The Effect of Baseball's Antitrust Exemption and Contraction on Its Minor League Baseball System: A Case Study of the Harrisburg Senators

Stanley M. Brand

Follow this and additional works at: https://digitalcommons.law.villanova.edu/mslj

Part of the Antitrust and Trade Regulation Commons, and the Entertainment, Arts, and Sports Law Commons

Recommended Citation

This Symposia is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Jeffrey S. Moorad Sports Law Journal by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.
THE EFFECT OF BASEBALL'S ANTITRUST EXEMPTION AND
CONTRACTION ON ITS MINOR LEAGUE BASEBALL
SYSTEM: A CASE STUDY OF THE
HARRISBURG SENATORS

STANLEY M. BRAND* & ANDREW J. GIORGIONE**

After the 2001 season, Major League Baseball ("MLB") Commissioner Bud Selig announced that two teams would be contracted. This announcement renewed interest in professional baseball's antitrust exemption. Although previous contraction was reported, Commissioner Selig's official announcement predictably triggered a host of congressional reactions. One reaction was from the late Senator Paul Wellstone, who introduced a bill to repeal baseball's immunity with respect to the elimination or relocation of major league teams. His bill illustrated that interest in the antitrust exemption remains as the debate over contraction lingers.

Senator Wellstone's bill was designed to curtail baseball's antitrust exemption. The introduction of this bill caused considerable

* Stanley M. Brand, Esq., is a founding principal of Brand & Frulla, P.C., a Washington, D.C. based civil and criminal litigation firm. Since 1992, he has also served as Vice President of the National Association of Professional Baseball Leagues Inc., the governing body of Minor League Baseball.

** Andrew J. Giorgione, Esq., is the partner-in-charge of the Harrisburg office of Obermayer Rebmann Maxwell & Hippel, LLP. Mr. Giorgione serves as general counsel to the Harrisburg Civic Baseball Club, Inc. This entity owns the Harrisburg Senators Minor League Baseball franchise. Mr. Giorgione previously served as City Solicitor to the City of Harrisburg. As City Solicitor, he represented Harrisburg in its purchase of the Harrisburg Senators franchise in 1995 and obtained approval of that transaction from Major League Baseball.


2. See Murray Chass, Whispers Turn To Talk of Eliminating Clubs, N.Y. TIMES, Dec. 10, 2000, § 8, at 5 (reporting renewal of discussions to eliminate professional teams as solution to baseball's economic problems).

3. See Fairness in Antitrust in National Sports (FANS) Act of 2001, S. 1704, 107th Cong. § 2 (2001). The purpose of the Act is to "eliminat[e] or relocat[e]... major league baseball franchises... covered under the antitrust laws, and to make clear that the enactment of this Act does not change the application of the antitrust laws in any other context or with respect to any other person or entity." Id.

4. See Bill Madden & Michael O'Keeffe, Hardball to the Very End: Players and Owners Talk as Strike Looms, N.Y. DAILY NEWS, Aug. 30, 2002, at 3 (describing negotiation struggle among players and team owners in efforts to avoid work stoppage).

5. See supra note 3 and accompanying text.
and justifiable alarm throughout Minor League Baseball. In 1998, Minor League Baseball worked diligently to ensure that the Curt Flood Act of 1998 protected not only MLB, but Minor League Baseball as well. Despite these efforts, Minor League Baseball still believes that any attempt to limit or change baseball’s antitrust exemption threatens Minor League Baseball, contradicts public policy, and defeats the goals for which the antitrust exemption was proffered.

Minor League Baseball is comprised of 206 teams in twenty leagues, which play professional baseball in the United States, Canada, and Mexico at the AAA, AA, A, and rookie levels. The league consists of approximately 5548 active players. In 2001, close to thirty-nine million fans attended baseball games at the minor league level. Inevitably, the repeal of baseball’s antitrust exemption would affect the incentive that MLB has to continue its investment in the minor leagues, which could lead to the elimination of many minor league teams, particularly at the Rookie and A levels. Under the


7. See Roberts, supra note 6, at 420-21 (noting most protections written into language of Curt Flood Act at behest of minor leagues were designed to protect major leagues from antitrust exposure for all non-player matters previously protected by federal law); see also Murray Chass, Deal Struck on Antitrust Bill, N.Y. TIMES, July 30, 1998, at C3 (noting Vice President of National Association of Professional Baseball Leagues (“NAPBL”) allayed concerns of minor league players by assuring continued survival of Minor League Baseball).

8. See Jason Barkham, Ending Baseball’s Antitrust Exemption, at http://www.baseballprospectus.com/news/20011126barkham.html (Nov. 26, 2001) (noting minor leagues have lobbied Congress to preserve baseball’s antitrust exemption because without exemption, minor leagues would have to change their operations, becoming more like “free” minor leagues of first half of twentieth century independent from, as opposed to partners with, MLB).


10. See id.

11. See Joe Kay, Minor Leagues Flourish While Major Leagues Flounder, SUN-NEWS (Myrtle Beach, S.C.), Aug. 27, 2002, at B2 (“While the major leagues confront the possibility of another strike, the minors are doing what they do best—providing good times to capacity crowds.”), available at 2002 WL 24674314.

current Professional Baseball Agreement ("PBA"), the individual major league club that signs and rosters the players pays minor league players’ salaries.\textsuperscript{13} In 1993, MLB spent over $130 million on direct minor league development costs (including minor league players’ salaries) and another $90 million on players’ bonuses and scouting to facilitate talent development.\textsuperscript{14} It is this subsidy that assists in underwriting the presence of Minor League Baseball in small towns throughout the United States.\textsuperscript{15}

In the event of repeal, the minor league player draft and reserve clause might be challenged as illegal restraints of trade under section 1 of the Sherman Act.\textsuperscript{16} Moreover, the PBA between the major and minor leagues, which ensures a competitive balance among MLB teams in player acquisition and retention, might be challenged as illegal under sections 1 or 2 of the Sherman Act.\textsuperscript{17} Even if Minor League Baseball were to prevail on an antitrust claim, the litigation costs of defending such a charge would threaten the league’s survival. In the end, minor league player development

\textsuperscript{13} See Major League Baseball Rules §§ 3(b)-(c) (2002) (explaining origin of minor league salaries); see also Hearings 1994 supra note 12, at 117 (explaining relationship between Major League Baseball and Minor League Baseball under terms of Professional Baseball Agreement ("PBA")). Most major league teams have a “direct one-on-one relationship . . . with a AAA team, a AA team, and a single A team . . . under which they have a direct contractual relationship and they pay for the coaches’ salaries and the players’ salaries on those minor league teams.” Id.

\textsuperscript{14} See Hearings 1994, supra note 12, at 124.

\textsuperscript{15} See Hearings 2001, supra note 1, at 99 (setting forth December 4, 2001 letter from Stanley Brand to James Sensenbrenner, Jr., Chairman of the Committee on Judiciary).


The so-called “reserve clause,” used by several professional sports in the past and still retained in varying forms by some, is a contract provision which, in the setting of other agreements, has been held to perpetually operate to remove from a player his free choice of teams, thereby having a restraining effect on the interstate market of players. Whether the player was initially cultivated through the “farm system” of league-affiliated minor teams, or “drafted” from collegiate or other amateur ranks, once a particular team has received from the league the right to negotiate with a particular player, no other team is allowed to invade that right by making any advances toward that player.

\textit{Id.}

would be stripped of its stability created by the player draft, reserve clause, and the PBA. Minor League Baseball has virtually no television revenue, and ticket sales and fence sign advertising do not generate sufficient cash flow to support a legion of lawyers. The effect of eliminating the antitrust exemption would be quite severe because it would harm communities, careers, and people associated with baseball at both the major and minor league levels.

This reduced output at the minor league level is antithetical to the policy underlying the antitrust laws to increase the quantity of the product. Accordingly:

One can speculate that even in the absence of an agreement to sign players to uniform contracts with renewal options, major league organizations individually have superior bargaining power that will permit them to sign hundreds of lower level players to the same kind of one year agreements with successive yearly options that are now required. If the antitrust laws are applicable, how will MLB clubs assess the risk that such a pattern will be challenged as being illegally collusive?

Is it not likely that MLB clubs will attempt to avoid this risk and reduce their expenses by shifting this risk of employing the players to the minor league teams? This is a burden that Minor League Baseball cannot afford.


If MLB determines that antitrust laws make it too risky to draft and then reserve players for six years, the nature of MLB’s investment in minor league players could change dramatically. Without the reserve clause, MLB can be expected to spend money on many fewer minor league players. MLB will not spend money signing prospects in the hope that they develop only to have them subject to being acquired by other teams due to their short-term contracts. With the signing of few minor league players overall, there will naturally be fewer minor league teams. This loss of teams would adversely affect numerous player development investments in facilities. The loss to consumers of affordable, intimate and wholesome entertainment provided by minor league clubs could be extensive, particularly in smaller communities and markets.

Id.

20. See Nat’l Collegiate Athletic Ass’n v. Bd. of Regents, 468 U.S. 85, 107-08 ("Restrictions on price and output are the paradigmatic examples of restraints of trade that the Sherman Act was intended to prohibit.").

Some have suggested that the first-year player draft can be upheld under a “rule of reason” analysis. Yet, the minor league draft will likely be subject to challenge since minor league players, unlike NBA and NFL players, are not part of a collective bargaining unit and, therefore, are left unprotected by the antitrust exemption.

For all of the foregoing reasons, Minor League Baseball and the members of Congress representing minor league clubs and their communities fought hard to include a clear and comprehensive “carve out” for the minor leagues during the enactment of the Curt Flood Act of 1998. The “carve out” was negotiated among representatives of MLB, the Players Association, and Minor League Baseball, and was incorporated into the final legislation. Upon examination, it appears that Senator Wellstone’s bill does not directly parallel the Curt Flood Act as it was purported to do. The changes imposed by Senator Wellstone’s bill were to be restricted to the subject of the Act so that the bill would lift baseball’s antitrust exemption with respect to contraction and franchise relocation. Instead, the actual text of the bill deletes certain language from the Curt Flood Act unrelated to contraction and franchise relocation. Despite the limited stated purpose of the bill, this puzzling deletion has the potential to raise questions, particularly if one were to argue that the absence has substantive significance, and could lead to unintended consequences, which would damage baseball at the minor league level.

The most glaring example of this failure to track the language in the Curt Flood Act is in the express list of matters not affected by

22. See Nat’l Collegiate Athletic Ass’n, 468 U.S. at 117 (suggesting insulating product from full range of competition in marketplace is inconsistent with basic policy of Sherman Act because of doubts about value and attractiveness of given product); see also Smith v. Pro Football, Inc., 593 F.2d 1173, 1183 (D.C. Cir. 1978).

Under the rule of reason, a restraint must be evaluated to determine whether it is significantly anticompetitive in purpose or effect. In making this evaluation, a court generally will be required to analyze “the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed.”

Id. (quoting Nat’l Soc’y of Prof’l Eng’rs v. United States, 435 U.S. 679, 692 (1978)).

23. See Hearings 1994, supra note 12, 123-24 (testimony of Stanley M. Brand). “This is an important difference from other professional sports; unlike the NBA and NFL, baseball’s draft extends to players who will never be part of the ‘major league’ team and the bargaining agent that represents them.” Id. at 124.


25. See id.

26. See id.

27. See Fairness in Antitrust in National Sports (FANS) Act of 2001, S. 1704, 107th Cong. § 2 (2001) (stating purpose as “[t]o amend the Act of September 30, 1961, to limit the antitrust exemption applicable to broadcasting agreements made by leagues of professional sports, and for other purposes”).
the bill in subsection 3(b). The Curt Flood Act lists six items as unaffected matters. To accomplish lifting the antitrust exemption only for major league franchise contraction and relocation, the single change should have been removing from item 3 the references to "franchise" and "relocation." Nonetheless, the bill omits far more language.

First, items 1 and 5 in subsection 3(b) of the Curt Flood Act are omitted. These two items respectively state:

1) any conduct, acts, practices, agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players; and

5) the relationship between persons in the business of organized professional baseball and umpires or other individuals who are employed in the business of organized professional baseball by such persons.

In addition, the bill edited item 3 of unaffected matters (in the proposed bill item 2) by deleting the words "franchise, expansion, location, and relocation," even though the stated purpose of the bill was to lift the exemption only towards contraction and relocation with respect to major league franchises. If the bill's stated purpose is accurate, issues of major league expansion or location that do not involve relocation, as well as all franchise issues at the minor league level, still should be covered by the exemption and should be referred to in item 3 (now 2).

28. See id. § 3(b) (eliminating items (1) and (5) from Curt Flood Act).
30. See id. § 27a(b)(3) (exempting baseball from antitrust liability with respect to franchise expansion and relocation).
31. See infra notes 32-35 and accompanying text.
33. Id.
34. S. 1704, § 3(b)(2). The pertinent section of the bill reads:
Any conduct, act, practice, or agreement of a person engaging in, conducting, or participating in the business of organized professional baseball relating to or affecting the relationship between the Office of the Commissioner and franchise owners, the marketing of sales of the entertainment product or organized professional baseball, and the licensing of intellectual property rights owned or held by organized professional baseball teams individually or collectively.

Id.
35. See id.
The deletions in the proposed bill are very troubling and possess enormous potential problems for Minor League Baseball. Many of these problems involve employment matters, drafts, and the reserve clause as applied to minor league players.\textsuperscript{36} The first-year player draft and minor league reserve clause constitute the core incentive for major league organizations to finance the development of minor league players, and any change in their foundations could affect severely minor league economic stability.\textsuperscript{37} The most troubling change is the deletion of a reference to franchise expansion, location, and relocation matters, which removes the express protection for the minor leagues with respect to these franchising issues.\textsuperscript{38} Specifically, it creates a potential risk for all minor league rules dealing with territories and territorial rights that now protect the viability of all minor league teams, particularly at the lower classification levels in many small and rural markets across the country.\textsuperscript{39}

Furthermore, subsection d(1) of the Curt Flood Act, provides that "[a]s used in this section, the National Association of Professional Baseball Leagues, its member leagues and the clubs of those leagues, are not 'in the business of organized professional major league baseball']."\textsuperscript{40} Senator Wellstone's bill deleted this language. The reason for this deletion remains unclear, but its absence, when compared with the Curt Flood Act, is striking and might well be interpreted as a deliberate statement by Congress that could subject baseball to antitrust claims. This absence implies that the antitrust exemption no longer applies to minor league players, umpires, or franchise issues. Also, this absence could cause the minor league to expend huge sums of money fighting these antitrust claims, which is something the minor leagues cannot afford to do. It is particularly troubling that this language has been

\textsuperscript{36} See 15 U.S.C. § 27a(3)(b)(1). The FANS Act of 2001 does not include the following language of the Curt Flood Act of 1998:

\begin{quote}
[\text{\textit{A}ny conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players}].
\end{quote}

\textit{Id.}

\textsuperscript{37} See \textit{Hearings 1994, supra} note 12, at 123 (testimony of Stanley M. Brand).

\textsuperscript{38} For a discussion of these deleted issues, see \textit{supra} notes 32-35 and accompanying text.

\textsuperscript{39} See generally 15 U.S.C. § 27a (setting forth antitrust laws with respect to both Minor League Baseball and MLB).

\textsuperscript{40} Id. § 27a(3)(d)(1).
omitted given the long and arduous effort Minor League Baseball exacted to include it in the final version of the Curt Flood Act.

Beyond the impact of omitting these provisions, two more indirect aspects of the bill present the possibility of serious long-term detrimental effects. First, the bill subjects MLB to potential treble antitrust liability for any action relating to franchise relocation. As seen in other sports, especially football, this has caused an *in terrorem* effect, such that individual franchises are now essentially free to relocate without league oversight. This has created the phenomenon by which teams essentially put themselves up for auction to the highest bidder, and has forced taxpayers in communities to provide hundreds of millions of dollars in direct and indirect subsidies in order to attract or to avoid losing a team. It is puzzling why, in response to MLB’s announced efforts to contract two teams, Congress would want to pass legislation lifting the antitrust exemption for both contraction and relocation. The historic baseball antitrust exemption has had an obvious restraining effect on relocations at the major league level and has served the public interest well by reducing the ability of teams to force huge public subsidies out of local communities. Denying immunity for relocation decisions could also create disruption in certain AAA minor league markets as well by subjecting those cities to uncertainties with respect to contraction. Furthermore, lifting immunity with respect to relocation is not at all justified or even suggested by the current efforts of MLB to eliminate two teams.

How did we get from the carefully crafted provisions of the Curt Flood Act to the reduced and inadequate minor league protections of Senator Wellstone’s bill? Sponsors of this legislation and the Major League Baseball Players Association (“MLBPA”) asserted cavalierly and falsely that the minor league exemption “carve out” remains intact. Yet, Donald Fehr, the president of the MLBPA, only a few years ago stated that “[t]oo much money is being wasted in


42. See Darren Rovell, *Baseball’s Antitrust Exemption: Q & A*, at http://espn.go.com/mlb/s/2001/1205/1290707.html (Dec. 5, 2001) (noting threat of antitrust lawsuits led to movement among NFL teams). In 1982, Al Davis, owner of the Los Angeles Raiders, filed an antitrust lawsuit after the NFL disallowed him to relocate to Oakland. See id. Davis won the lawsuit and moved his team to Oakland. See id. Subsequently, this threat of antitrust lawsuits led to more movement among NFL teams, such as the Cleveland Browns to Baltimore and the Los Angeles Rams to St. Louis. See id. Besides the NFL moving seven times since the last MLB move in 1971 (Washington Senators to the Texas Rangers), the NBA has experienced seven moves, while the NHL has had nine. See id.
the minor leagues.” Since then, the MLBPA has been the principal and relentless proponent of total and outright repeal of the antitrust exemption. During the consideration of the Curt Flood Act, the union steadfastly resisted adding language to the legislation that would have provided clear and unmistakable protection to Minor League Baseball. The union eventually relented under pressure from its own congressional allies only when it became apparent that no legislation could be passed without including language that protected Minor League Baseball. Seemingly, the MLBPA seeks a total repeal in order to destroy Minor League Baseball so that Donald Fehr can lay claim to the money “wasted” at the minor league level, and divert it to “his” players.

Beyond omitting key protections for the minor leagues, the bill erodes baseball’s exemption in another aspect of its business without any demonstration that it will solve problems for which it is advanced. Namely, it accelerates the unjustified momentum begun with the Curt Flood Act by lifting aspects of the antitrust exemption on a piecemeal basis whenever baseball makes a difficult or unpopular decision. Rather than deal directly with the event that generated concern (planned contraction), the bill, like the Curt Flood Act, erodes a long-standing legal principle that has served the public well. This makes it politically easier to lift the immunity even further when the next problem arises, a trend that undoubtedly will have adverse affects on Minor League Baseball. This is bad public policy and will hasten the demise of grassroots baseball, without giving any assurance that the desired result will be achieved.

There has been much discussion of the lack of competitive balance at the major league level and the economic remedies available to restore healthy on-field competition to baseball. What is seldom mentioned as part of the discussion is the role of the exemption in buttressing competition at the major league level through minor league player development. In the event of a repeal, major and


44. See id. (claiming money wasted on minor leagues should instead be used to push kids to college by subsidizing professional summer league programs for students).

minor league teams presumably will be free to compete openly for the signing of baseball player prospects. Players signed by major league teams could be placed either on the major league roster (currently forty players) or assigned to minor league teams for further development. Free of standardized player contracts with fixed salaries and reserve periods, major league teams would compete for top prospects. This competition will upset the competitive balance essential to baseball’s viability. Wealthier teams would be in a position to outbid smaller market teams for available first-year draft talent. This can only exacerbate the “competitive problems” detailed in the Report of the Independent Members of the Commissioner’s Blue Ribbon Panel on Baseball Economics.46

If a repeal triggers unbridled competition in the payment of salaries for minor league players, the rich simply get richer at the expense of less prosperous clubs. This scenario is identical to that of the 1940s and 50s, when Branch Rickey of the St. Louis Cardinals purchased a large number of minor league teams to stock the major league Cardinals.47

While professional football and basketball look to college talent for developing professional players, grave doubt exists that col-

owners may decide to relocate based on financial reasons, which could lead to the destruction of minor league clubs and lessen America’s interest in baseball on the whole. See id. With MLB supporting them, minor league clubs can bargain for more money from their respective cities for stadium renovations. See id. Thus, minor league clubs benefit from new facilities, while MLB reaps the benefits of improved player development. See id.

46. See Summer 2000: Report on the Blue Ribbon Panel Report, OUTSIDE THE LINES (SABR Bus. of Baseball Comm., Cleveland, Ohio), Summer 2000 (explaining competitive problems arise from revenues and player payrolls, as illustrated by comparing payrolls to on-field performance), available at http://www.roadsidephotos.com/baseball/blueribbon.htm; see also BENJAMIN G. RADER, BASEBALL: A HISTORY OF AMERICA’S GAME 131 (Univ. of Ill. Press 1992) (indicating recruitment of new players far more cost-effective when left in hands of minor league franchises). Mr. Rader noted:

[N]either the major league nor the high-level minor league club need employ a bevy of scouts or take the risks of investing in dozens of players who never would make it to the higher echelons of baseball. A player who had proven his potential in minor league competition could then be purchased; if the minor league franchise set the price too high, the player would eventually become subject to the draft (at a set price) by a club higher in organized baseball’s hierarchy.

Id.

47. See RADER, supra note 46, at 130-32. Mr. Rader related:

By far the most important of Rickey’s innovations, however, was the St. Louis farm system . . . . Prior to Rickey, conventional wisdom had held that such a system would not be cost-effective . . . . Had it not been for the near collapse of the draft system in the 1920s Rickey would probably never have broken with the traditional mode of player acquisition.

Id.
leges could, or should, fill the void. As colleges currently organize their baseball programs, there is little hope that colleges can train baseball players as effectively as the minor leagues do. Baseball is played primarily during the summer when colleges are closed. The NCAA will not permit students to play in the minor leagues without forfeiting their college baseball eligibility. Some have argued that the “summer leagues,” such as the Alaskan and the Cape Cod leagues, may fill the gap during the summer months when colleges are closed. Nonetheless, such leagues are not competitive enough nor are their seasons long enough to develop talent as well as the traditional minor leagues. It is questionable whether their existing caliber of play could be preserved if the summer leagues were expanded should the minor league fail.

In addition, one can assume that minor league teams usually have better coaches, facilities, and competition than college teams because the minor leagues are subsidized by the billion-dollar industry of MLB. In college, students play baseball at most three to four times per week for only three months, yet it remains an extremely difficult sport requiring considerable skill, finesse, and constant practice to hone one’s skills. These skills are best developed in the minor leagues where players play every day for six to seven months out of the year. Only then do prospects normally advance to the major leagues. In fact, college baseball players usually require two to three years of additional development before they are prepared to play in the major leagues. Thus, it is not surprising that many players who excel in college never make it to the major league level when additional development is needed after college.

One seriously must doubt whether the NCAA would permit MLB to invest in collegiate baseball programs on terms that are ac-


49. See Newhan, supra note 43, at C10 (emphasizing importance of professional summer leagues for college students as opposed to over-financed minor league clubs).


51. See Friedman, supra note 45, at http://140.192.57.122/lawslj/comments/antitrust_exemption.asp (recognizing minor league setting created largely to enhance player development for MLB).

52. See Joshua P. Jones, A Congressional Swing and Miss: The Curt Flood Act, Player Control, and the National Pastime, 33 GA. L. REV. 639, 684-86 (1999) (explaining due to skill needed in MLB, four years at collegiate level will not be enough to maintain current performance level of present day MLB players).
ceptable to MLB. Surely, the NCAA would require that all NCAA baseball programs be treated alike, and that all receive the same level of financial support from MLB teams. The logistics of financing such a system would be insurmountable, not to mention the chaos created by mixing professional and amateur sports programs together.

Other sports illustrate that it is inadvisable to create an alternative player development system that commingles professionalism and education.\textsuperscript{53} Colleges ought to concentrate on developing "major league" doctors, scientists, and educators, not major league ballplayers. It is foreseeable that creating greater reliance on college baseball as a player development system will expose baseball to the scandals and conflicts that have blemished other college sports.\textsuperscript{54}

The effect of contraction and a repeal of the antitrust exemption can be demonstrated by examining the Harrisburg Senators minor league club. The Harrisburg Senators franchise is under a player development contract ("PDC") with the Montreal Expos.\textsuperscript{55} The Senators serve as the Expos AA affiliate for player development, while the Expos are a major league team frequently considered a contraction candidate.\textsuperscript{56}

The City of Harrisburg had a minor league team until 1952 when the team disbanded.\textsuperscript{57} In 1987, behind the vision and efforts of Mayor Stephen R. Reed, the city was able to attract a franchise to a proposed new stadium in Harrisburg.\textsuperscript{58} Built as a "throw-back" stadium with bench seating and cantilevered overhangs, the city's construction of Riverside Stadium signaled the return of baseball to Pennsylvania's capital city. Although the local media chided the

\textsuperscript{53} See generally Tanyon T. Lynch, \textit{Quid Pro Quo: Restoring Educational Primacy to College Basketball}, 12 MARQ. SPORTS L. REV. 595, 608 (2002) (suggesting college sports are becoming training grounds for professional careers while student-athlete education is being compromised).

\textsuperscript{54} See id. at 621-25 (illustrating effect NBA has on NCAA basketball players and specifically acknowledging that college basketball is number one recruiting system for NBA, but college basketball players have lowest graduation rates of all college athletes).


\textsuperscript{56} See Murray Chass, \textit{Selig Isn't Ready To Call Off Contraction}, N.Y. TIMES, Nov. 27, 2001, at S5 (noting Montreal Expos expected to be eliminated by contraction, along with Minnesota Twins).

\textsuperscript{57} See \textit{History}, supra note 55.

\textsuperscript{58} See Matt Assad, \textit{Harrisburg Tells Baseball Success Story, Mayor Says Team Aided City's Economic Recovery}, MORNING CALL, Sept. 3, 1994, at B3 (indicating Mayor Reed's involvement with Senators brought pride back to Harrisburg).
proposal as a pipe dream and extraordinary effort was critical to its fulfillment, the return of baseball to the City of Harrisburg was a tremendous success.\textsuperscript{59}

Not long after baseball returned to Harrisburg, the then-owners of the Harrisburg Senators franchise announced that the team would be relocating to a proposed state-of-the-art stadium in Springfield, Massachusetts at the expiration of its Riverside Stadium lease in 1996.\textsuperscript{60} In recognition of the overwhelming interest to protect the city’s investment in reviving baseball in Harrisburg, constructing Riverside Stadium, and the economic benefits derived from the franchise, the Mayor initiated negotiations to purchase the Senators.\textsuperscript{61} During the negotiations, the city took other actions to protect its interest in baseball. In July 1995, the City of Harrisburg filed a lawsuit against the City of Springfield alleging interference with contract-related issues, and also filed an expansion application with MLB. The lawsuit created a debate regarding the actions of the Mayor of Springfield, who, after using the baseball issue as a campaign asset, was derided by the media for “stealing” a team from Pennsylvania’s capital city. Shortly after filing the lawsuit, Springfield was forced to back down.\textsuperscript{62} Harrisburg was then able to negotiate the purchase of the team, but not without paying a then-record sum of $6.7 million for a AA club.\textsuperscript{63} Accordingly, the City withdrew the lawsuit against Springfield and its expansion application.\textsuperscript{64}

\textsuperscript{59} See id. (noting Senators arrived on Harrisburg’s City Island in 1987 during end of economic downturn). “Since the baseball project, [Mayor] Reed estimates the city has enjoyed nearly 300 development projects amounting to about $800 million.” Id.

\textsuperscript{60} See Megan O’Matz, Harrisburg Strikes Deal for Senators; City Will Pay $6.7 Million To Keep Baseball Team, MORNING CALL, July 8, 1995, at A3 (indicating possible team relocation to Springfield, Massachusetts after 1996 season).

\textsuperscript{61} See id. The NAPBL encouraged the present owners of the Senators to renew talks with the City of Harrisburg. See id. “When it became clear that the present owners would not back down from their demand for a new stadium in Harrisburg, the mayor . . . offered, for the second time, to buy the team.” Id. Without the team, “Harrisburg risked losing up to $10 million a year in goods, services and salaries,” and would have to spend up to $13 million to bring in another minor league club. Id.

\textsuperscript{62} See O’Matz, supra note 60, at A3 (noting intensive discussions and negotiations took place, which allowed Harrisburg to keep minor league team).

\textsuperscript{63} See id. (stating City of Harrisburg bought Senators baseball club for $6.7 million). Mayor Reed was reluctant to have the city put up such a large sum of money and become the buyer of the team. See id. Nonetheless, he realized, “[i]f you want to keep baseball in Harrisburg, you’re just going to have to buy the team.” Id.

\textsuperscript{64} See id. (discussing moot nature of expansion application after city purchased team).
Shortly before completing the purchase, Harrisburg established a corporate entity, which currently runs the Harrisburg Senators franchise. The franchise is owned and operated by a for-profit entity, the Harrisburg Civic Baseball Club, Inc. ("HCBC") of which the city owns 100% of its stock. The city also owns and operates Riverside Stadium, which is located on Harrisburg's City Island, and has invested in excess of ten million dollars in its construction, upgrade, and maintenance since 1987. The city also incorporated City Island Catering, Inc. ("CIC"), a for-profit entity that provides all concessionaire services at Riverside Stadium and at other venues and kiosks open to the public around the stadium. The city owns 100% of the stock in CIC as well. Although this was a costly transaction, ownership of the franchise assures the community that the Harrisburg Senators will continue to play on City Island in perpetuity.

The return of baseball has been a great success story for Harrisburg and particularly the Mayor, who is entering an unprecedented fifth term. Baseball brings millions of dollars to the city, considering the other businesses such as arcades, batting cages, and miniature golf courses that surround the stadium. The city is also in the final planning stages for the Pennsylvania Sports Hall of Fame, and has received $9.5 million from the Commonwealth to construct such a facility.

The franchise has also achieved on the field success through its affiliation with the Montreal Expos, which historically has main-

65. See id. (indicating creation of non-profit corporation).
67. See Assad, supra note 58, at B3 (detailing city's estimate of ten million dollars for 8000-seat stadium on undeveloped site); Peter J. Shelly, Harrisburg Buys its Baseball Team, PITTSBURGH POST-GAZETTE, July 23, 1995, at C3 (describing how Harrisburg has spent eighteen million dollars on City Island, including money towards miniature golf courses, amusement rides, arcades, and baseball stadium).
68. See Shelly, supra note 67, at C3 (describing how Harrisburg fans "love their Senators" and "love Stephen R. Reed").
69. See id. (stating city estimation that Senators bring between eight and ten million dollars into Harrisburg economy).
70. See Pennsylvania Sports Hall of Fame: Delaware County Chapter, at http://www.pasportshalloffame-dcc.com (last visited Nov. 19, 2002) (identifying Pennsylvania Sports Hall of Fame as non-profit organization founded to perpetuate memory of athletes, male and female, who brought lasting fame and recognition to Pennsylvania through their athletic achievements). A committee is currently taking action to design and build a permanent structure to house the honor roll, plaques, and personal memorabilia of Hall of Fame Inductees. See id.
tained a strong minor league system.\textsuperscript{71} Some of the players and coaches that have come through Harrisburg include Moises Alou, Cliff Floyd, Brad Fullmer, Mark Grudzielanek, Vladimir Guerrero, Kirk Rueter, Ugueth Urbina, Javier Vazquez, Rondell White, Manager Jim Tracy, and current Phillies pitching coach Joe Kerrigan.\textsuperscript{72} Moreover, the Senators have won six Eastern League Championships since 1987, including four straight from 1996 through 1999.\textsuperscript{73} The Senators’s Championship in 1999 made national headlines when down eleven to eight in the bottom of the ninth inning with two outs, bases loaded, and a full count, Senators player Milton Bradley hit a grand slam home run to win the game.\textsuperscript{74}

Although the franchise achieved economic and championship success, Harrisburg continues to subsidize the team’s operations. In 1995, the city issued taxable bonds in the amount of $7.7 million to purchase the team and perform upgrades to the stadium. Despite such efforts, revenues continue to fall short of supporting the team’s operating cost and debt service. Such revenue shortfall occurs even though the franchise consistently ranks in the top third of all AA baseball franchises in net revenue and even though the city controls all of the revenue-making assets. Without the support of the minor leagues and the protections provided by the antitrust exemption, baseball could not survive in Harrisburg, even with such staunch public support.

The most recent threat to the franchise and its viability has been the talk of contraction.\textsuperscript{75} The PBA between the major and minor leagues was signed in 1997 for a ten-year term with early termination rights beginning in September 2003 for cause or September 2004 and thereafter for any reason.\textsuperscript{76} The PBA sets forth a PDC commitment, which provides that the MLB will field 160 teams through the termination of the PBA, including thirty teams at the AA minor league level.\textsuperscript{77} The PBA also provides, however, that

\begin{itemize}
  \item \textsuperscript{71} See Senators’ All-Time Player Roster, at http://senatorsbaseball.com/AllTime Roster.html (last visited Nov. 19, 2002).
  \item \textsuperscript{72} See id.
  \item \textsuperscript{73} See History, supra note 55.
  \item \textsuperscript{75} See generally Roberts, supra note 6, at 420 (stating subjecting major leagues to antitrust litigation jeopardizes future of minor league teams).
  \item \textsuperscript{76} See Professional Baseball Agreement art. III(a).
  \item \textsuperscript{77} See Professional Baseball Agreement art. VII(a).
\end{itemize}
each PDC shall be between one major league and minor league team unless the commissioner grants permission for a “co-op” due to emergency financial circumstances of a major league club.  

According to the terms of the PBA between MLB and the NAPBL, a AA minor league franchise of the Eastern League of Professional Baseball is recognized in Harrisburg. Even with the talk of contraction, the PBA provides some assurance that the major leagues are contractually obligated to field a team in Harrisburg. Yet, the prospect of a “co-op” team is not a preferred option for Harrisburg, because “co-op” teams are usually poor quality clubs that receive “end-of-the-bench” minor leaguers from other clubs and have no identifiable team presence. A major league team will not send a hot prospect to a “co-op” team where it cannot keep a close eye on him.

The mere speculation of contraction has affected adversely the Harrisburg Senators club. Shortly after word leaked out of potential contraction during the 2001 World Series, the Senators franchise received frantic calls from sponsors and fans who did not understand the intricacies of the contractual relationships between the major and minor leagues. Because of this lack of understanding, sponsors and fans provided only down payments for advertisements and season tickets for the 2002 season in fear that baseball might not be played in Harrisburg. The franchise has not recovered fully, as revenues have fallen short of budget projections.

With the major leagues considering contraction, HCBC identified certain actions that would be available to protect its interest in the franchise. As an initial and practical matter, HCBC would rely on the NAPBL, the ruling body of the minor leagues, to protect its interest. The influence of the NAPBL was most recently on display during the proposed passage of the Curt Flood Act in 1998 as discussed above.

---

78. See Professional Baseball Agreement art. VII(c)(4).
80. See Rob White, Contraction Affects Minor Leagues If Major League Clubs Dissolve, OMAHA WORLD-HERALD, Nov. 22, 2001, at 3C (explaining “co-op” teams struggle to compete because they are usually stocked with players of marginal ability).
82. See Roberts, supra note 6 (describing pressure exerted on Congress by NAPBL). The NAPBL saw the Curt Flood Act as a potential source of mischief,
Recently, Minor League Baseball President Mike Moore stated on November 6th, 2001:

We plan on baseball being played by all of our franchises next season . . . Commissioner Selig has indicated to me that following any definitive decisions on contraction, we will work closely in formulating solutions pertaining to the minor leagues. The commissioner has been a strong supporter and ally of minor league baseball and we will continue to work together toward our common goals.  

With the assistance of the NABPL, the following options would be available for the Senators's franchise in the face of contraction. The Senators franchise could lobby for the dissolution of the lowest producing AA team, rather than the Senators franchise. Because the Senators franchise consistently ranks in the top-half in attendance and top-third in net revenue, the argument would be that it would be more prudent to dissolve a team in a weaker city and allow the Senators to assume that franchise's PDC. The Senators franchise could also lobby for a "buy-out" from the major leagues, similar to what was proposed to the owners of the Expos and Twins. This is not, however, a preferred option for the city. Instead, HCBC could bring a cause of action against the major leagues for breach of the PBA, which requires the major leagues to provide players for 160 minor league teams, including a team in Harrisburg. Due to the city's lease agreement with the stadium, the city could sue HCBC for breach of the lease, and HCBC could sue to join the major leagues for violation of the PBA. Finally, in

and lobbied for the inclusion of several provisions that provide substantial legal aid and comfort to the NAPBL in its effort to protect itself from the coverage of the antitrust laws. See id.

83. Mike Eisenbath, Is Baseball's Contraction a Ploy For Negotiations or a Necessity, ST. LOUIS POST-DISPATCH, Nov. 11, 2001, at D7 (quoting Minor League Baseball President, and stipulating existing farm clubs might continue in different form as co-op teams with only differences being that players would belong to different organizations and staffers would be employed by MLB).


85. See Eisenbath, supra note 83, at D7 (indicating ownership proposal to owners of Montreal Expos and Minnesota Twins franchises respectively).

86. See Richard Sandomir, Contraction Plans Put Minor League Affiliates in Limbo, N.Y. TIMES, Dec. 4, 2001, at S4 (noting minor league franchises are protected from potential effects of contraction by PBA, which provides that 160 minor league teams will be operated through 2003). While contraction might eventually come to the minor leagues, it will not necessarily impact the minor league teams affiliated with the major league clubs that are eliminated. See id.
order to preserve baseball in Harrisburg, the city and HCBC could also seek to affiliate with another major league team. This was not a viable option for the 2002 season given that PDCs must be negotiated during a twenty-day period in September of every year. Attracting another franchise would also be difficult because even though Riverside Stadium was built in 1987, over $650 million has been invested in minor league ballparks during the “stadium boom” of the 1990s, and Riverside Stadium does not have many of the amenities these newer ballparks possess. Although Riverside Stadium is a charming venue, it cannot match the concessions, superboxes, and, more importantly, hitting tunnels, inside pitching mounds, and revamped locker rooms that other stadiums possess. The city has plans for upgrades to the stadium, but with a price tag of twelve million dollars, the city does not have the financial wherewithal to invest in the stadium at this time.

Commissioner Selig, in testifying last December before the House Judiciary Committee, stated that it was not necessarily the case that minor league clubs would be contracted if their affiliated major league club ceased to exist. There are a number of ways in which this issue can be addressed, including: 1) assumption by other major league clubs of the contracted clubs’ minor league


88. See Laura Petrecca, Fun and Games: MLB Boosts Entertainment at the Ballpark, Advertising Age, Apr. 3, 2000, at 32 (detailing unprecedented new stadium-building boom in which state-of-the-art stadiums merged sports and entertainment to create amusement park atmosphere for families while also providing corporate-pleasing amenities, including more luxury boxes, which lead to greater revenue).

89. See Edward Gunts, Only the Players Are Minor-League: Extra Touches Set Ripken Stadium Apart from Other Family Ballparks, BALT. SUN, June 16, 2002, at 3E (describing newly-built eighteen million-dollar minor league ballpark with features one might expect in larger stadiums, from wide seats with built-in cup holders to air-conditioned club level and skyboxes); see also Don Muret, New Ballpark Making Waves in SAL, Amusement Bus., Mar. 19, 2001, at 19 (noting renovations to minor league facility in which two clubhouses were installed, as well as new dugouts, bullpens, restrooms, office space, and ticket operation booths being built).

90. See James O’Toole, Stadium Issue No Divider, PITTSBURGH POST-GAZETTE, Apr. 29, 2001, at A1 (describing political conflict resulting from Harrisburg Mayor’s tactics to obtain funding for minor league stadium from state legislature).

PDCs; or 2) maintenance of the contracted minor league clubs’ PDCs on a “cooperative” or shared basis among several major league clubs. Suffice it to say that the minor leagues will be working cooperatively to preserve the viable minor league clubs, like Harrisburg, in the event of major league contraction.

Finally, a related issue to contraction and antitrust exemption is the Senators’s territorial rights, which are protected under the Curt Flood Act.\(^9\) The antitrust exemption allows for territorial rights, and the territory of the Harrisburg Senators franchise includes Dauphin County as well as a fifteen-mile buffer surrounding the county.\(^3\) The fifteen-mile buffer around Dauphin County includes York County, Pennsylvania. The City of York, in York County, has sought to lure a minor league franchise to its city for the past seven years.\(^4\) Even more recently, the City of Lancaster, also in the Senators’s territory, has sought to bring Minor League Baseball to a new proposed stadium in its city.\(^5\)


93. See National Association Agreement 10.06(B). “All grants of protected territory to minor league clubs must first be approved by the President of the Minor League Association and by the Commissioner.” Id.; see also National Association Agreement 10.06(C). An exception to this rule allows a club to play its games within another club’s protected area pursuant to a grant of protected territory or the written consent of each major or minor league club upon whose home territory is infringed. See id. “The 15-mile ‘buffer’ is not included as part of a club’s home territory and may coincide (in whole or in part) with the 15-mile ‘buffer’ surrounding another club’s home territory.” Major League Baseball Rules § 52(b)(2) (2002); see also National Association Agreement 10.06(C). If the boundary of a minor league club’s territory overlaps or is within fifteen miles of another territory, the minor league club cannot relocate inside its own territory to a location closer to the boundary of the other club’s territory. See National Association Agreement 10.06(D). An exception to this rule allows the minor league club to relocate to a location closer to the other club’s boundary if it obtains written consent from the affected clubs and league or the President of the National Association of Professional Baseball authorizes an exception. See id.

94. See Timothy B. Wheeler, Baseball Vision for Faded York, BALT. SUN, July 23, 1999, at 1A (discerning city officials and business leaders desire to lure Minor League Baseball team in hopes of urban revival); see also David O’Connor, York Gets High Marks for Pro Baseball, LANCASTER NEW ERA, Apr. 2, 1999, at B1 (citing report predicting that minor league team in York would be among top performers in professional baseball); Justin Quinn, Batter Up: Fans, League Feel Team Would Work, IntelliJENCER J., Aug. 1, 2001, at A1 (quoting location scout’s opinion that independent Minor League Baseball team in York County would complement existing major league farm teams in Harrisburg and Reading).

95. See O’Connor, supra note 94, at B1 (detailing former mayor’s effort to bring team to Lancaster because “Lancaster is overdue for a team” in league with natural rivals like Harrisburg, Reading, and York); see also League Says Lancaster, PA Has Good Chance To Win Minor-League Baseball Team, LANCASTER NEW ERA, Oct. 25,
Without the territorial rights afforded by the antitrust exception, the Harrisburg franchise would be affected adversely by expansion in neighboring communities. In turn, such expansion would harm each of these communities through over-expansion. Thus, the antitrust exemption presumes the viability of the franchise and prevents the saturation of markets.

2001 (identifying Atlantic League official's opinion that prospects are promising for Lancaster to be awarded minor league franchise if it meets certain conditions).