baltimore Orioles made a habit of proving in years past, high payroll clubs can certainly flop on the field.<sup>121</sup> “[W]hile it is evident that a high payroll is not the only element in fielding a winning club”—chemistry, scouting, and management are factors as well—“it is an increasingly important element.”<sup>122</sup> “Put another way, a high payroll does not automatically guarantee a good win-loss record and a contending season, but a low payroll usually means that a club cannot contend for a postseason berth or championship.”<sup>123</sup> Selig admitted as much when he testified that baseball’s postseason “continues to be dominated by high payroll clubs. . . . [I]n the playoffs, the payroll and performance correlation is unmistakable and powerful.”<sup>124</sup>

The correlation between team win percentage and team payroll has been significant at the highest statistical level every year between 1995 and 2001.<sup>125</sup> In contrast, the correlation was not significant at

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<sup>119</sup> It should be noted that although Mulder was less heralded in that year’s draft, he has turned out to be a quality selection for the A’s. In 2001, Mulder finished in second place in the voting for the Cy Young Award. Drew, on the other hand, has produced solid numbers for the Cardinals but has spent much of his young career on the disabled list.

<sup>120</sup> Blue Ribbon Panel, *supra* note 24, at 29.

<sup>121</sup> See Jack Etkin, *Labor Pains; If History is Any Guide, Don’t Expect Kid-Gloves Treatment in Talks for a New Basic Agreement*, ROCKY MOUNTAIN NEWS, Sept. 24, 2001, at 1E (pointing out the occasional aberrations in this payroll-success relationship).

<sup>122</sup> Blue Ribbon Panel, *supra* note 24, at 29.

<sup>123</sup> *Id.*

<sup>124</sup> For the League’s official stance on this issue, see Press Release, Major League Baseball, Major League Baseball Competitive Balance Worsens (Dec. 6, 2001), available at [http://www.mlb.com/NASApp/mlb/mlb/news/mlb\\_news\\_story.jsp?GXHC\\_gx\\_session\\_id\\_=6c5e1bdd1e32ccfd&GXHC\\_GX\\_jst=fc7b64f0662d6163&article\\_id=mlb\\_20011206\\_competitivebalance\\_pr&team\\_id=mlb](http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?GXHC_gx_session_id_=6c5e1bdd1e32ccfd&GXHC_GX_jst=fc7b64f0662d6163&article_id=mlb_20011206_competitivebalance_pr&team_id=mlb) (last visited Jan. 31, 2002).

<sup>125</sup> Andrew Zimbalist, *Foreword* to BOB COSTAS, FAIR BALL xv (2000) (tracking the

this level in any year between 1985 and 1994.<sup>126</sup> Over the seven-year period since the strike, no team outside of the top quarter in payroll has won a single World Series game.<sup>127</sup> Teams in the bottom half of payroll have won only five of the 224 postseason contests that have taken place since the strike, with four of these victories achieved by the same club, Oakland.<sup>128</sup> No team in the bottom half of team payroll during this period actually won a postseason series.<sup>129</sup> Over this span, thirteen out of fourteen World Series participants have been in the top eight in league payroll.<sup>130</sup> Spending a truckload on player salaries doesn't guarantee success, but it sure helps. As a result, a perennial marketing description for low revenue clubs is "young and exciting," which in many cases is simply a euphemism for a "100-game loser."<sup>131</sup> The myth of opening day, where anyone can win a title, lays exposed as a lie.<sup>132</sup>

## II. CONTRACTION: THE PROPOSAL

Two years ago, when the Blue Ribbon Panel tried to formulate solutions on how to increase competitive balance in baseball, they were presented with a unique idea by Colorado Rockies owner Jerry McMorris.<sup>133</sup> Looking back, McMorris recalls, "I just didn't understand why we continued to spread the money to places that

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correlation).

<sup>126</sup> *See id.*

<sup>127</sup> *Selig's Testimony Submitted in Advance; Testimony of Allan H. (Bud) Selig, Commissioner of Baseball, Before the House Comm. on the Judiciary United States House of Rep.*, MLB.COM (Dec. 6, 2001), available at [http://www.mlb.com/NASApp/mlb/mlb/news/mlb\\_news\\_story.jsp?article\\_id=mlb\\_20011206\\_seligttestimony\\_news&team\\_id=min](http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=mlb_20011206_seligttestimony_news&team_id=min) (last visited Feb. 5, 2002) [hereinafter *Selig Testimony*].

<sup>128</sup> *See id.*

<sup>129</sup> *See id.*

<sup>130</sup> *See* Blue Ribbon Panel, *supra* note 24, at 33-35 (presenting this information in table form).

<sup>131</sup> *See* Ronald Blum, *L.A.'s \$105 Million Deal For Brown Has Small-Market Teams Demanding Change*, SALT LAKE TRIB., Jan. 24, 1999, at B9.

<sup>132</sup> *See* Mike Vaccaro, *Megabucks: Salaries Send Baseball Spinning*, TIMES-PICAYUNE (New Orleans), Dec. 27, 1998, at C1.

<sup>133</sup> *See* Mike Klis, *McMorris' Idea Now Hottest Topic*, DENVER POST, Nov. 4, 2001, at C05 (reporting on the introduction of the idea of contraction).

continuously showed they don't have the type of support you need for baseball to survive."<sup>134</sup> The proposal, of course, was to simply eliminate the sport's weakest franchises.<sup>135</sup> Although it took a while for "contraction," as it became known, to catch on, Selig, a one-time critic of the proposal, changed his tune this year and became its biggest proponent.<sup>136</sup>

Both the American and National League constitutions have language that governs the elimination of teams, dictating that "any member may withdraw from membership with the consent of three-fourths of all members."<sup>137</sup> However, there has not been contraction in the sport in over 100 years.<sup>138</sup> Back in 1899 economic concerns forced the National League to eliminate four of its twelve franchises, as owners of teams in Baltimore, Cleveland, Louisville, and Washington, D.C. were bought out by their colleagues for a combined sum of \$104,000.<sup>139</sup> A new league, the American League, formed a few years later and jumped at the chance to enter the suddenly vacant Cleveland and Washington markets.<sup>140</sup> By 1903, both the American and National Leagues featured eight teams and enjoyed a period of relative stability.<sup>141</sup>

Nearly a century later, on November 6, 2001, approximately forty-eight hours after one of the most incredible World Series ever, baseball's owners overwhelmingly voted to authorize Selig to begin the process of contracting two teams prior to the start of the 2002 season.<sup>142</sup> According to reports, the vote was twenty-eight to two in

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<sup>134</sup> See *id.*

<sup>135</sup> See *id.*

<sup>136</sup> See Tracy Ringolsby, *Addition by Contraction is Still on the Board*, CHI. SUN-TIMES, June 17, 2001, at 123 (noting Commissioner Selig's evolving position on the idea of contraction).

<sup>137</sup> See Michael Grange, *Baseball Understands the Logic of Culling*, GLOBE & MAIL, Nov. 2, 2001, Sports, at 2 (describing the withdrawal provisions contained in the American and National League Constitutions).

<sup>138</sup> See Jay Weiner, *Baseball Contraction; The Rise, And Then The Fall*, MINNEAPOLIS STAR TRIB., Nov. 11, 2001, at 1C.

<sup>139</sup> See *id.*

<sup>140</sup> See *id.*

<sup>141</sup> See *id.*

<sup>142</sup> See Eric Fisher, *Commissioner Concedes There Will Be 'Potholes'*, WASH. TIMES, Nov. 8, 2001, at C1.

favor of contraction, with the owners of the Twins and Expos the only “no” votes.<sup>143</sup> Although Selig remained vague on specific details of the proposal, it seems clear that the Twins and Expos are the franchises most likely to be eliminated.<sup>144</sup> Initial reports predicted that the owners would expand team rosters in order to make up for the loss of union jobs, but it now appears as though the owners are not willing to offer this concession.<sup>145</sup> It has also been speculated that players from the contracted teams would enter a dispersal draft, with selection order determined by cumulative record over the past three years (this year’s record counting for 50%, last year’s 30%, and 1999 records 20%).<sup>146</sup>

The fact that the owners would vote for such a drastic proposal makes it clear that baseball has serious financial issues. Selig admitted as much when he claimed, “this action, though difficult, should not surprise anyone who is familiar with the economics of the game. Our industry has significant financial problems that we are trying to address in a myriad of ways. Contraction is one step toward addressing the industry’s problem.”<sup>147</sup> According to the Commissioner, the primary factor for targeting specific teams for contraction is an inability to generate sufficient local revenue.<sup>148</sup> “It makes no sense for Major League Baseball to be in markets that generate insufficient local revenues to justify the investment in the franchise,” Selig emphasized. “The teams to be contracted had a long record of failing to generate enough revenues to operate a viable Major League franchise.”<sup>149</sup>

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<sup>143</sup> See Murray Chass, *Back to Business: Baseball Votes to Drop Two Teams*, N.Y. TIMES, Nov. 7, 2001, at A1.

<sup>144</sup> See *id.*

<sup>145</sup> See Murray Chass, *In Debate Over Contraction, Devil Is Also In The Details*, N.Y. TIMES, Nov. 21, 2001, at S4.

<sup>146</sup> See *id.*

<sup>147</sup> See Press Release, Major League Baseball, Major League Baseball Votes to Contract Two Teams (Nov. 6, 2001), available at [http://www.mlb.com/NASApp/mlb/mlb/news/mlb\\_news\\_story.jsp?article\\_id=tex\\_20011106\\_contract\\_news&team\\_id=tex](http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=tex_20011106_contract_news&team_id=tex) (last visited Feb. 1, 2002).

<sup>148</sup> See *id.*

<sup>149</sup> See *id.*

Due to the fact that some teams have difficulty generating sufficient local revenue, groups in cities across the nation have been courting struggling franchises like the Twins and Expos for years in an attempt to lure them into a new market.<sup>150</sup> Washington D.C., Northern Virginia, Portland, and Las Vegas are just a few of the areas that would like to see franchise relocation before contraction.<sup>151</sup> It has been over thirty years since a baseball franchise moved, and that streak could continue since the owners appear committed to contraction over relocation.<sup>152</sup> Although they have not ruled out the possibility of franchise relocation in the future, the owners seem set in their belief that it is not a solution for the game's immediate problems.<sup>153</sup> According to Selig, "Merely transferring existing problems to another ownership group or another city would only exacerbate the problem, not resolve it. . . . After long and arduous study, we have determined that there is no other acceptable current solution but to contract two teams."<sup>154</sup>

Selig and the owners have had their way, and contraction is now on the table. Unfortunately, an analysis of the repercussions of this plan demonstrates that, all in all, it was a big mistake. First of all, the legal consequences of contraction are bound to stagger the industry. In addition, non-legal practical problems shed serious doubt on the feasibility of the proposal.

### III. LEGAL PROBLEMS WITH CONTRACTION

After the owners' fateful contraction announcement, Selig claimed that MLB's lawyers spent "thousands of hours" studying the legal ramifications of contraction.<sup>155</sup> Contraction could ultimately lead to

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<sup>150</sup> See Roger G. Noll, *The Economics of Baseball Contraction*, at 1-3 (describing the relative feasibility of each of these markets), available at [siepr.stanford.edu/people/noll\\_baseball.pdf](http://siepr.stanford.edu/people/noll_baseball.pdf) (last visited Feb. 1, 2002).

<sup>151</sup> See *id.*

<sup>152</sup> See Kevin Murphy, *Baseball Commissioner Defends Plan to Eliminate Two Teams*, KAN. CITY STAR, Dec. 7, 2001.

<sup>153</sup> See Press Release, *supra* note 147.

<sup>154</sup> See *id.*

<sup>155</sup> See Jose de Jesus Ortiz, *Selig Stands Firm as Congress, Courts Get Involved*, HOUSTON CHRON., Nov. 9, 2001, at 6.

tens of thousands of billable hours for lawyers across the country, since MLB is now facing significant legal roadblocks that make one wonder whether the benefit of contraction is truly worth the potential costs.

#### A. *Antitrust Issues*

When it comes to franchise movement, MLB does not function like a true free market.<sup>156</sup> Baseball has been granted an exemption from antitrust laws to which all other businesses in the country are subject.<sup>157</sup> Therefore, MLB can engage in what would normally be considered anti-competitive practices when it comes to franchise relocation issues.<sup>158</sup> Unfortunately for baseball, its shortsighted contraction proposal has led to renewed scrutiny of the game's traditional antitrust exemption.<sup>159</sup>

The United States Supreme Court first carved out the exemption in the infamous *Federal Baseball* decision.<sup>160</sup> In 1914, the Federal League attempted to challenge the established American and National Leagues.<sup>161</sup> Due to the increase in competition, the Major Leagues agreed to a buyout of all the Federal League clubs, with the notable exception of Baltimore.<sup>162</sup> Claiming that the major leagues broke the Federal League through "transactions which amount to nothing less than bribery," Baltimore's owner alleged that a conspiracy among the Major Leagues, in violation of antitrust laws, caused his club great damage.<sup>163</sup> Writing for the Court, Justice

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<sup>156</sup> See Blue Ribbon Panel, *supra* note 24, at 5.

<sup>157</sup> See *Flood v. Kuhn*, 407 U.S. 258 (1972); *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356 (1953); *Fed. Baseball Club of Balt., Inc. v. Nat'l League of Prof'l Baseball Clubs, Inc.*, 259 U.S. 200 (1922) (a string of cases either granting or affirming Major League Baseball's antitrust exemption).

<sup>158</sup> See 15 U.S.C. §§ 12-37 (2001).

<sup>159</sup> See, e.g., H.R. 3288, 107th Cong. (2001). This is the bill introduced by Rep. John Conyers (D-MI), known as the Fairness in Antitrust in National Sports (FANS) Act, which would repeal Major League Baseball's antitrust exemption.

<sup>160</sup> See *Federal Baseball*, 259 U.S. at 208-09.

<sup>161</sup> See *id.* at 207.

<sup>162</sup> See *id.*

<sup>163</sup> See ROGER ABRAMS, *BASEBALL AND THE LAW* 56 (1998) (recounting the factual circumstances surrounding the *Federal Baseball* case).

Holmes held that because professional baseball was not a subject of interstate commerce, the business of providing baseball games for profit between clubs of professional players was not within the scope of federal antitrust laws.<sup>164</sup> Holmes argued that the business of baseball was purely a state affair despite the fact that players had to cross state lines in order to participate in games.<sup>165</sup>

Thirty-one years after *Federal Baseball*, baseball's antitrust exemption once again landed in the Supreme Court.<sup>166</sup> George Toolson, a pitcher who had signed a contract to play with the Yankees, refused to report from one farm club to another.<sup>167</sup> Toolson subsequently claimed that baseball's reserve system violated federal antitrust laws.<sup>168</sup> In a *per curiam* decision, the Court reaffirmed the outcome of *Federal Baseball*, but based its decision on different grounds.<sup>169</sup> The Justices emphasized that baseball had been left to develop for thirty years based on the understanding that it was not subject to antitrust legislation.<sup>170</sup> Congress, which was well aware of the controversial *Federal Baseball* decision, had not seen fit to pass legislation that would eliminate the sport's exemption.<sup>171</sup> In an act of passing the buck, the *Toolson* Court stated that "if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation."<sup>172</sup>

The Supreme Court's most recent look at baseball's antitrust exemption came in 1972's *Flood v. Kuhn* decision.<sup>173</sup> Curt Flood, a centerfielder traded from the Cardinals to the Phillies without his previous knowledge or consent, brought an antitrust suit after being refused free agency by Baseball Commissioner Bowie Kuhn.<sup>174</sup> The

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<sup>164</sup> See *Federal Baseball*, 259 U.S. at 208-09 (constituting the controversial legal and logical steps required to grant an antitrust exemption).

<sup>165</sup> See *id.*

<sup>166</sup> See *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953).

<sup>167</sup> See ABRAMS, *supra* note 163, at 60.

<sup>168</sup> See *id.*

<sup>169</sup> See *Toolson*, 346 U.S. at 357.

<sup>170</sup> See *id.*

<sup>171</sup> See *id.*

<sup>172</sup> *Id.*

<sup>173</sup> See *Flood v. Kuhn*, 407 U.S. 258, 285 (1972).

<sup>174</sup> See *id.* at 264-66.

Supreme Court in *Flood* held that the longstanding exemption of professional baseball from antitrust laws was an “established aberration,” in light of the fact that other interstate professional sports were not similarly exempt.<sup>175</sup> Nevertheless, because Congress has acquiesced to this “established aberration,” the Court in *Flood* ruled that baseball’s exemption was entitled to the benefit of stare decisis.<sup>176</sup> The Court reaffirmed the notion that any removal of the resultant inconsistency would be a matter for legislative, not judicial, resolution.<sup>177</sup>

Although *Flood* was the last time the Supreme Court ruled on baseball’s antitrust exemption, the matter still managed to find its way into lower level courts several times during the eighties and nineties.<sup>178</sup> The great weight of subsequent federal cases held that *Flood* exempts the entire business of baseball from federal and state antitrust claims.<sup>179</sup> Two cases did emerge, however, in which a federal district court and a state supreme court took a different interpretation of *Flood*.<sup>180</sup> In *Piazza*, a Pennsylvania federal district court reasoned that stare decisis should be narrowly applied with regard to *Flood*, based on the decision’s opening sentence, which stated, “for the third time in 50 years the Court is asked specifically to rule the professional baseball reserve system is within the reach of the antitrust laws.”<sup>181</sup> Based on this language, the court in *Piazza* ruled that the exemption should only be applied to baseball’s reserve system.<sup>182</sup> Therefore, other aspects of the “business of baseball,” such as franchise relocation, were not exempt from antitrust legislation.<sup>183</sup> Faced with the same facts as in *Piazza*, the Florida Supreme Court in *Butterworth* also held that baseball’s antitrust

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<sup>175</sup> See *id.* at 282.

<sup>176</sup> See *id.*

<sup>177</sup> See *id.* at 285 (continuing the rationale laid out in *Toolson*).

<sup>178</sup> See, e.g., *McCoy v. Major League Baseball*, 911 F. Supp. 454 (W.D. Wash. 1995); *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993); *Minn. Twins P’ship v. State ex rel. Hatch*, 592 N.W. 2d 847 (1999); *Morsani v. Major League Baseball*, 663 So. 2d 653 (1995); *Butterworth v. Nat’l League of Prof’l Baseball Clubs*, 644 So. 2d 1021 (1994).

<sup>179</sup> See, e.g., *McCoy*, 911 F. Supp. at 458.

<sup>180</sup> See *Piazza*, 831 F. Supp. at 438; *Butterworth*, 644 So. 2d at 1025.

<sup>181</sup> See *Piazza*, 831 F. Supp. at 438.

<sup>182</sup> See *id.*

<sup>183</sup> See *id.*



exemption only applied to the reserve system and did not extend to relocation of baseball clubs.<sup>184</sup>

The Curt Flood Act of 1998 resolved some of the uncertainty surrounding baseball's exemption from antitrust laws.<sup>185</sup> The Act repealed part of the exemption, stating that the business of baseball directly relating to or affecting the employment of major league baseball players is subject to antitrust laws.<sup>186</sup> Significantly, however, Congress explicitly stated that the "passage of this Act does not change the application of the antitrust laws in any other context."<sup>187</sup> Specifically, the Act stated that courts were not to rely on the Act as a basis to change the application of antitrust laws to the business of baseball "relating to or affecting franchise expansion, location or relocation, (and) franchise ownership issues."<sup>188</sup>

Despite the fact that the Curt Flood Act reaffirmed baseball's antitrust exemption as it relates to franchise relocation, MLB decided to push its luck in November with its contraction announcement. Reacting to the public outcry that followed the owners' decision, Congressman John Conyers, Jr., Ranking Member of the House Judiciary Committee, joined members of the House and Senate in introducing the "Fairness in Antitrust in National Sports Act" — better known as the "FANS Act."<sup>189</sup> H.R. 3288 specifically states, "[i]t is the purpose of this Act to state that the elimination or relocation of major league baseball franchises are covered under the antitrust laws."<sup>190</sup> In response to MLB's announcement that it would eliminate two franchises, Congressman Conyers felt it necessary to ensure that "anti-competitive decisions by Major League Baseball" become subject to federal antitrust laws like all other professional sports and businesses.<sup>191</sup> Conyers stated that "[a]ny time 30 of the wealthiest and most influential individuals get together behind closed

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<sup>184</sup> See *Butterworth*, 644 So. 2d at 1025.

<sup>185</sup> See 15 U.S.C. §27a (2001).

<sup>186</sup> See *id.* §27a(a).

<sup>187</sup> See *id.* §27a(b).

<sup>188</sup> See *id.* §27a(b)(3).

<sup>189</sup> See H.R. 3288, 107th Cong. (2001).

<sup>190</sup> *Id.*

<sup>191</sup> See Press Release, Congressman John Conyers, Jr., Conyers Introduces "The Fairness in Antitrust in National Sports (FANS) Act" (Nov. 14, 2001) (on file with author).

doors and agree to reduce output, that cannot be a good thing for anyone but the monopolists. If GM and Ford got together and jointly agreed to cut production, people would be outraged. That is exactly what baseball has done.”<sup>192</sup>

Due to Congress’s higher priorities and MLB’s lobbying efforts, it seems unlikely that the FANS Act will be passed.<sup>193</sup> However, if it does, the loss of its antitrust exemption as it pertains to contraction and franchise relocation would be disastrous for MLB. As an example, assume that MLB finally announces that it is in the process of contracting the Twins. Days later, suppose the FANS Act is passed and MLB loses its exemption in the narrow areas of relocation and contraction. The lawsuits against MLB would come fast and furious, and the owners would be forced to prove that their action to eliminate teams is somehow better for the competitive business of the sport.<sup>194</sup> Potential plaintiffs would likely counter by claiming the decision to contract constitutes an agreement among all teams to limit output and competition while having no positive impact on competition.<sup>195</sup>

The number of parties with potential claims against MLB could be endless. In Minnesota, the city and stadium owners would no doubt claim that they had been injured because the antitrust conspiracy by baseball’s owners took away their team. Then there are those who would be unemployed as a result of the owners actions—players, front office personnel, and stadium workers would all have valid claims that they had been injured. Finally, cities like Washington, who have been courting MLB franchises for years, would have valid antitrust claims as well. Adding salt to MLB’s potential wounds, those with valid antitrust claims would be entitled to treble damages.<sup>196</sup>

In addition to the numerous lawsuits, a loss of antitrust protection would also likely destroy the stability that the league has enjoyed for

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<sup>192</sup> *See id.*

<sup>193</sup> *See* Bob Dart, *Baseball Could Face Antitrust Squeeze Play*, PALM BEACH POST, Nov. 18, 2001, at 5A (describing the difficult task faced by the bill’s sponsors).

<sup>194</sup> *See* 15 U.S.C. §§ 12-37 (2001).

<sup>195</sup> *See id.*

<sup>196</sup> *See id.*

the last thirty years. An MLB team has not moved since 1971, when the Washington Senators relocated to Texas and became the Rangers.<sup>197</sup> If baseball lost its exemption and the Florida Marlins, frustrated by an inability to get a stadium approved, decided to pack up and move to Washington, D.C., there is little MLB could do. Legal precedent set by professional sports leagues subject to antitrust laws would weigh heavily against the league.<sup>198</sup> For instance, in 1982 Oakland Raiders owner Al Davis won an antitrust suit that allowed his team to move from Oakland to Los Angeles.<sup>199</sup> Since that decision, seven other National Football League (hereinafter “NFL”) moves have taken place.<sup>200</sup> A total of nine National Basketball Association (hereinafter “NBA”) and NHL teams have moved during that same period, and MLB franchise movement would likely cause this list to expand.<sup>201</sup> Selig is well aware of this reality, noting recently that “if you take the antitrust exemption away, people can move wherever they want to move.”<sup>202</sup>

If the antitrust exemption were to be lifted, it is very likely that New York City would once again become a three-team market.<sup>203</sup> Under current MLB rules, territorial exclusivity has been granted to one American League team and one National League team.<sup>204</sup> Without the benefit of its antitrust exemption, there is little reason to believe that such a rule would survive judicial scrutiny. A third New

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<sup>197</sup> See Bob Gravely, *Selig Defends Baseball Contraction Plan to Skeptical Lawmakers*, BLOOMBERG NEWS, Dec. 6, 2001 (reporting that no team has relocated in thirty years).

<sup>198</sup> See, e.g., *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*, 791 F.2d 1356 (9th Cir. 1986) (finding that the NFL’s attempts to prevent the Raiders from relocating from Oakland to Los Angeles amounted to an illegal restraint of trade); *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*, 726 F.2d 1381 (9th Cir. 1984) (sustaining the Raiders’ challenge to the NFL’s rule requiring three-fourths of the league’s teams to approve one team moving into another team’s territory, finding that the league was not a “single entity” and that it engaged in an illegal restraint of trade in violation of the Sherman Antitrust Act).

<sup>199</sup> See *id.*

<sup>200</sup> See Gravely, *supra* note 197.

<sup>201</sup> See *id.*

<sup>202</sup> *Id.*

<sup>203</sup> See Evan Weiner, *New York Should Field Third Baseball Team*, NEWSDAY (N.Y.), Dec. 6, 2001, at A51 (advocating that result).

<sup>204</sup> See Andrew Zimbalist, *Baseball and D.C., for All The Wrong Reasons*, WASH. POST, Jan. 27, 2002, at B1 (noting that “[b]aseball’s rules grant teams territorial monopolies within a 75-mile radius, but only if the proposed nearby team would be in the same league.”).

York team would benefit from a lucrative television package (MSG just lost the Yankees and no doubt is looking for summer programming), a massive corporate base, and millions of fans.<sup>205</sup> Considering the economic potential, it would seem to be more attractive to be the third most popular team in New York than the only team in small markets like Minneapolis and Kansas City.<sup>206</sup> As an added bonus, a third New York team would likely cut into the overall revenues of both the Mets and Yankees, thereby bringing their overall revenues closer to the rest of the pack.<sup>207</sup>

### B. Collective Bargaining

There is debate as to whether or not the owners' plan to contract violates the Collective Bargaining Agreement (hereinafter "CBA") that currently governs the relationship between the owners and players.<sup>208</sup> Despite the fact that the agreement formally expired on November 7, 2001, labor law dictates that unless there is a strike, lockout, or a new deal is struck, the terms of an existing agreement continue to govern beyond the expiration date.<sup>209</sup>

In early September, baseball owners sent the Players Association a letter stating they would seek to make changes in the sport's CBA, which was agreed to in 1996.<sup>210</sup> The letter was a formality under the National Labor Relations Act and was received on September 4 by the Players Association.<sup>211</sup> Selig has claimed that he made it clear to

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<sup>205</sup> See Weiner, *supra* note 203.

<sup>206</sup> See *id.*

<sup>207</sup> See *id.*

<sup>208</sup> See Dave Sheinin, *Hearing on Contraction Begins Today*, WASH. POST, Dec. 4, 2001, at D2 (reporting that "the union contends that contraction must be bargained as part of a new collective bargaining agreement.").

<sup>209</sup> See *Contraction Grievance Heard; Labor Talks on Horizon*, ASSOCIATED PRESS, Jan. 4, 2002 (reporting that the "expired labor contract . . . remains in force."), available at <http://espn.go.com/mlb/news/2002/0104/1305847.html> (last visited Feb. 1, 2002).

<sup>210</sup> See Carrie Muskat, *Players Have Questions Union Can't Yet Answer*, MLB.COM (Nov. 20, 2001) (describing the events factoring into the current controversy over contraction), at [http://www.mlb.com/NASApp/mlb/mlb/news/mlb\\_news\\_story.jsp?article\\_id=mlb\\_20011120\\_playersunion\\_news&team\\_id=mlb](http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=mlb_20011120_playersunion_news&team_id=mlb) (last visited Feb. 1, 2002).

<sup>211</sup> See *id.*

the union that contraction was a distinct possibility, an assertion the union denies.<sup>212</sup> According to Donald Fehr, current union boss, the contraction announcement “landed like a bombshell” since it had not been discussed in any significant detail during earlier collective bargaining meetings.<sup>213</sup>

Regardless of whether or not the union was actually on notice, Selig and the owners understood that choosing to implement contraction would require some union input.<sup>214</sup> Management lawyers assured the Commissioner that although the owners had the right to unilaterally eliminate two franchises, specifics such as the dispersal of players would have to be subjects of bargaining with the union.<sup>215</sup> Based on this assumption, the owners went ahead with their historic vote in early November.<sup>216</sup>

Not surprisingly, immediately following the contraction announcement, the union countered with a grievance against the owners.<sup>217</sup> The grievance, which currently is the subject of an arbitration hearing, charged that contraction violates at least nine provisions of the labor contract as well as four attachments to the contract, seven major league rules, all existing player contracts, and “the clubs’ obligation of good faith and fair dealing” under the CBA.<sup>218</sup> In short, the union believes that since contraction affects major league players, it is subject to collective bargaining and cannot be unilaterally implemented by the owners.<sup>219</sup> Rick Helling of the Texas Rangers, who also serves as the union’s American League

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<sup>212</sup> See Selig Testimony, *supra* note 127.

<sup>213</sup> See Ken Gurnick, *Fehr, MLBPA Reps Weigh In*, MLB.COM (Dec. 6, 2001) (describing the reactions of Fehr and union members to the contraction proposal), at [http://www.mlb.com/NASApp/mlb/mlb/news/mlb\\_news\\_story.jsp?article\\_id=mlb\\_20011206\\_playersassociation\\_news&team\\_id=min](http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=mlb_20011206_playersassociation_news&team_id=min) (last visited Feb. 1, 2002).

<sup>214</sup> See Larry Stone, *Contraction Promises Rebirth of Bad Feelings*, SEATTLE TIMES, Nov. 7, 2001, at D1.

<sup>215</sup> See *id.*

<sup>216</sup> See *id.*

<sup>217</sup> See Murray Chass, *The Union Puts up a Stop Sign as the Owners Plan Contraction*, N.Y. TIMES, Nov. 9, 2001, at S3 (describing the union’s initial reaction to the owners’ contraction plan).

<sup>218</sup> See *id.* (detailing the contents of the union’s grievance).

<sup>219</sup> See Dave Sheinin, *Union Challenges Contraction Bid*, WASH. POST, Dec. 5, 2001, at D3 (reporting on the union’s likely legal argument).

representative, claims that, “From our position, contraction affects the players, and anything that affects the players has to be negotiated” with the union.<sup>220</sup>

While contraction is not specifically addressed in the CBA, Article II of the agreement states “the Clubs recognize the association as the sole and exclusive collective bargaining agent for all major league players during the term of this agreement, with regard to all terms and conditions of employment.”<sup>221</sup> The union can reasonably argue that questions over contraction have significantly affected this year’s group of free agents.<sup>222</sup> Hoping that perhaps they can obtain a superstar for free in some type of disbursement draft, teams are not willing to spend lavishly on the current crop of free agents.<sup>223</sup> Since this impacts the future contract values of this year’s free agents, it could be argued that contraction has in fact had an impact on the “terms and conditions of employment.”<sup>224</sup> History seems to be on the union’s side, as during the 1990s three different arbitrators held that any issue affecting free agency had to be negotiated with the union and could not be enacted unilaterally by the owners.<sup>225</sup>

Union founder Marvin Miller is among those who believes the owners have handled matters the wrong way.<sup>226</sup> “They’re arguing

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<sup>220</sup> See *id.*

<sup>221</sup> Collective Bargaining Agreement, Art. II, *quoted in* Darren Rovell, *Legal Wrangling Begins over Contraction* (Nov. 17, 2001), at <http://espn.go.com/mlb/s/2001/1116/1279368.html> (last visited Feb. 1, 2002).

<sup>222</sup> See Peter Schmuck, *Contraction Affects Free-Agent Signings*, BALTIMORE SUN, Dec. 9, 2001 (describing the relative uncertainty facing free agents as contraction suddenly was made an option), *available at* [http://www.amarillonet.com/stories/120901/spo\\_contraction.shtml](http://www.amarillonet.com/stories/120901/spo_contraction.shtml) (last visited Feb. 1, 2002).

<sup>223</sup> See *id.* (noting that “the prospect of a dispersal draft—which was supposed to take place in mid-December—created the possibility that some teams would be able to acquire a marquee player without spending big free-agent money or giving up solid players in return.”).

<sup>224</sup> See Rovell, *supra* note 221 (containing the referenced language).

<sup>225</sup> See Sheinin, *supra* note 208 (quoting William B. Gould IV, the former chairman of the National Labor Relations Board and former baseball arbitrator: “[a]rbitrators have held in three different cases in the 1990s that any issue regarding free agency must be negotiated with the union and cannot be enacted unilaterally by the owners.”).

<sup>226</sup> See Jim Souhan, *Miller: Selig Has Conflicts*, MINNEAPOLIS STAR TRIB., Nov. 14, 2001, at 1C (detailing Miller’s argument that Selig should resign due to conflict of interest inherent in baseball’s proposed contraction plan and his criticism of the owners: “I’m

that while they have to negotiate with the union on the impact on players otherwise they are free to do whatever they want, and don't have to negotiate contraction," Miller has stated. "I don't know how to separate the two. How would you have contraction without having an impact on players?"<sup>227</sup> Donald Fehr agrees, having claimed, "You can't do a deal just on contraction. It affects too many other things."<sup>228</sup>

However, the union may not have as strong a case as it believes. Although Selig has gone on record to state that subtracting clubs has nothing to do with the terms and conditions of employment, that is not his only argument.<sup>229</sup> It is highly significant that the owners have yet to identify the teams to be eliminated.<sup>230</sup> Based on this fact, if the union charged the owners with refusal to bargain, the owners could counter by stating, "We haven't done anything yet."<sup>231</sup> Even this argument, however, has not convinced the owners that victory is guaranteed.<sup>232</sup> Apparently, the owners' chief labor lawyer warned them that there was a distinct possibility that contraction could backfire.<sup>233</sup>

In the event that the union loses in arbitration, contraction is not necessarily imminent. The Players Association might ask for support from the National Labor Relations Board (hereinafter "NLRB") in the event it can prove contraction would violate the Wagner Act of 1935, which grants rights that enable unions to negotiate with management over working hours, wages, and working conditions.<sup>234</sup>

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appalled at their [the owners] methods—talking about this publicly, without having approached the union.").

<sup>227</sup> See *id.*

<sup>228</sup> See Mark Asher & Dave Sheinin, *Players Union Sets Stage for Legal Clash*, WASH. POST, Oct. 26, 2001, at D1.

<sup>229</sup> See Darren Rovell, *Legal Wrangling Begins over Contraction*, ESPN.COM (Nov. 17, 2001), at <http://espn.go.com/mlb/s/2001/1116/1279368.html> (last visited Feb. 1, 2002).

<sup>230</sup> See Souhan, *supra* note 226.

<sup>231</sup> See *id.*

<sup>232</sup> See Murray Chass, *Delay Only Complicates Contraction*, N.Y. TIMES, Nov. 25, 2001, at S6 (describing the uncertainty of the fate of the contraction plan).

<sup>233</sup> See *id.*

<sup>234</sup> See Bob Dutton, *Selig Faces Mounting Challenges in Quest to Engineer Contraction*, KAN. CITY STAR, Nov. 18, 2001, at K7001 (noting that the players association could appeal to the National Labor Relations Board contending that contraction violates the Wagner Act

The NLRB has been sympathetic to the union's arguments in the past.<sup>235</sup> However, that support came when the NLRB's general counsel was appointed by the Clinton administration.<sup>236</sup> The current general counsel, Arthur F. Rosenfeld, was appointed by current President and former Texas Rangers owner George W. Bush, and is considered to be sympathetic to the owners' side.<sup>237</sup> Regardless, one former NLRB official claims, "Whatever could happen before the NLRB, the matter would still have to be resolved between the parties. All the legal maneuverings are just designed to get an upper hand in those negotiations."<sup>238</sup>

### C. Contractual Issues

If in fact the Twins and Expos receive a death sentence from MLB, a chain reaction would occur leading to dozens of breach of contract claims. This would add to contraction's cost. In order to buy out all the relevant contracts MLB would likely have to pay hundreds of millions of dollars in damages. Here are just a few of the contract claims that the owners might face:

- *Major League Stadium Leases*—One potential contractual liability for the owners is the unexpired portion of the stadium leases of the teams that are being eliminated. It has been speculated that this is one of the primary reasons that the Twins would be selected for contraction over a team like the Devil Rays, since Minnesota's lease, in theory, would be more attractive to buy out than Tampa Bay's burdensome twenty-six year lease.<sup>239</sup> Unfortunately for MLB, the reality is that any attempt to break the Twins

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of 1935, which ensures the right of the union to bargain with management regarding matters of working hours, wages, and working conditions).

<sup>235</sup> See Dave Sheinin, *supra* note 219 (stating that the National Labor Relations Board has supported the players' union in the past).

<sup>236</sup> See *id.*

<sup>237</sup> See *id.*

<sup>238</sup> See Rovell, *supra* note 229.

<sup>239</sup> See Gary Shelton, *Would it Make a Sound?*, ST. PETERSBURG TIMES, Nov. 8, 2001, at 1C (arguing that the Tampa Bay Devil Ray's twenty-six-year lease renders Tampa Bay an unattractive candidate for contraction).



lease with the Metropolitan Sports Facilities Commission will come with its own share of headaches.<sup>240</sup> On October 1, the Twins signed an ongoing use agreement with the stadium commission, distinct from its lease, that requires them to actually play baseball at the Metrodome next year.<sup>241</sup> A state court has ruled that the Minnesota Twins must be permitted to play out their contractual agreement with the local stadium authority, and, even if this specific performance remedy is overturned on appeal, baseball still is likely to have to pay damages to the stadium for breaking the lease.<sup>242</sup>

- *Spring Training Leases*—The Metrodome lease would not be the only one the Twins would break if eliminated. The Team conducts Spring Training in Fort Myers, Florida, and currently has a lease with Lee County for the use of the Lee County Sports Complex.<sup>243</sup> If contraction were to take place, the Twins would be forced to break their lease and, “as a result, reimburse the county all scheduled payments of principal and interest due on bonds.”<sup>244</sup>
- *Minor League Affiliate Stadium Leases*—The minor league

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<sup>240</sup> See Jay Weiner, *Dome Panel Says It Will Enforce Twins’ 2002 Lease*, MINNEAPOLIS STAR TRIB., Nov. 6, 2001 (stating that in response to talk of contraction, the Metropolitan Sports Facilities Commission told MLB that the Commission intends to “exercise every power it has” to enforce the Twins’ lease at the Metrodome).

<sup>241</sup> See Bill McAuliffe, *Twins Had Renewed Pact to Play Ball at Dome*, MINNEAPOLIS STAR TRIB., Nov. 3, 2001, at 9A (stating that on October 1, 2001, the Twins renewed an “on-going” use agreement with the stadium commission, which is distinct from their lease with the commission and requires the Twins to actually play baseball in the Metrodome next season and not simply buy out their lease).

<sup>242</sup> See Randy Furst, *Appeals Court Says Injunction Keeping Twins at Dome is Legal*, MINNEAPOLIS STAR TRIB., Jan. 23, 2002 (reporting that the judge predicted a trial court may find an award of damages, estimated by owners at around \$500,000, but that amount might not adequately compensate for non-monetary losses, and therefore might require specific performance instead), available at <http://www.startribune.com/stories/509/1117044.html> (last visited Feb. 1, 2002).

<sup>243</sup> See Lee County Sports Complex (reporting that the lease term is twenty years), at <http://www.angelfire.com/on/slammin/gftwins.html> (last visited Feb. 1, 2002).

<sup>244</sup> For details on this potential problem, see Kevin Kelly, *FSL Sites Are Left in Lurch*, ST. PETERSBURG TIMES, Nov. 8, 2001, available at [http://www.sptimes.com/News/110801/news\\_pf/Sports/FSL\\_sites\\_are\\_left\\_in.shtml](http://www.sptimes.com/News/110801/news_pf/Sports/FSL_sites_are_left_in.shtml) (last visited Feb. 1, 2002).

affiliates of contracted teams could also face lawsuits, and MLB would likely be on the hook for any resulting damages. For example, the Ottawa Lynx are the Triple-A affiliate of the Expos.<sup>245</sup> The Lynx currently have a lease with the City of Ottawa that allows the club to play its home games at JetFoam Park.<sup>246</sup> Under the lease, the Lynx would face huge penalties if they folded within the next year and were forced to break the lease.<sup>247</sup> Obviously, the elimination of the Expos certainly makes the subsequent elimination of the Lynx a possibility.

- *Other Stadium Contracts*—Other major and minor league stadium contracts could prove costly to buy out, as well. For example, all clubs have deals with concessionaires. In addition, companies are tied up with stadium advertising deals, and corporations have leased luxury boxes for years.
- *Local Broadcast Contracts*—Local broadcasters could also have a contract claim against the clubs. As an example, Infinity-owned WCCO-AM has two years left on its contract with the Twins.<sup>248</sup> Although sources indicate that Twins' TV partner Fox Sports Net would not file a suit against baseball should the club be contracted, stranger things have happened.<sup>249</sup>
- *Player and Staff Contracts*—Another potential liability is the unexpired portion of multi-year contracts for players who do not make another major league roster. Folding two teams will eliminate fifty major league positions, and at least some of the players who will be dropped or demoted to the minor leagues will file a grievance if they do not make a major league roster, and the salary commitments in

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<sup>245</sup> For information on the Ottawa Lynx, a minor-league affiliate of the Montreal Expos, see <http://www.canoe.ca/BaseballOTT/home.html> (last visited Feb. 5, 2002).

<sup>246</sup> See *id.*

<sup>247</sup> See *id.*

<sup>248</sup> See Judd Zulgad, *Contraction Talk Worries Twins Rights-Holders*, MINNEAPOLIS STAR TRIB., Nov. 2, 2001, at 5C.

<sup>249</sup> See *id.* (quoting an industry source as stating that Fox Sports Network would not file suit against baseball if the Twins were dissolved).

their existing contracts are not honored.<sup>250</sup> Players are not the only employees of Major League Baseball clubs who might have contracts. Front-office staff, vendors, and members of the groundskeeping crews are among the many others that could potentially lose their jobs due to contraction. For all of his good points, Selig does, on occasion, have the tendency to put his foot in his mouth. On the day contraction was announced, a reporter asked the Commissioner if it was a sad day in the history of the game.<sup>251</sup> “Why is it a sad day?” Selig replied with an incredulous look on his face.<sup>252</sup> The Commissioner momentarily forgot that there is a human factor to contraction, and that some people would suddenly be jobless, and could require additional compensation from MLB.

- *Minor League Contraction Fees*—Still another potential liability could arise from folding twelve minor league franchises that have working agreements with the two teams that are eliminated. This will not happen right away since the Professional Baseball Agreement, the deal between MLB and Minor League Baseball, states that 160 minor league teams will be operated through 2003.<sup>253</sup> However, if contraction were to occur at the Major League level, eventually it would be necessary in the minors as well.<sup>254</sup> At the moment, minor league baseball is booming, with Class AAA franchises commonly valued at \$20

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<sup>250</sup> See Noll, *supra* note 150, at 5 (detailing another potential liability posed by contraction).

<sup>251</sup> See Darren Rovell, *Contraction Won't Necessarily Hurt Game's Image*, ESPN.COM (Nov. 6, 2001), at <http://www.espn.go.com/mlb/s/2001/1106/1274571.html> (last visited Feb. 10, 2002).

<sup>252</sup> See *id.*

<sup>253</sup> See Richard Sandomir, *Contraction Plans Put Minor League Affiliates in Limbo*, N.Y. TIMES, Dec. 4, 2001, at S4 (noting that at least for now, minor league franchises are protected from the potential effects of contraction by the Professional Baseball Agreement, which provides that 160 minor league teams will be operated through 2003).

<sup>254</sup> See *id.* (stating that contraction will eventually come to the minors, but will not necessarily impact the minor league teams affiliated with the major league clubs that are eliminated).

million or more, and even Class A franchises selling for several million.<sup>255</sup> MLB could face the prospect of being forced to buy out twelve minor league teams at a total cost of over \$50 to \$75 million.<sup>256</sup>

#### IV. PRACTICAL PROBLEMS WITH CONTRACTION

In addition to the numerous legal obstacles facing MLB, a close analysis of contraction reveals a number of non-legal, practical problems that hamper the proposal.

##### *A. Such a Drastic Move Is Not Necessary*

The decision to hand out death sentences to two clubs seems strange considering the overall health of Major League Baseball. Measured simply in terms of annual revenue, which is now soaring toward \$4 billion, MLB is prospering.<sup>257</sup> Fox and ESPN have flooded MLB's coffers with record-setting broadcast contracts.<sup>258</sup> Attendance has increased despite a near doubling in ticket prices since the strike.<sup>259</sup> The Yankees-Diamondbacks World Series garnered incredible television ratings.<sup>260</sup> Franchise values are soaring.<sup>261</sup>

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<sup>255</sup> See Noll, *supra* note 150, at 6 (discussing the liability that could arise from folding the minor league franchises that have working agreements with the two major teams that are slated for elimination).

<sup>256</sup> See *id.*

<sup>257</sup> See Eric Fisher, *Baseball Heads For Another Stoppage*, WASH. TIMES, Oct. 25, 2001, at C1 (stating that annual industry revenues have soared from \$1.4 billion to more than \$3.5 billion since the 1994-95 players' strike).

<sup>258</sup> See Tedesco, *supra* note 57 (noting that Fox has a six-year \$2.5-billion contract with MLB and ESPN has a six-year \$850-million deal with MLB).

<sup>259</sup> See Eric Fisher, *Baseball's Economic Outlook Still Good*, WASH. TIMES, Nov. 30, 2001, at C1 (noting that partially due to the development of eleven new stadiums over the past decade, baseball attendance has increased despite a near-doubling in ticket prices over the same time period).

<sup>260</sup> See Kim Chipman, *Fox TV May Get Lift from World Series, Analysts Say*, BLOOMBERG NEWS, Nov. 6, 2001 (noting that Game Seven of the 2001 World Series was the highest rated baseball telecast in ten years).

<sup>261</sup> See Christopher Carey, *The Numbers Don't Add Up for Baseball*, ST. LOUIS POST-

Despite these encouraging developments, through its contraction proposal, MLB recently declared that baseball as we know it is on life-support. In his recent testimony before the Committee on the Judiciary, Selig presented a number of alarming statistics based upon yet-to-be-audited financial figures.<sup>262</sup> According to the Commissioner, baseball's total industry debt is over \$3 billion, a figure that grows to nearly \$8 billion when factoring in deferred compensation and future, guaranteed obligations to players.<sup>263</sup> In the past seven years alone, the owners claim that cumulative operating losses have grown to nearly \$1.4 billion.<sup>264</sup> In 2001, Selig contends, only five clubs actually made money, and the consolidated loss for all thirty teams stood at approximately \$519 million.<sup>265</sup>

There is a great deal of skepticism about these figures. The union contends that MLB refused to provide the House Judiciary Committee with all of the relevant financial material it had.<sup>266</sup> Selig countered by testifying, "We have given you all the financial information you need," to which Rep. Maxine Waters (D-Cal.) sharply retorted, "Let me remind you, you're under oath, sir."<sup>267</sup> According to economist Andrew Zimbalist, "[t]he bottom line can be juggled in a number of ways, all of which are legal. But that doesn't tell you about the health of the game."<sup>268</sup> The League claims that only two of baseball's thirty teams have made a cumulative profit since 1995.<sup>269</sup> One of those teams, not surprisingly, is the Yankees.<sup>270</sup> The other team, with a healthy profit of \$39 million, is the Cleveland Indians.<sup>271</sup> Interestingly, there is only one team over

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DISPATCH, Dec. 16, 2001, at D1 (questioning why so many offers were made to buy the Red Sox if Major League Baseball's business is in as much trouble as it claims).

<sup>262</sup> See Selig Testimony, *supra* note 127.

<sup>263</sup> See *id.*

<sup>264</sup> See *id.*

<sup>265</sup> See *id.*

<sup>266</sup> See Mark Asher and William Gildea, *Selig's Economic Recovery Pitch Elicits Few Takers*, WASH. POST, Dec. 7, 2001, at D1 (stating that the union claimed that Selig refused to provide all the financial information in MLB's possession).

<sup>267</sup> See *id.*

<sup>268</sup> See Michael O'Keeffe, *Critics Call Contraction Unkindest Cut*, DAILY NEWS (N.Y.), Nov. 29, 2001, at 89.

<sup>269</sup> See Sam Walker, *Poor, Poor Baseball*, WALL ST. J., Dec. 7, 2001, at W8.

<sup>270</sup> See *id.*

<sup>271</sup> See *id.* (stating that since 1995, Cleveland has generated a cumulative profit of \$39

that same time span that was owned for a time by stockholders.<sup>272</sup> Because it was a publicly traded entity, that team's financial figures are not subject to the same doubt as Selig's figures. Who was that team? That's right, the Cleveland Indians.<sup>273</sup>

Take a moment and think of baseball like any other billion-dollar corporate entity. If a company announced that it just finished the year \$500 million in debt and would be forced to eliminate 7% of existing franchises, is it likely that the company's CEO would suddenly be rewarded with a three-year extension?<sup>274</sup> It does not seem logical, and yet baseball's owners did precisely that by recently rewarding Selig with a new deal.<sup>275</sup> This decision, when combined with other recent developments in the game, makes one wonder whether or not baseball truly is a dying industry. On the day that Selig testified before Congress to state his case, Boston Red Sox officials were sorting through bids of approximately \$400 million for a half-interest in the team.<sup>276</sup> It is noteworthy that George Mitchell, the former Maine senator, is a part of one group looking to own the Red Sox.<sup>277</sup> Just two years ago, Mitchell, along with other members of the Blue Ribbon Panel, spent over a year studying the game's economics.<sup>278</sup> If things are really so bad, then why would a brilliant, well-respected man who understands baseball's finances as well as anyone be so eager to enter the industry? Another interesting development was the Yankees' reported signing of free agent Jason

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million).

<sup>272</sup> See *id.* (noting that Cleveland is the only team to be owned by stockholders during the time period discussed).

<sup>273</sup> See *id.*

<sup>274</sup> See Chris Jenkins, *Selig Given Security as Game Falls into Chaos*, SAN DIEGO UNION-TRIB., Nov. 28, 2001, at D1 (reporting on Commissioner Selig's contract extension).

<sup>275</sup> See Eric Fisher, *Budget Arrives at a Turbulent Time for Selig, Baseball*, WASH. TIMES, Jan. 13, 2002, at C3.

<sup>276</sup> See Steve Marantz, *Sources: By Backing MLB Head, Sox Team May Be Last Standing*, BOSTON HERALD, Dec. 3, 2001, at 34 (reporting on the bidding process for the Boston franchise).

<sup>277</sup> See *id.* (noting that Selig favors the Red Sox being sold to the group of Tom Werner, Les Otten, George Mitchell, and Larry Lucchino, the eventual purchasers).

<sup>278</sup> See Blue Ribbon Panel, *supra* note 24, at 55-56 (providing a brief biographical synopsis of Senator George J. Mitchell, who along with Richard C. Levin, Paul A. Volcker, and George F. Will, served as the independent members of the Blue Ribbon Panel).

Giambi to a seven-year, \$120-million deal.<sup>279</sup> Remarking on that deal, Minnesota Governor Jesse Ventura wondered, “How, on one side of their mouths, can (the owners) plead poverty, and then on the other side . . . they’re paying these kinds of salaries?”<sup>280</sup> What should we expect next? Will Enron, another struggling business giant, lavishly pay for naming rights at another ballpark despite its impending bankruptcy? Of course not, because Enron *actually* is financially doomed. Major League Baseball, on the other hand, is not.

### *B. A Solution Motivated by Greed?*

Although the specifics of contraction remain unclear, one thing is certain—the surviving owners will profit if in fact two teams are eliminated. Based on this reality, it is likely that the rich teams simply voted to erase their smallest partners, thereby leaving more cash for them to divide. Every surviving owner would receive a greater share of MLB’s Central Fund, which is distributed evenly to all the teams. In 2001, every team (with the exception of recent expansion franchises Arizona and Tampa Bay) received approximately \$24 million from the Central Fund.<sup>281</sup> If two teams were to be eliminated, the remaining twenty-eight teams would evenly split the \$48 million that would have been distributed to the eliminated teams.<sup>282</sup> Therefore, surviving owners would get approximately \$1.7 million in additional Central Fund money per year.<sup>283</sup> Owners of wealthy teams would also benefit due to a reduction in revenue sharing payments. The Twins and Expos received a combined \$47.586 million last season in revenue sharing, a commitment that would disappear along with the teams.<sup>284</sup> Finally, the elimination of two teams would lead to lucrative expansion fees in the future for the surviving owners. In the unlikely event that

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<sup>279</sup> See Feinsand, *supra* note 93.

<sup>280</sup> Kevin Diaz, *Ventura Gives Selig and Baseball a Scolding During House Hearing*, MINNEAPOLIS STAR TRIB., Dec. 7, 2001, at 1A.

<sup>281</sup> See 2001 Forecast, *supra* note 49.

<sup>282</sup> See *id.*

<sup>283</sup> See *id.*

<sup>284</sup> See *id.*

contraction is implemented and helps fix baseball's economic problems, there is a good possibility that the league could re-expand to thirty teams. If that were the case, owners would profit handsomely. During the past expansion three years ago, the Tampa Bay Devil Rays and Arizona Diamondbacks paid \$130 million each, which resulted in a healthy profit of nearly \$10 million for each existing owner.<sup>285</sup> If expansion becomes an option in the future, there is no doubt that this price tag will go up.

*C. An Arbitrary Proposal that Does Not Address Baseball's Real Problems*

Although the extent of baseball's financial misery is in dispute, there is no doubt that modern day baseball does have problems. As noted above, baseball's primary problem is a lack of competitive balance, a situation exacerbated by disparity in local revenues. Sure, if contraction were to proceed, then two franchises with little hope of ever reaching the World Series would be eliminated. However, many clubs condemned to perpetual mediocrity would remain in existence. By killing off two of the league's weaker teams, baseball would not be addressing the issue of competitive imbalance. According to one analyst, contraction is "like having a disease on your arm and then cutting your arm off without finding out what's wrong. The disease can then spread to the rest of your body if you don't diagnose it correctly."<sup>286</sup> Selig and the rest of the owners have done nothing to show that contraction is the cure for what currently ails the game.<sup>287</sup> The teams to be eliminated, the cost of buying out franchises, and the effect on the schedule and possible realignment have not been addressed.<sup>288</sup> No credible studies have been presented that show there is no hope in the future for the Twins and Expos.<sup>289</sup>

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<sup>285</sup> See Richard Sandomir, *Decades of Growth Coming to an End*, N.Y. TIMES, Nov. 7, 2001, at S2 (stating that expansion teams in Tampa Bay and Arizona joined Major League Baseball in 1998).

<sup>286</sup> Rovell, *supra* note 251.

<sup>287</sup> Daley, *supra* note 22.

<sup>288</sup> See *id.*

<sup>289</sup> See *id.*



Furthermore, there is no convincing argument that relocation is not a better option than contraction.<sup>290</sup>

People have always been predicting the hopelessness of certain teams, but never before were there calls for franchise euthanasia. If contraction had been a proposed solution back in the late 1980s and early 1990s, the Seattle Mariners probably would not have been around to tie a Major League record this year with 116 wins.<sup>291</sup> In addition, such a proposal during that same era surely would have targeted the Atlanta Braves, who last season won their tenth straight division title.<sup>292</sup> The Cleveland Indians are another compelling example. At the beginning of the 1990s, the Indians were a dying franchise playing in a decaying stadium.<sup>293</sup> After the Tribe lost 105 games in 1991, Bill James claimed, “[t]he Cleveland Indians have become the first team to abandon the hope of paying a competitive salary to a quality player.”<sup>294</sup> At the time, the Indians’ value was estimated at \$77 million, the second lowest in baseball.<sup>295</sup> Today, the Indians have dominated their division in recent years and are valued at \$372 million, making them one of baseball’s five most valuable franchises.<sup>296</sup>

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<sup>290</sup> See *id.*

<sup>291</sup> See generally The Official Site of the Seattle Mariners, *History* (reviewing the history of the Mariners franchise and stating that in 1990, the Mariners finished the season with a record of 83-79, posting a season record over .500 for the first time in team history), at [http://mariners.mlb.com/NASApp/mlb/sea/history/sea\\_history\\_timeline.jsp](http://mariners.mlb.com/NASApp/mlb/sea/history/sea_history_timeline.jsp) (last visited Feb. 1, 2002).

<sup>292</sup> See generally The Story of the Braves (describing how after struggling during the 1980s, the Atlanta Braves turned their fortunes around and went on to be “far and away the most successful Major League Baseball team of the decade”), at [http://braves.mlb.com/NASApp/mlb/atl/history/atl\\_history\\_feature.jsp?story=1](http://braves.mlb.com/NASApp/mlb/atl/history/atl_history_feature.jsp?story=1) (last visited Feb. 1, 2002).

<sup>293</sup> See David Schoenfield, *Success, But at What Price?* ESPN.COM (Feb. 4, 1999) (describing the economic nadir of the Cleveland franchise).

<sup>294</sup> See *id.*

<sup>295</sup> See *id.*

<sup>296</sup> See *Sabathia Wins a Spot in Cleveland’s Rotation*, N.Y. TIMES (ASSOCIATED PRESS), Mar. 31, 2001, at D4 (noting that only the New York Yankees, valued at \$635 million, New York Mets, valued at \$454 million, Atlanta Braves, valued at \$407 million, and Los Angeles Dodgers, valued at \$381 million, have a higher value than the Cleveland franchise, which is valued at \$372 million).

The parallel between the Indians and Twins is eerie. The Twins compete in the thirteenth-largest television market in the country, while Cleveland is ranked fifteenth.<sup>297</sup> The Twins' recent attendance pattern—between 1.05 and 1.4 million between 1994 and 2000—mirrors that of the Indians' during the pre-Jacobs Field days.<sup>298</sup> Last year, with a competitive team, the Twins drew 1.78 million fans, a 70% increase from the previous year's attendance.<sup>299</sup> Likewise, in 1993, when the Indians were finally showing signs of life and Jacobs Field was one year away, the Tribe drew 2.17 million, a 78% increase from the year before.<sup>300</sup> The Indians were spared from contraction and have become one of MLB's model franchises—why shouldn't the Twins be given the same right?

Because the owners have yet to show just how eliminating two franchises will help the game, it seems completely illogical to kill teams off just for the sake of taking some action. Neither the Expos nor the Twins deserve to be eliminated, although the thought of killing a franchise is even more repulsive in Minnesota's case. The Twins are an organization that has been around for 100 years, dating back to the days of the Washington Senators.<sup>301</sup> Walter Johnson, considered by many to be the greatest pitcher in history, spent his entire career with the franchise.<sup>302</sup> The Twins were the first Major League club ever to draw over three million fans in a season, and just ten years ago they were celebrating a World Championship.<sup>303</sup> Last season, in what some baseball officials hope was their swan song, the Club led their division for the majority of the season and drew 1.8 million fans with the lowest budget in baseball.<sup>304</sup> Any plan to wipe

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<sup>297</sup> See Richard Sandomir, *Developing a Winning Team Should Be Preferred to Closing the Books*, N.Y. TIMES, Nov. 13, 2001, at S3.

<sup>298</sup> *See id.*

<sup>299</sup> *See id.*

<sup>300</sup> *See id.*

<sup>301</sup> See Paul Sullivan, *Fans, Cities in Limbo*, CHI. TRIB., Nov. 8, 2001, at N1.

<sup>302</sup> See Bob Ryan, *The First Name in Fireballing: Any Discussion of Heat Starts with Walter Johnson*, BOSTON GLOBE, Mar. 31, 2000, at E7 (discussing the career of the legendary hurler).

<sup>303</sup> See Jim Souhan, *The Twins Were a Major League Baseball Role Model a Decade Ago, But Now They're a Contraction Probability. What happened?*, MINNEAPOLIS STAR TRIB., Dec. 16, 2001, at 1C (describing the peak of the Minnesota franchise).

<sup>304</sup> See Kirk Bohls, *Cutting Twins Doesn't Make Sense*, AUSTIN AM.-STATESMAN, Nov.

out a franchise like the Twins, especially a plan that ultimately would not achieve anything, is completely unjustifiable.

*D. The Owners Are Not Serious about Contraction*

It is clear that there are many impediments to the implementation of contraction, and the nature of these obstacles leads one to believe that contraction will never happen. Therefore, the obvious question arises: What were the owners thinking? One guess is that the owners never seriously thought they could pull off this plan and were simply looking for leverage over two important groups. The vote for contraction was as much an attempt to gain leverage with different cities and state governments, as it was an attempt to gain the upper hand in negotiations with the Players Association. Marvin Miller, the man responsible for the formation of the union, believes that he sees right through the owners' proposal: "On the one hand, they seem to want to hammer the union with the loss of jobs and on the other hand, they seem to want to hammer the various communities. . . . This is a double-headed ploy."<sup>305</sup>

It is very likely that the owners see contraction simply as a bargaining chip for the upcoming labor negotiations with the union. Selig refutes this notion, having gone on record to state that contraction "is not something we have done to create leverage or threaten the players."<sup>306</sup> However, the Players Association remains unconvinced.<sup>307</sup> Twins Player Representative Denny Hocking stated, "We don't know if they're trying to say, 'OK, we want to eliminate two teams' or if they're going to use that in the basic agreement negotiations against us for a salary cap."<sup>308</sup> Whether the intent is there or not, the threat of taking away major league jobs does indeed seem to impact labor negotiations.

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7, 2001, at D1.

<sup>305</sup> Jim Souhan, *Miller: Selig Has Conflicts*, MINNEAPOLIS STAR TRIB., Nov. 14, 2001, at 1C.

<sup>306</sup> Tracy Ringolsby, *Selig: Expansion 'Hard to Digest'; Commissioner Seeks Quick Contraction to Aid Game Long Term*, ROCKY MOUNTAIN NEWS, Nov. 8, 2001, at 1C.

<sup>307</sup> See Muskat, *supra* note 210.

<sup>308</sup> *Id.*

The threat of contraction also could be an effort to exert pressure on communities so that they will give in and finance new stadiums. Montreal, Minnesota, and Florida are the three teams most frequently mentioned when contraction talk arises. Not coincidentally, all three of those teams have seen their local community vote down a stadium proposal in recent years.<sup>309</sup> The threat of contraction essentially places a gun to the head of these cities and others in the future—build a new stadium, or else. According to Miller, “What lends credibility to this theory is they haven’t named the teams that are supposed to fold. That would have limited their leverage to two cities.”<sup>310</sup>

## V. REAL SOLUTIONS

Contraction has already been extremely costly. With all the attention it has garnered, the proposal has distracted baseball’s leaders from what the game really needs at the moment: a CBA that will help alleviate the game’s current competitive balance problems. Contraction is the ultimate red herring, a non-issue that has drained the time and energy of the game’s primary decision-makers. Real solutions need to be looked at and addressed so that yet another work stoppage can be avoided. It is worth emphasizing that compromise is needed from three key groups, not two.<sup>311</sup> As David Cone astutely pointed out, “[t]he general perception is that it’s billionaire owners versus millionaire players, but actually it’s a three-headed battle. The big-revenue owners are fighting the small-revenue owners and the players are the third party.”<sup>312</sup> These parties need to place the health of the game ahead of their own agendas for once and be willing to make sacrifices.

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<sup>309</sup> See Gordon Wittenmyer, *Contraction Not Final Answer, But a Short Term Gain for Baseball, Officials Say*, ST. PAUL PIONEER PRESS, Nov. 4, 2001.

<sup>310</sup> Ron Rapoport, *Miller Not Laboring over Selig’s Announcement*, CHI. SUN-TIMES, Nov. 8, 2001, at 121.

<sup>311</sup> See Jeff Horrigan, *Cone to Pitch In*, BOSTON HERALD, Oct. 1, 2001, at 84 (noting the complexity of the problem and the multi-layered nature of any solution).

<sup>312</sup> See *id.*

What follows is a series of solutions that would at least put baseball back on the right track. Those intimately familiar with these issues will notice that my proposal in some respects mirrors those issued by Bob Costas and the Blue Ribbon Panel.<sup>313</sup> Although I do not agree with all of their proposals (for example, see Costas's "Floor-to-Ceiling" Salary Cap and the Panel's "Competitive Balance Draft"), I highly respect their grasp of the "big picture."<sup>314</sup> In developing their recommendations, Costas and the Panel benefited from a perspective unavailable to the owners or union—they were truly acting on behalf of the game of baseball and its fans. Bud Selig and Donald Fehr do not have this perspective, and that is understandable. After all, their jobs are to be the best advocates possible for their clients and they perform that duty admirably. However, sometimes it takes those without passionate client loyalty to actually resolve a conflict. In essence, Costas, the Panel, and I are attempting to play the role of mediator between the owners and union when creating these types of proposals.

By including the following proposals into a new CBA, competitive balance would once again have a chance, along with "hope and faith" in baseball fans throughout North America. It is worth remembering that under the recently expired CBA, three-quarters of team owners would have to agree to the recommendations and the union would have to sign off as well.<sup>315</sup> Therefore, this is not necessarily the best solution for baseball—one need only look at the NFL current agreement to see the best way to achieve complete competitive

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<sup>313</sup> See generally COSTAS, *supra* note 42; Blue Ribbon Panel, *supra* note 24.

<sup>314</sup> See COSTAS, *supra* note 42, at 91-104 (detailing his proposal which includes: a major league team payroll minimum equal to the per-team average of media revenues and a maximum equal to twice that figure; increased revenue sharing which will enable small market teams to increase their payroll to meet the minimum; "superstar" salary cap limiting any one player's salary to one-quarter of the minimum team payroll or one-eighth of the maximum team payroll; a 50% increase in minimum salary levels; salary arbitration for the first four years in the majors but within a graduated scale of maximums and minimums; in exchange for the graduated salary caps, players would achieve restricted free agency in the fifth and sixth years and unrestricted free agency after their sixth year); see also Blue Ribbon Panel, *supra* note 24, at 40.

<sup>315</sup> See Hal Bodley, *Answers to Your Questions about Eliminating MLB Teams*, USA TODAY, Nov. 6, 2001, at 4C (spelling out the voting requirements for contraction).

balance.<sup>316</sup> Instead, the recommendations below are realistic solutions that would improve competition in baseball and could potentially be agreed upon by the relevant leaders of the sport.

#### *A. Equitable Distribution of Local Revenue*

The greatest emphasis should be placed on expanded sharing of local revenues, and fortunately all parties seem to understand the issue's importance. During his recent House testimony, Selig stated that the owners will "persist in attempting to achieve greater local revenue sharing in our upcoming negotiations with the union."<sup>317</sup> Similarly, Fehr has gone on record as believing that "when we get into the heavy bargaining, the most likely result is that the principal issue will be revenue sharing."<sup>318</sup>

MLB's old revenue sharing plan simply did not work, as it produced neither the intended moderation of payroll disparities, nor improved competitive balance. Some low-revenue clubs, determining that their revenue sharing payments were not enough to make them competitive, used those proceeds to become modestly profitable.<sup>319</sup> Given that at least the bottom half of teams recognize that they have no hope of competing in the free agent market, their best profit-maximizing strategy was to lowball their payroll, perform poorly and collect large transfers from the rich teams.<sup>320</sup> Therefore, it comes as no surprise that under the old system the bottom half of teams got worse as the top teams pulled in millions of additional dollars from lucrative local revenue streams.<sup>321</sup>

Additionally, an entire middle class of teams emerged that were shut out of the limited economic assistance provided by the revenue

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<sup>316</sup> See Kenneth A. Kovach, Patrizia Ricci & Aladino Robles, *Is Nothing Sacred? Labor Strife in Professional Sports*, BUS. HORIZONS, Jan. 11, 1998, at 34.

<sup>317</sup> *Supra* note 127.

<sup>318</sup> Michael O'Keeffe & T.J. Quinn, *Players, Owners Still Laboring Union: We'll Talk Revenue-Sharing*, DAILY NEWS (N.Y.), Oct. 25, 2001.

<sup>319</sup> See Zimablist, *supra* note 125, at xvii (pointing to a state of affairs that is of great concern to those few teams that are profitable).

<sup>320</sup> *See id.*

<sup>321</sup> *See id.*

sharing and remained just as non-competitive, both on the field and on the ledger sheet, as the low revenue clubs.<sup>322</sup> “The only teams making money are at the top end and at the bottom end,” MLB Executive Sandy Alderson once commented.<sup>323</sup> “The other clubs will figure it out. And what that means is that a team that spends \$30 million looks around and says, ‘Hey, I can finish in fourth place spending \$10 million just as easily as \$30 million.’ So they cut payroll.”<sup>324</sup> While the Braves, Yankees, Dodgers, and Mets raced to determine who would have the first \$100 million-plus payroll, the Expos, Twins and others have headed in the other direction, slashing payroll in an effort to break even.<sup>325</sup>

Looking forward, the plan that would make the most sense would be an equitable split of local revenue in which every other dollar of gate receipts and local broadcast fees would be shared. In order to make this “Equitable System” palatable to high-revenue owners, such a proposal should be introduced incrementally. For instance, let us say the owners and the union agree on a new six-year CBA. The ultimate goal would be to have a complete 50-50 home team-visiting team split by the agreement’s last year so that both sides could assess the success of the plan when negotiations on a new agreement begin. Therefore, start with a 75-25 split in 2002, move to 70-30 in 2003, 65-35 in 2004, and so on until there is an even split by 2007.

What should be shared? First of all, regular-season gate receipts should be equitably divided. Under the existing system home teams keep 100% of regular season game receipts.<sup>326</sup> This unequal distribution ignores the fact that without a visiting team to compete against, no fans would show up to watch their local club. Therefore, it only seems natural to split the regular-season gate receipts equitably among all teams. How would this work? Well, in 2001 Major League clubs made nearly \$1.4 billion in regular season gate

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<sup>322</sup> See Vaccaro, *supra* note 132 (reporting on the fact that the so-called middle class of teams sees no benefit from the current revenue sharing).

<sup>323</sup> *See id.*

<sup>324</sup> *See id.*

<sup>325</sup> *See* 2001 Forecast, *supra* note 49.

<sup>326</sup> *See* COSTAS, *supra* note 42, at 55.

receipts.<sup>327</sup> At the high end, the Yankees pulled in \$98 million from their home games, while the lowly Expos could only manage \$6.4 million.<sup>328</sup> Now, I certainly am not suggesting that the \$1.4 billion should be divided equally—this would not be fair to the Yankees and would unjustly reward the Expos. Under my proposal, teams would keep 50% of their regular season gate receipts and contribute the other half to an “equitable game receipt” pool. The funds in this pool would then be distributed evenly among the thirty teams. For instance, in 2001 each club would have kept half of their home receipts and would also receive approximately \$23 million from the equitable game receipt pool.<sup>329</sup> Thus, the Yankees would walk away with over \$72 million and the Expos would benefit with over \$26 million.<sup>330</sup> While the Yankees would still be rewarded for their great attendance, clubs like the Expos would finally benefit from the notion that one club’s gate receipts would not be possible without a visiting team.

In addition, local broadcast deals should be equitably divided among the league’s teams by using the same principle. With the advent of cable television, the disparity in local broadcast fees has grown incredibly.<sup>331</sup> The only way to address this inequity is to split the fees in the same manner proposed above. Again, this would remain consistent with the idea that the clubs are business partners who cannot survive without each other. After all, how much would the Yankees receive for broadcasting rights if no other teams existed and New York media outlets were forced to cover intra-squad scrimmages? Let’s look at the Yankees and Expos again to demonstrate how this would work. In 2001, the Yankees received \$56.75 million from their broadcast deals while the Expos could manage only \$536,000.<sup>332</sup> Under this Equitable System, half of each team’s local broadcast revenue would be pooled in an “equitable local broadcast fund”—the Yankees would contribute approximately \$28 million and keep \$28 million from their deal. Since MLB clubs

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<sup>327</sup> See 2001 Forecast, *supra* note 49.

<sup>328</sup> See *id.*

<sup>329</sup> See *id.*

<sup>330</sup> See *id.*

<sup>331</sup> See Blue Ribbon Panel, *supra* note 24, at 18.

<sup>332</sup> See 2001 Forecast, *supra* note 49.



earned a total of \$571 million this year from their local broadcast deals, half of that total would be divided up equally and redistributed to every team.<sup>333</sup> Thus, the Yankees and Expos, like the remaining twenty-eight teams, would each receive approximately \$9.5 million from the equitable local broadcast pool.<sup>334</sup> When adding this to the half-share of the local deal that each team could hold on to, the new figures would be \$37.5 million in local broadcast revenue for the Yankees and \$10 million for the Expos.<sup>335</sup> While this still gives the Yankees a significant advantage, such a proposal would significantly close the gap between teams in lucrative media markets and those in smaller markets where local broadcast rights will never command a high fee.

In order for this plan to work, independent audits must be made to ensure that each club contributes half of the *market value* of their local broadcast package as opposed to the actual contract value. Taking a look at some of the current broadcast rights deals emphasizes the need for this.<sup>336</sup> The Dodgers received \$27.342 million for local broadcast rights, which seems low compared to the other large-market clubs such as the Mets (\$46.251 million) and Yankees (\$56.750 million).<sup>337</sup> How could broadcast rights in the nation's second largest market be so inexpensive? Well, the Dodgers are owned by Fox and are not charging the parent company what they might charge an independent one.<sup>338</sup> The Cubs (\$23.559 million), owned by the Tribune Company (which owns and operates WGN), and the Braves (\$19.988 million), owned by AOL/Time

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<sup>333</sup> See *id.*

<sup>334</sup> See *id.*

<sup>335</sup> See *id.*

<sup>336</sup> See Jim Banks, *Spreadsheet Provides Fodder that Touches All 30 Clubs; A Closer Look at all Those Numbers*, MLB.COM (Dec. 6, 2001) (emphasizing the discrepancy in broadcast revenues between teams citing as examples the Dodgers' receipt of \$27.342 million for local broadcast revenue as opposed to the \$46.251 and \$56.75 million received by the Mets and Yankees respectively), at [http://www.mlb.com/NASApp/mlb/mlb/news/mlb\\_news\\_story.jsp?article\\_id=mlb\\_20011206\\_behindnumbers\\_news&team\\_id=mlb](http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=mlb_20011206_behindnumbers_news&team_id=mlb) (last visited Feb. 1, 2002).

<sup>337</sup> See *id.*

<sup>338</sup> See *id.* (reporting that the discrepancy in broadcast revenues could in part be due to the fact that several teams including the Dodgers, Cubs, and Braves are owned by media entities and the teams then charge their parent companies less than the potential market price for the broadcasting contracts).

Warner/Ted Turner (which owns and operates WTBS) are in similar situations.<sup>339</sup> By looking at the market value of each team's deal, the equitable local broadcast pool would increase, thereby allowing small-market teams to receive larger pool payments.

As a concession to the high-revenue owners, one thing that should not be equitably distributed is what MLB calls, "All Other Local Operating Revenue."<sup>340</sup> This figure includes revenue obtained from sources such as suite sales, stadium signage, sponsorship deals, and concessions.<sup>341</sup> Thus, the Equitable System simply divides regular season gate receipts and local broadcasting revenue in a fair way that ensures overall local-revenue disparity will not reach obscene levels.

Let us take a look at how this Equitable System of local revenue sharing would have affected the Yankees' and Expos' overall revenue figures (in millions) in 2001:<sup>342</sup>

<i>Under Current System</i>	<u>Yankees</u>	<u>Expos</u>
Regular System Game Receipts	\$98	\$6.405
Local Television, Radio and Cable	\$56.75	\$.536
All Other Local Operating Revenue	\$47.057	\$2.829
<b>Total Local Revenue</b>	<b>\$201.807</b>	<b>\$9.770</b>

<sup>339</sup> See *id.*

<sup>340</sup> See 2001 Forecast, *supra* note 49; see also Jim Banks, *Is Money Everything?*, MLB.COM (Dec. 6, 2001) (describing the other sources of local revenue for the wealthier teams, including suite sales, stadium signage, sponsorship deals and concessions, benefits of having new stadiums all of which are incorporated in "other local operating revenue" in MLB's spreadsheet), at [http://www.mlb.com/NASApp/mlb/mlb/news/mlb\\_news\\_story.jsp?article\\_id=mlb\\_20011206\\_banks\\_news&team\\_id=mlb](http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=mlb_20011206_banks_news&team_id=mlb) (last visited Feb. 1, 2002).

<sup>341</sup> See *id.*

<sup>342</sup> See 2001 Forecast, *supra* note 49.

570 *FORDHAM INTELL. PROP., MEDIA & ENT. L.J.* [Vol. 12

<i>Under Equitable System</i>	<u>Yankees</u>	<u>Expos</u>
50% of Regular System Game Receipts	\$49	\$3.2025
Share of "Equitable Game Receipt Pool"	\$23.075	\$23.075
50% of Local Television, Radio and Cable	\$28.375	\$2.268
Share of "Equitable Local Broadcast Pool"	\$9.518	\$9.518
All Other Operating Revenue	\$47.057	\$2.829
<b>Total Local Revenue</b>	<b>\$157.025</b>	<b>\$38.893</b>

The new system cuts the Yankees' local revenue advantage from over 10:1 to just over 4:1. What about Montreal's supposed contraction partners, the Twins? It seems to be a foregone conclusion that the Expos will never survive in Montreal. Twins supporters, however, believe that the club can survive in the Land of 10,000 Lakes. Let us take a look at how the Equitable System would have affected the local revenue gap between the Yankees and Twins (in millions):<sup>343</sup>

<i>Under Current System</i>	<u>Yankees</u>	<u>Twins</u>
Regular System Game Receipts	\$98	\$17.605
Local Television, Radio and Cable	\$56.75	\$7.273
All Other Local Operating Revenue	\$47.057	\$6.987
<b>Total Local Revenue</b>	<b>\$201.807</b>	<b>\$31.865</b>

<sup>343</sup> *See id.*

2002]            *CONTRACTION & MAJOR LEAGUE BASEBALL*            571

<i>Under Equitable System</i>	<u>Yankees</u>	<u>Twins</u>
50% of Regular System Game Receipts	\$49	\$8.8025
Share of "Equitable Game Receipt Pool"	\$23.075	\$23.075
50% of Local Television, Radio and Cable	\$28.375	\$3.6365
Share of "Equitable Local Broadcast Pool"	\$9.518	\$9.518
All Other Operating Revenue	\$47.057	\$6.987
<b>Total Local Revenue</b>	<b>\$157.025</b>	<b>\$52.019</b>

Again, the Yankees enjoy an advantage under both systems, but under the Equitable System the ratio falls from approximately 6.5:1 to approximately 3.1:1. By further factoring in luxury tax adjustments and increased Central Fund payments (see below), it seems clear that under the Equitable System small market teams like the Twins could at least be in the same neighborhood as the Yankees when it comes to overall revenues.

#### *B. Luxury Tax, Not a Salary Cap*

During the past few seasons several baseball owners claimed that they would seek massive changes during the next round of labor talks.<sup>344</sup> Many emphasized the need for a salary cap, saying it is the only way small market teams would be able to survive against the big spenders.<sup>345</sup> Although there is certainly truth in that assessment, the likelihood of the union agreeing to a NFL- or NBA-style salary cap is zero. According to Kevin Towers, the General Manager of the San Diego Padres, "[a] payroll cap would be terrific, but the union's never going to allow that."<sup>346</sup> Fehr would concur wholeheartedly with Towers' assessment.<sup>347</sup> "The purpose of a cap is to pay players

<sup>344</sup> See Jeffrey Flanagan, *Baseball's Small Market Teams Might Fare Better on Their Own*, KAN. CITY STAR, Jan. 26, 1999, at C2.

<sup>345</sup> See *id.*

<sup>346</sup> Steve Rock, *Small Revenue Clubs Hope System Changes*, KAN. CITY STAR, Apr. 4, 1999, at J2.

<sup>347</sup> See Ronald Blum, *Fehr Says Forget about Salary Cap*, ASSOCIATED PRESS, Jan. 21, 1999.

less than their free-market value,” he has said. “It’s hard to envision this union doing that to its own members.”<sup>348</sup> Following the NBA agreement, Fehr had a clear response for baseball owners dreaming of an NBA-style salary cap: forget it.<sup>349</sup> Along with other top union officials, Fehr believes the NBA union handed over the free market in a shocking capitulation and is convinced that baseball players must be prepared to withstand a long lockout rather than make that same sacrifice by accepting a cap.<sup>350</sup>

A better alternative for both sides would be the implementation of a luxury tax. Under the previous CBA there was a luxury tax from 1997 to 1999.<sup>351</sup> Although the union opposes this proposal due to the fact that it is “cap-like,” it is worth noting that in the three seasons in which the luxury tax was in effect the tax had no discernible impact on the growth of player salaries.<sup>352</sup> If the union remains skeptical of a luxury tax, the owners should make concessions so that it can gain acceptance and help regulate baseball’s economic system. Two possible points to give in on would be an increase in the minimum player salary from \$200,000 to \$300,000 and increased benefits for former players. A luxury tax is crucial to the health of the game and would be well worth those concessions.

Under my proposal, a tax would be placed on every dollar that a team spends above an established payroll threshold. The payroll threshold would start at \$90 million and increase each year at the same rate as baseball’s total operating revenue. The tax would start at 50% for every dollar spent above \$90 million and would increase 10% for each additional \$5 million payroll increment. For example, a club with a payroll of \$100 million would pay a 50% tax on their first \$5 million over the threshold, then would have to pay a 60% tax for every dollar spent in the next \$5 million increment.

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<sup>348</sup> *See id.*

<sup>349</sup> *See id.*

<sup>350</sup> *See* Ross Newhan, *Beware of Lockout: Owners Envy NBA Cap*, L.A. TIMES, Jan. 13, 1999, at D10 (describing union philosophy as expressed by Marvin Miller that in agreeing to a salary ceiling the NBA union improperly forewent their free agent market and advising that MLB players be willing to sustain a long lockout rather than accept a salary cap).

<sup>351</sup> *See* Blue Ribbon Panel, *supra* note 24, at 8, 38.

<sup>352</sup> Selig Testimony, *supra* note 127.

2002]

CONTRACTION &amp; MAJOR LEAGUE BASEBALL

573

To demonstrate this proposal, suppose this type of luxury tax had been implemented in 2001. The tax chart would look like this:

<u>Payroll Figure</u>	<u>Tax % Paid Per Dollar Spent in Range</u>
\$90-95 million	50%
\$95-100 million	60%
\$100-105 million	70%
\$105-110 million	80%
\$110-115 million	90%
\$115 million and above	100%

Eight clubs had player compensation and benefit expenses of over \$90 million in 2001, with the Boston Red Sox leading the way at over \$118 million.<sup>353</sup> Based on the luxury-tax formula set out above, those breaking the applicable threshold would have had to pay the following taxes:<sup>354</sup>

<u>Team</u>	<u>'01 Payroll (in Millions)</u>	<u>Luxury Tax Figure (in Millions)</u>
Arizona	\$99.434	\$5.16
Atlanta	\$99.671	\$5.303
Boston	\$118.471	\$23.471
Cleveland	\$102.491	\$7.244
L.A.	\$116.077	\$21.077
NY Mets	\$99.144	\$4.986
NY Yankees	\$117.936	\$22.936
Texas	\$92.793	\$1.397
<b>Total Luxury Tax Payments:</b>		<b>\$91.574</b>

<sup>353</sup> See 2001 Forecast, *supra* note 49.

<sup>354</sup> See *id.*

The tax that each team over the threshold pays would be placed in an “equitable luxury tax pool” and redistributed equally to all non-infringing clubs. Since twenty-two clubs remained under \$90 million in team payroll in 2001, the \$91.574 million placed into the equitable luxury tax pool would be divided by twenty-two, and the entitled teams would each receive a \$4.162 million share.<sup>355</sup>

Under this type of luxury-tax plan, Seattle, which was only \$6.054 million below the threshold in 2001, would receive the same amount as the Twins, owners of the game’s lowest payroll.<sup>356</sup> This remains consistent with the equitable principles preached above in regards to local-revenue sharing. A “sliding-scale” payment distribution that rewards teams at the bottom of the payroll chart with more money would be illogical, since this would provide clubs with an incentive to slash payroll.<sup>357</sup> By giving every eligible team the exact same share of local revenue and luxury-tax payments, baseball would avoid a repeat of the welfare state created under past proposals.

### C. Institute Minimum Team Payroll

The only way that high revenue clubs would be willing to consider the Equitable System of local-revenue sharing and the luxury tax proposed above would be if a minimum team payroll is implemented. Under those proposals, owners like George Steinbrenner and Tom Hicks would be sacrificing millions of dollars for the sake of the game’s integrity. However, that integrity could easily be robbed by owners like Carl Pohlad who, under the old system, pocketed large revenue sharing sums, yet refused to reinvest that money into team payroll.<sup>358</sup> In 2001, the Twins benefited from over \$19 million in revenue sharing receipts.<sup>359</sup> Despite this

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<sup>355</sup> See *id.*

<sup>356</sup> See *id.*

<sup>357</sup> The Blue Ribbon Report referred to sliding scale payment distribution as a “split pool plan.” See Blue Ribbon Panel, *supra* note 24, at 38.

<sup>358</sup> See Chris Jenkins, *A Twin Killing: Selig’s Contraction a Shot Across Bow to Game’s Have-Nots*, SAN DIEGO UNION-TRIB., Nov. 7, 2001, at D1 (explaining the teams’ ability to make a profit in the previous three years in large part due to the fact that owners like Carl Pohlad and Jeffrey Loria refused to put added money towards the payroll).

<sup>359</sup> See 2001 Forecast, *supra* note 49.

windfall, Pohlad would only allow the club to spend \$30 million in payrolls and benefits.<sup>360</sup> Although the Twins had a surprise season on the field, no one can honestly claim that the team was built to compete with the Yankees—it was built so that the franchise could turn a profit. A minimum payroll would ensure that team compensation decisions relate more to wins and losses than an ability to end the season in the black.

How would it work? Well, it would not be a strict minimum, as teams would be allowed to have a payroll below the minimum threshold. As has been shown above, a high payroll corresponds directly with a team's on field success.<sup>361</sup> Therefore, in an effort to make all clubs do their best to remain competitive, substantial penalties would have to exist for clubs that fall below the minimum threshold. The best solution would be to withhold local-revenue sharing and luxury-tax payments from any team that fails to meet the payroll minimum. That money could then be redistributed equally to those teams that did meet the minimum and are actually making an effort to compete.

#### *D. Allow and Encourage Franchise Relocation*

In place of contraction, franchise relocation should be encouraged to address the competitive issues facing the game. Clubs that have little likelihood of securing a new ballpark or undertaking other revenue-enhancing activities should have the option to relocate if better markets can be identified. The relocation of a club to a more attractive market would present the club with an opportunity to generate more revenue that, in turn, reasonably could be expected to make the club more financially capable of competing with high revenue clubs in terms of on-field performance.

Following this logic, the first thing MLB should do is keep the Expos in business and allow them to relocate to the Washington, D.C. area, the nation's seventh largest metropolitan area and the

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<sup>360</sup> *See id.*

<sup>361</sup> *See* Blue Ribbon Panel, *supra* note 24, at 29.



wealthiest in per capita income.<sup>362</sup> It is clear that baseball will no longer prosper in Montreal. As one writer put it, “[b]aseball is dead in that city and has no chance of being revived. More people show up for garage sales.”<sup>363</sup> Demographic studies have shown that the Washington area is by far the largest and wealthiest U.S. city without a major league team and much better positioned economically to support a franchise than Selig’s hometown of Milwaukee.<sup>364</sup> The Virginia Baseball Stadium Authority has already drawn up plans for a “national landmark ballpark” to be built near the Pentagon at a cost of approximately \$325 million, and independent studies estimate a local team could easily draw in excess of 35,000 fans a game.<sup>365</sup> The financial benefits to current owners would be great. As a result of relocation, they would save approximately \$250 million in franchise buyout fees.<sup>366</sup> In addition, national television ratings would increase with the introduction of a new major market, thereby increasing the price tag for future broadcast rights. Finally, licensed merchandise would undoubtedly see a bump in sales.

Whenever the Washington market is mentioned as a possible franchise destination, inevitably the concerns of Peter Angelos and the Baltimore Orioles emerge. Angelos has stated that baseball in

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<sup>362</sup> See Eric Fisher, *Despite Loss of Teams, D.C. Not in '02 Lineup*, WASH. TIMES, Nov. 8, 2001, at A1 (proposing the relocation to the D.C. area of one of the economically suffering teams as an alternative to contraction, noting that the area is a fertile market as the country’s seventh largest metropolitan area with the wealthiest per-capita income and yet has not fielded a team for over thirty years).

<sup>363</sup> See Tom Haudricourt, *Contraction Scenarios Likely Too Late to Affect 2002*, MILWAUKEE J. SENT., Oct. 28, 2001 (describing the different factors involved in the plans for contraction and noting the complete necessity of removing the team from Montreal).

<sup>364</sup> See Eric Fisher, *Area Groups Might Sue if Baseball Folds Teams*, WASH. TIMES, Oct. 24, 2001, at C1 (noting demographic studies which have demonstrated that the Washington D.C. area is the largest and wealthiest city without a team and concluding that the area would be able to draw an excess of 35,000 fans per game).

<sup>365</sup> See *id.*; see also Mark Asher, *New Stadium in Virginia Proposed*, WASH. POST, Oct. 27, 2001, at D4 (describing the Virginia Baseball Stadium Authority’s proposal to build a \$325-million stadium located near the Pentagon and Reagan National Airport as a national landmark honoring the lives of members of the armed forces lost in the events of September 11th).

<sup>366</sup> Most media estimates place the price tag for buying out the Twins or Expos at \$250 million. See, e.g., Richard Justice, *No Easy Answers; Owners’ Contraction Plan Means Questions, Controversy, Legal Issues*, HOUSTON CHRON., Nov. 8, 2001, at 1 (indicating departing owners would receive between \$200 and \$250 million).

D.C. would be disastrous for both the new franchise and the Orioles since “two ballclubs within 30 miles of each other are simply going to grind each other into serious financial problems.”<sup>367</sup> It should be emphasized that Angelos’ arguments and bargaining strength have been overplayed in the press, and he should not be seen as an impediment to moving a club to Washington. Baltimore and Washington are considered two different markets by most demographic studies, and the distance between markets is greater than the thirty miles Angelos makes reference to.<sup>368</sup> In addition, although under Major League Rules Angelos does have the right to veto the relocation of an American League team to any area within a seventy-five-mile radius of Baltimore, he has no legal right to stop the move of a National League team.<sup>369</sup> Nevertheless, baseball would be wise to use some of the money they save in contraction fees to grease the skids into Washington by compensating the ever-litigious Angelos in some manner.

#### *E. Fix the Draft*

The First Year Player Draft was originally designed to reward unsuccessful teams by giving them the first shot at the top amateurs.<sup>370</sup> In theory, allowing disappointing teams the first chance to sign baseball’s future superstars should eventually turn their fortunes around.<sup>371</sup> Unfortunately, today, the draft has the exact opposite effect, as high-revenue clubs now use the current format to help cement their place among baseball’s hierarchy.<sup>372</sup> If the

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<sup>367</sup> See Mark Asher, *Angelos Protects His Turf*, WASH. POST, Nov. 9, 2001, at D1 (expressing Peter Angelos’ view that relocating a team to the D.C. area would be detrimental to the league’s purpose and that two ball clubs within a thirty-mile radius would be financially burdensome to both teams).

<sup>368</sup> See *id.* (noting that the distance between Washington and Baltimore is greater than the portrayed thirty-mile distance and that most demographic studies consider the two cities to be two separate markets).

<sup>369</sup> See *id.* (stating that although Angelos maintains veto power over the relocation of an American League team, he has no legal right to stop a National League team from such an action).

<sup>370</sup> See Blue Ribbon Panel, *supra* note 24, at 41.

<sup>371</sup> See *id.*

<sup>372</sup> See *id.*

following changes were made to the First Year Player Draft, it would once again serve its purpose of reversing fortunes of downtrodden teams:

- *Institute a Worldwide Draft*—Making every amateur player eligible for the draft would give each team the same chance at the best players. Without such a modification, top international players will continue to fall to the top five or six revenue producers in the league, since they will be the only clubs with the ability to realistically enter the bidding.
- *Place a Cap on First Year Player Signing Bonuses*—There are too many situations where teams at the top of the draft, convinced that they do not have the money to sign the player they want, take an inferior player just to sign someone.<sup>373</sup> As a result, the top players fall to the high revenue teams who usually sign them for the money they are seeking.<sup>374</sup> In many cases, by speaking with clubs before the draft and discussing bonus demands, agents can virtually hand pick which club a heavily sought-after client will be drafted by.<sup>375</sup> Placing a cap on signing bonuses would help alleviate this situation.
- *Allow Teams to Trade Their Draft Picks*—Baseball teams are forbidden from trading draft picks, a situation that does not exist in any of the three other major sports.<sup>376</sup> General Managers like Kevin Towers of the Padres feel that by allowing teams to trade their draft picks, some of the draft disadvantages would be alleviated: “[s]ay you finished last and you wanted to trade that pick to the Yankees for their

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<sup>373</sup> See Blackman, *supra* note 27 (using as an example the draft decisions surrounding J.D. Drew who although the “obvious” choice for the A’s number two draft pick was passed over for Mark Mulder after the A’s were unable to meet Drew’s salary demands).

<sup>374</sup> See *id.* (describing the current bidding situation where it is essentially only the wealthy teams who are able to compete for the top players as they are the only ones capable of entering the bidding).

<sup>375</sup> See *id.*

<sup>376</sup> See *id.*

first-round pick and second-round pick. At least that gives you some flexibility. It gives you another option.<sup>377</sup>

- *Eliminate Compensation Picks*—Under the current system, teams receive supplementary draft picks as compensation for losing major league players to free agency.<sup>378</sup> Increasingly, high-revenue clubs rent out players on the verge of free agency to assist in a late season playoff run.<sup>379</sup> Because these players often sign with a new club the following year, those teams able to trade for high-salaried and soon-to-be free agents receive more than their proportionate share of the supplementary picks.<sup>380</sup> The supplementary picks harm low-revenue clubs by artificially changing the draft order of the first 100 selections and devaluing subsequent selections.<sup>381</sup>

#### *F. Boost Central Fund Revenues*

As previously noted, Central Fund revenues primarily consist of national broadcast and licensing fees.<sup>382</sup> Since Central Fund payments are divided equally among all thirty teams, a boost to this pool would do wonders in diminishing the disparities in overall team revenue.<sup>383</sup> Here are a few suggestions to boost Central Fund revenues:

- *More Aggressive Marketing*—As the most traditional of all the major sports, baseball has been reluctant to jump headfirst into the commercial marketplace. A few years ago there was a great deal of backlash when it was suggested that advertising patches on uniforms could be sold, with the revenue going directly to the low-revenue

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<sup>377</sup> *See id.*

<sup>378</sup> See Blue Ribbon Panel, *supra* note 24, at 41.

<sup>379</sup> *See id.*

<sup>380</sup> *See id.*

<sup>381</sup> *See id.*

<sup>382</sup> *See id.* at 59.

<sup>383</sup> *See id.*

teams.<sup>384</sup> Critics of that plan contended that MLB was not, and never should be, NASCAR.<sup>385</sup> However, the league should attempt to expand its sponsorship and licensing programs so that Central Fund revenues can increase. The upcoming Winter Olympics in Salt Lake City should provide a good blueprint for such an endeavor, since the combined marketing efforts of the U.S. Olympic Committee and Salt Lake Olympic Committee have netted nearly \$1 billion through an extremely aggressive sponsorship program.<sup>386</sup> The Olympics do have the benefit of strict rules regarding commercial presence on the field of play—none is allowed.<sup>387</sup> Therefore, the Olympic Movement seems shielded from criticism for turning into NASCAR. Baseball does not have such a rule, as demonstrated by Fox's garish and tasteless "Virtual Ads" that were heavily criticized during the World Series.<sup>388</sup> If it could increase its marketing revenues, MLB would undoubtedly have to walk a fine line between maintaining the game's integrity and pleasing its marketing partners.

- *World Cup Revenues*—At the moment, over "40% of the players under contract to Major and Minor League clubs were born outside of the United States."<sup>389</sup> Because

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<sup>384</sup> See Ross Newhan, *Ad Idea May Be a Little Patchy*, L.A. TIMES, Apr. 1, 1999, at D1 (raising concerns about the overexploitation of advertising opportunities in baseball).

<sup>385</sup> See *id.*

<sup>386</sup> See Lori Buttars, *Two More Olympic Sponsors Signed, But They Are the Last*, SALT LAKE TRIB., Nov. 2, 2001, at D12 (estimating the total marketing revenue raised prior to the Games at \$896 million).

<sup>387</sup> See The Olympic Charter, Rule 61.

<sup>388</sup> See *World Series on Fox Needed a Dose of Ritalin*, TORONTO STAR, Nov. 5, 2001, at C3 (expressing the author's disdain with the "virtual ads" that ran during the Fox's broadcast of the World Series, feeling above all else it demonstrates a disrespect for the game); see also Sharon Ginn, *Series Ads Create Some Controversy*, ST. PETERSBURG TIMES, Nov. 2, 2001, at 7C (discussing the criticism of the "virtual ads" for which there was an allowance of eighteen per Series game, ten for MLB marketing partners and five for Fox, which mid-way through the Series had to be modified because MLB and Fox realized they were "jarring"); Richard Sandomir, *Ads Are Crowding Batter's Box on TV*, N.Y. TIMES, Nov. 1, 2001, at S4 (agreeing with the MLB and Fox decision to remove the ads, finding them to be "ostentatious").

<sup>389</sup> Blue Ribbon Panel, *supra* note 24, at 45.

baseball is played at a very high level in other countries, the opportunity for a successful and competitive baseball World Cup is great. As anyone who followed the United States' Olympic triumph in Sydney can attest, international baseball tournaments provide just as much drama and excitement as MLB's playoffs.<sup>390</sup> "Moreover, because international revenues are currently funneled through MLB's Central Fund," the revenues that such an event would generate could be equally distributed to all clubs.<sup>391</sup> Increases in revenues from international events like the World Cup would therefore play a role in moderating the level of revenue disparity in the industry.

- *Player Memorabilia Requirement*—Another way that MLB could boost Central Fund revenues is by agreeing with the union that a mandatory memorabilia clause be inserted into each Uniform Major League Player Contract. For instance, under this requirement each player might be forced to sign his hat and jersey after every game and donate the memorabilia to the league. MLB could then partner with an online auction site like eBay to sell that merchandise, with the resulting revenue going directly into the Central Fund.

#### CONCLUSION

The furor over contraction apparently has not taken Selig by surprise.<sup>392</sup> When he first announced the owners' historic plan, he confessed, "No modern American sport has done this, so understand there will be potholes along the way."<sup>393</sup> Unfortunately for Selig, a

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<sup>390</sup> See Timothy Guidera, *This Baseball Team Will Be Remembered*, AUGUSTA CHRON., Sept. 28, 2000, at C4 (discussing the United States 2000 Summer Olympic Baseball Team, their success in winning the gold medal, their enjoyment while playing, and how above all else they were able to bring back to baseball the pure joy of the game).

<sup>391</sup> Blue Ribbon Panel, *supra* note 24, at 45.

<sup>392</sup> See Rovell, *supra* note 251.

<sup>393</sup> See *id.*

close analysis of contraction reveals that those metaphoric potholes could each be the size of the Grand Canyon.

It is beginning to look more and more like the Twins and Expos will be spared. The Twins recently released copies of their 2002 home schedule featuring, appropriately, the slogan, "Get 'Em Before They're Gone."<sup>394</sup> Meanwhile, the Expos have signed a lease to play at Olympic Stadium next season and are currently exploring the possibility of upgrading the venue's playing surface.<sup>395</sup> These are positive signs, since the first step towards truly addressing baseball's problems is to forget about contraction. By doing this, the owners and the union can once and for all focus on creating a CBA that each side can live with and that addresses baseball's competitive balance problems. Through cooperation from all parties, this can be achieved. After all, in the words of George Will, "[b]aseball is not Bangladesh. It can get well by deciding to get well."<sup>396</sup>

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<sup>394</sup> See LaVelle Neal III, *Not Quite Business as Usual at Dome*, MINNEAPOLIS STAR TRIB., Nov. 8, 2001, at 1C; Mel Antonen, *Teams Trying to Carry On*, USA TODAY, November 30, 2001, at 19C (discussing the "holding period" that the potentially contracted teams are currently in as they await an announcement as to if they will be able to play this upcoming season, the uncertainty making all sales and marketing attempts difficult).

<sup>395</sup> See *Expos Signed 2002 Lease for Olympic Stadium, But Have Escape Clause*, CANADIAN PRESS, Nov. 30, 2001 (reporting plans to improve the quality of the artificial turf at Olympic Stadium), available at [http://www.canoe.ca/Slam011130/mlb\\_mtl-cp.html](http://www.canoe.ca/Slam011130/mlb_mtl-cp.html) (last visited Feb. 5, 2002).

<sup>396</sup> See Richard Justice, *Squeeze Play*, HOUSTON CHRON., Nov. 11, 2001, at 1 (discussing MLB's alternatives to contraction and proposing, as did the Blue Ribbon Panel, that there are viable alternatives, namely increasing revenue sharing between the teams and that cooperation will be the key to the league's ultimate fate).