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MAJOR LEAGUE BASEBALL’S LABOR TURMOIL:
THE FAILURE OF THE COUNTER-REVOLUTION

JEFFREY S. MOORAD*

Professional Baseball is on the wane. Salaries must come
down or the interest of the public must be increased in
some way. If one or the other does not happen, bank-
ruptcy stares every team in the face.

Albert Spalding, Owner
Chicago White Stockings, 1881

You go through The Sporting News for the last one hundred
years, and you will find two things are always true. You
never have enough pitching, and nobody ever made
money.

Donald Fehr, Executive Director
Major League Baseball Players Association

Basically, the players just don’t trust the owners. We don’t
want to repeat the past.

Mike Greenwell, Left Fielder
Boston Red Sox

Since professional baseball began in 1869, labor relations be-
tween players and club owners have been highly contentious. More

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Williams, Ivan Rodriguez, Will Clark, Eric Karros, Raul Mondesi, and Travis Lee.
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1996) for their invaluable assistance in the preparation of this article.
2. Christopher D. Cameron & Michael Echevarria, The Ploys of Summer: Anti-
trust, Industrial Distrust, and the Case Against a Salary Cap for Major League Baseball, 22
3. A History of Baseball Disputes, USA TODAY, Mar. 19, 1990, at 8C.
4. See ANDREW ZIMBALIST, BASEBALL AND BILLIONS: A PROBING LOOK INSIDE
THE BIG BUSINESS OF OUR NATIONAL PASTIME 2 (1992). Baseball’s origins have
been traced back as far as 1839. See Note, Baseball and the Law—Yesterday and Today,
32 VA. L. REV. 1164, 1165 (1946). However, players were not compensated for
labor-management disputes have arisen in Major League Baseball (MLB) than in any other major professional sport played in the United States, particularly since the advent of collective bargaining in the past three decades.\(^5\)

The tension that characterizes baseball's labor relations is the product of almost a century of near-total owner hegemony over the game and its players' careers through use of the infamous reserve clause. Players ultimately overthrew the reserve system in the 1970s, but only through a determined campaign involving litigation, arbitration, and collective bargaining.\(^6\) This revolution led to a remarkable period of salary gains and player freedom for almost two decades.

Since the establishment of the current system in 1976, owners have engaged in increasingly desperate efforts to turn back the players' gains. In every set of collective bargaining discussions since then, management has espoused plans or positions that would abrogate some or all of the players' hard-fought rights to free agency, salary arbitration and freedom from industry-wide salary controls. For several years in the 1980s, owners illegally colluded to destroy the open market for free agents, a policy that instilled a new generation of major league baseball players with distrust toward owners.

Finally, ownership's attempts to impose a salary cap in collective bargaining discussions during the 1994 season touched off the 1994-1995 players' strike, the longest strike in professional major league sports history.\(^7\) The strike was also the only sports labor

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5. See Gary Mihoces, "Labor Strife Now Just Part of the Game," USA TODAY, Jan. 9, 1995, at 1C. Since 1969, professional major league sports played in the United States (baseball, football, basketball and hockey) have experienced 14 labor-management disputes resulting in either lockouts or strikes. See id. One-half of these disputes involved MLB. See id.

6. See Zimbalist, supra note 4, at 20-21. The final blow to the reserve clause came when, in December 1975, a grievance panel headed by Peter Seitz ruled that "players were free to bargain with other clubs once their contracts expired." Id. at 21. The owners fired Seitz and appealed to the federal district court, where their appeals were denied in March, 1976. See id.

7. See Christopher J. Fisher, The 1994-95 Baseball Strike: A Case Study in Myopic Subconscious Macrocosmic Response to Conflict, 6 SETON HALL J. SPORTS L. 367, 393 (1996). The strike, which began on August 12, 1994, lasted for 232 days. See id. The second-longest strike in professional major league sports history occurred in 1982, when the NFL's regular season was interrupted for 57 days. See Mihoces, supra note 5.
stoppage to result in the termination of a season. Moreover, the labor-management stand-off persisted through the 1996 season and beyond.

This article will examine the history of MLB's labor relations, with particular emphasis on the rise of the Players Association and the long-standing mistrust between labor and management, the three-tiered player compensation system that emerged from the sport's collective bargaining discussions, and the owners' three-year-old, and thus-far frustrated, attempts to overturn that system through negotiation or fiat. The article will conclude with some thoughts as to the future of baseball’s labor relations, both as to the probable settlement of the current dispute (unresolved as of this writing) and to the lessons learned from the tumult of the last few years.

I. THE HISTORY OF LABOR RELATIONS IN BASEBALL

To understand the current tenor of labor relations in baseball, it is important to analyze its history. This history reveals patterns of owner behavior that readily explain the atmosphere of mistrust and animosity that pervades the sport to this day.

A. The Reserve Clause

Although the official position of baseball's first governing body, the National Association of Baseball Players, was that paying players for their services was "reprehensible and not in the best interests of the game," it was not uncommon for teams to pay talented players. Many players began to move from team to team during the season, allowing for greater compensation, a practice called "revolving."

8. See Strike Chronology, USA TODAY, Dec. 16, 1994, at 5C; see also USA TODAY BASEBALL WEEKLY, 1995 ALMANAC, 36 (P. White ed., 1995) (including complete text of owners' agreement terminating the 1994 season). Allan "Bud" Selig, the acting commissioner of baseball and owner of the Milwaukee Brewers, announced the termination of the season and the cancellation of the World Series on September 14, 1994, a little over a month after the strike began. See id. The World Series was cancelled at only one other time, in 1904. See GLENN DICKY, THE HISTORY OF THE WORLD SERIES SINCE 1903 21 (1984). The 1904 game, which would have been the second World Series, was cancelled after New York Giants owner John Brush refused to participate, stating: "There is nothing in the constitution or the playing rules of the National League which requires its victorious club to submit its championship honors to a contest with a victorious club in a minor league." Id.


10. See ZIMBALIST, supra note 4, at 2.

11. See Pietrusza, supra note 9, at 588.
Revolving continued as regular professional play began. Talented players found that "contract jumping" created competition for their services and thus increased their compensation. This practice proved financially ruinous for the nascent National League clubs, however, and as a result more than one-half of the League's teams collapsed under the economic strain caused by competition for players.

The owners of the remaining National League clubs, determined to halt contract jumping, reached a secret "gentlemen's agreement" under which each team could "reserve" five players. Other teams agreed not to court players on the reserve lists. These lists proved so successful in stifling increases in player salaries that by the 1890s every professional baseball contract included a reserve clause.

The reserve clause allowed a team to renew a player's contract for one year unilaterally upon its expiration, even if the player refused to re-sign with the team. Because the new contract would also include a reserve clause, players found themselves in a contractual hall of mirrors, with endlessly repeating obligations and no reasonable way out. Players could not seek employment with other teams; those that did, found themselves permanently barred from the sport. Thus, players remained bound to their original team,

12. See id.
13. See id. William Hulbert, the National League President at the time, said of increasing player salaries: "it is ridiculous to pay ballplayers $2,000 a year when the $800 boys often do just as well." Id.
14. See McCormick, supra note 4, at 1140. Heavy bidding for talent resulted in the failure of 8 of the original 15 teams by the end of the 1879 season. See id.
15. See Zimbalist, supra note 4, at 4.
16. See John Helyar, Lords of the Realm 35 (1994). The version of this renewal clause that existed prior to 1976, as set forth in paragraph 10(a) of the Uniform Player's Contract, read as follows:

On or before January 15... the Club may tender to the Player a contract for the term of that year by mailing the same to the Player. If prior to the March 1 next succeeding said January 15, the Player and the Club have not agreed upon the terms of such contract, then on or before 10 days after said March 1, the Club shall have the right... to renew this contract for the period of one year.

Id. The current paragraph 10(a) differs in a number of important respects, including its references to free agency, the maximum salary reduction rule and player rights. See Basic Agreement Between the American League of Professional Baseball Clubs and the National League of Professional Baseball Clubs and Major League Baseball Players Association, Schedule A, para. 10(a) (Jan. 1, 1990) [hereinafter Basic Agreement of 1990].
absent retirement or the team’s decision to trade or cut them.\textsuperscript{19} These conditions led one judge to liken the practice to indentured servitude and to write that “[t]he quasi peonage of baseball players under the operations of this plan and agreement is contrary to the spirit of American institutions, and is contrary to the spirit of the Constitution of the United States.”\textsuperscript{20}

The owners’ purported rationale for the maintenance of the reserve system was the necessity of maintaining healthy and robust competition between teams, a dynamic referred to as “competitive balance.”\textsuperscript{21} Competitive balance was indeed an issue at times during the early years of professional baseball.\textsuperscript{22} However, the reserve system was hardly a panacea. At the same time owners were prohibiting players from choosing to switch teams on their own, they often promoted competitive imbalance. Poor clubs would literally sell the contracts of their talented players to richer teams.\textsuperscript{23} As has frequently been the case, owner justifications for policies limiting player freedom were often disingenuous at best.

B. The Antitrust Exemption

While it has been suggested that the players’ initial reaction to the reserve lists was positive, it soon became clear that reservation was not in the players’ best interest.\textsuperscript{24} Reservation brought an end to the free market for their services, along with an end to their salary increases. There were two principal reactions to the reserve clause and the control it provided to owners. First, players and other individuals established alternative leagues which forced the development of competition for players’ services. Second, players’ associations were formed.

\begin{itemize}
  \item \textsuperscript{19} See Helyar, \textit{supra} note 16, at 10.
  \item \textsuperscript{20} Chase, 86 Misc. at 465.
  \item \textsuperscript{21} See Hopkins, \textit{supra} note 17, at 303-04.
  \item \textsuperscript{22} See McCormick, \textit{supra} note 4, at 1140 n.44. For instance, in 1869 the Cincinnati Red Legs went undefeated for 57 consecutive games; in 1875, the Boston Red Stockings won 71 of their 79 games. \textit{See id.}
  \item \textsuperscript{23} See Zimbalist, \textit{supra} note 4, at 5; Hopkins, \textit{supra} note 17, at 304. Of this process, John Montgomery Ward, organizer of the first players’ association, once said that “[p]layers have been bought, sold and exchanged as though they were sheep instead of American citizens.” Helyar, \textit{supra} note 16, at 5.
  \item \textsuperscript{24} See Pietrusza, \textit{supra} note 9, at 588. When the reserve lists were small, players were said to have taken pride in their inclusion on the list. \textit{See id.} This suggestion seems dubious, as it is unlikely that many players were aware of the “secret agreement” between owners prior to the wholesale adoption of the reserve clause in the late 1880s. \textit{See Helyar, \textit{supra} note 16, at 10.}
\end{itemize}
The first alternative league to the National League was the American Association, which began play in 1882. The American Association abolished the reserve clause, sold tickets for half the price of those sold by National League clubs and allowed beer and whiskey in the stands on Sundays. Unfortunately for the players, the American Association entered into a pact with the National League in 1883, under which it abandoned its policies in favor of those of the National League. Two additional leagues, the Union Association and Players League, soon followed. Although both groups weakened the National League's hold on baseball, both failed within one season. The National League partially absorbed all three leagues.

The only alternative league to gain a foothold during this period was the American League, which emerged in 1892 as the Western League. By the turn of the century, the American League had wooed 100 players from the National League, and was drawing 500,000 more fans per season. Once again, club owners found competition not to their liking. In 1903, the two leagues came to an agreement under which the National League accepted the American League as an equal, and together the two leagues formed the bicameral system that characterizes Major League Baseball today.

In 1913, the Federal League was established — the last alternative league of the pre-World War II era. Next to the American League, the Federal League was the most successful of the alternative leagues, lasting for three major league seasons. As part of the dissolution agreement between National League and Federal

26. See Pietrusza, supra note 9, at 588.
27. See id.
28. See Zimbalist, supra note 4, at 5. The Union Association was founded in 1884 by railroad tycoon Henry Lucas. See id. The Players League was founded by baseball's first labor organization, the Brotherhood of Professional Baseball Players. See id.
29. See id. at 7-8.
30. See id.
31. See Dickey, supra note 25, at 3. Ban Johnson, the President of the Western League, renamed it in 1899. See id.
32. See Zimbalist, supra note 4, at 7.
33. See id. at 7-8.
34. See id. at 8-9.
35. See id. The Federal League (FL) began as a minor league in the 1913 season. See id. However, an increasing number of major league players defected to the FL through the 1915 season. See id. Finally, after disputes between MLB and the FL over access to the player's market, the parties resolved their dispute in
League owners, the National League absorbed some of the Federal League's teams, while others were simply bought out. 36

Among the teams to be bought out were the Baltimore Terrapins. However, the Terrapins' owners felt that the $50,000 offer they received from the National League was unsatisfactorily low. 37 The Terrapins rejected the offer and sued the National League for violations of federal antitrust laws, claiming that the National League had monopolistic control over the operation of major league baseball. 38 The case, Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 39 ended up before the United States Supreme Court in 1922. 40 The Court, in a unanimous decision written by Justice Oliver Wendell Holmes, held that baseball was not subject to federal antitrust laws because it was not an activity involving interstate commerce. 41 Justice Holmes, while acknowledging that baseball clubs necessarily moved from state to state to compete, wrote that "[t]he business is giving exhibitions of base ball, which are purely state affairs .... That which in its consummation is not commerce does not become commerce among the States because .... transportation .... takes place." 42

The antitrust exemption established in Federal Baseball was of extraordinary importance to the owners because it allowed them to operate their businesses without interference from the outside. Owners have jealously guarded the Federal Baseball decision from its announcement, generally avoiding judicial scrutiny through out-of-court settlements and lobbying Congress to ensure its continued vitality. In the seventy-two years between Federal Baseball and the 1994 players' strike, baseball's antitrust exemption was never in serious jeopardy before Congress and has faced only slightly more exacting scrutiny from the judiciary.

Perhaps the strongest assault upon the antitrust exemption occurred immediately following World War II. Danny Gardella, an

November 1915, resulting in the dissolution of the FL after only two seasons of play. See id.


37. See id. Many at the time felt that $50,000 was more than reasonable for a club located in a town described as unsuitable for major league teams and barely passable for a minor league team. See id.


40. See id.

41. See id. at 208-09.

42. Id. at 208-09.
outfielder with the New York Giants, left the Giants for a team in the Mexico League in 1946. Upon his return to America, Gardella found that MLB had blacklisted him; no team would allow him to play. He brought an antitrust suit against MLB in federal court. The district court dismissed Gardella’s suit on the grounds that Federal Baseball prohibited such actions. However, on appeal, the Second Circuit held that the dismissal was improper. Judge Learned Hand noted that the environment had changed somewhat since 1922, and that baseball’s involvement with radio and television broadcasting provided an appropriate basis for finding that it was part of interstate commerce. Gardella’s case was ultimately settled for $60,000 to avoid further judicial consideration of Federal Baseball.

Two years later, another player, George Toolson, attacked the antitrust exemption. Toolson had refused to accept an assignment from one New York Yankees’ farm club to another, and as a result had been placed on the club’s ineligible list. As in Gardella, the district court dismissed the complaint as impermissible under Federal Baseball. After the Ninth Circuit affirmed, in something of an upset, the Supreme Court (by a seven-to-two vote) reaffirmed the rule of Federal Baseball in a one-paragraph opinion.


44. See Hailey & Pappas, supra note 43, at 601. Gardella did not return to MLB, instead he found work as a hospital orderly. See id.


46. See id.

47. See Gardella v. Chandler, 172 F.2d 402, 410 (2d Cir. 1949).

48. See HELYAR, supra note 16, at 11. This was a very large settlement, especially when one considers that Gardella was by no means a spectacular player. See id. The top of the pay scale two years before the settlement was $100,000; in 1951, the average player salary was $13,000. See id.


50. See id. The entire text of the opinion reads as follows: In Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922), this Court held that the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws. Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. The present cases ask us to overrule the prior decision and, with retrospective effect, hold the legislation applicable. We think that if there are evils in this
inaction in the wake of *Federal Baseball* was deemed to be conclusive as to Congress' intent that MLB not be governed by antitrust law.\(^{51}\)

The most recent Supreme Court examination of baseball's antitrust exemption came nearly 20 years later, in *Flood v. Kuhn*.\(^ {52}\) Curt Flood, a star outfielder who had spent twelve years of his major league career with the Saint Louis Cardinals, refused to report when the Cardinals traded him to the Philadelphia Phillies following the 1969 season.\(^ {53}\) Flood petitioned MLB Commissioner Bowie Kuhn for free agency but was denied.\(^ {54}\) He then brought an action in federal court, asserting that the reserve clause violated antitrust laws and the Thirteenth Amendment, among other claims. Noting that Congress had failed to act on more than 50 bills that had been introduced in order to abrogate baseball's antitrust exemption,\(^ {55}\) the Court refused to overrule its settled position despite its recognition that baseball was indeed engaged in interstate commerce and that the antitrust exemption was an anomaly and an aberration.\(^ {56}\) Once again, the Court stated that the elimination of the antitrust exemption was best left to Congress.\(^ {57}\)

Since its creation in 1922, then, baseball's antitrust exemption has proven to be remarkably resistant to challenge despite the suspect reasoning behind its creation. A recent district court opinion took at least a chink out of the exemption's protective armor.\(^ {58}\)
and, as discussed later in this article, there have been heightened efforts to overturn baseball’s antitrust exemption in Congress in connection with the labor unrest of the mid-1990s. Nevertheless, the antitrust exemption served as an important weapon against player attempts to break down the reserve system for more than fifty years.

C. The Rise of the Player Association

Players’ efforts to gain bargaining strength through the formation of a collective bargaining unit date back more than a century. In 1885, John Montgomery Ward, a shortstop with the New York Giants, formed the Brotherhood of Professional Baseball Players. The Brotherhood’s goal was to fight the reserve clause and the $2,500 salary cap imposed by owners. After the failure of its Players League, the Brotherhood collapsed in 1891.

Over the next five decades, two additional attempts at organization were made. First came the Players Fraternity, which enjoyed some success as a result of the concurrent establishment of the Federal League in 1914. The additional league provided players with leverage, and collectively they had a measure of power. Because the Players Fraternity’s fortunes were intertwined with those of the Federal League, however, the union dissolved along with the Federal League in 1915.

In 1946, Robert Murphy, a Boston attorney, made another attempt at unionization. Murphy hoped his organization, the American Baseball Guild, would give players the leverage they needed to increase their salaries at a time when star players were dying in poverty. Unfortunately, the decidedly anti-union environment of the mid-1940s doomed Murphy’s efforts.

Finally, in 1954 the players voted to establish the Major League Baseball Players Association (MLBPA). The MLBPA’s early days

59. See HELYAR, supra note 16, at 5.
60. See ZIMBALIST, supra note 4, at 5.
61. See Baseball & the Law—Yesterday and Today, supra note 4, at 1166.
62. See HELYAR, supra note 16, at 6; Baseball & the Law—Yesterday and Today, supra note 4, at 1167.
63. See HELYAR, supra note 13, at 6. The competition created by the establishment of the Federal League raised the average salary from $1,200 to $2,800 from 1914 to 1915. See ZIMBALIST, supra note 1, at 9.
64. See HELYAR, supra note 16, at 8.
65. See Baseball & the Law—Yesterday and Today, supra note 4, at 1164 n.1.
68. See McCormick, supra note 4, at 1151.
were rocky: it suffered from a lack of strong central organization, an immature sense of identity and few concrete objectives. Many of the MLBPA’s early difficulties were the result of management — it was originally run by Judge Robert Cannon, whose pro-owner sympathies ran deep. Further aggravating the MLBPA’s shortcomings was the fact that its management, for more than a decade, was only available on a part-time basis. Fortunately for the players, Cannon declined an offer of full-time control of the union in 1966.

Instead, the players hired Marvin Miller, a negotiator for the United Steelworkers Union. Within a year, the MLBPA, under Miller’s leadership, had settled upon a pension plan and virtually doubled players’ benefits. After years of stagnation, the MLBPA became so effective under Miller’s stewardship that MLB was compelled to form its own collective bargaining unit, the Player Relations Committee (PRC).

In 1968, the MLBPA and the PRC settled on the first collective bargaining agreement in professional sports called the Basic Agreement. The Basic Agreement was unique in that it was the first time players and owners negotiated items such as minimum salaries, benefits, pension payments and the like. Significantly, the first Basic Agreement included a grievance process, which allowed players to file complaints against owners who violated their contractual rights. The grievance process gave the players the ability to enforce the rights for which they had fought at the bargaining table.


70. See Zimbalist, supra note 4, at 17. Cannon aspired to become the Commissioner of Baseball. See id.

71. See Miller, supra note 43, at 7.

72. See id. Owners were so pleased with Cannon that they proposed to pay part of their revenues into a fund to pay for Cannon’s New York City office. See id.

73. See id. at 153-55.

74. See Pietrusza, supra note 9, at 589.

75. See Miller, supra note 43, at 163-64.

76. See id. at 164.

77. See id.

78. See id. at 165. The establishment of the new grievance process, however, was only a partial victory. Under the procedure, grievances were heard by MLB’s Commissioner, an obviously biased arbitrator. See Hopkins, supra note 17, at 507. Grievances brought in the wake of this new procedure were generally limited to non-economic contractual issues, such as the quality of lodging or carriage provided by teams for their players. See Miller, supra note 43, at 164-65.
The second Basic Agreement emerged two years later, in 1970. While the new Basic Agreement involved increases in minimum salaries and restricted salary cuts to twenty percent,\(^79\) the provision which would have the most impact on player/owner relations was one which established the right to binding impartial arbitration.\(^80\) This provision laid the foundation for today’s player compensation system.

In 1972, the third Basic Agreement was concluded after a thirteen day players’ strike during spring training and the scheduled start of the regular season.\(^81\) This was the first league-wide work stoppage in baseball history.\(^82\) The 1972 Basic Agreement took the grievance-arbitration process one step further, establishing the mechanism which facilitated the loss of the reserve clause: players were now permitted to arbitrate grievances.\(^83\)

D. The Evisceration of the Reserve Clause

After the 1974 season, Andy Messersmith, a pitcher for the Los Angeles Dodgers, and Dave McNally, a pitcher for the Montreal Expos, were dissatisfied with their clubs’ respective contract offers.\(^84\) Unable to reach agreement on terms, the two were “renewed” by their clubs pursuant to the renewal clause in their 1974 contracts, and they both played the 1975 season without ever signing new contracts for that season.\(^85\) Following the conclusion of the 1975 season, Messersmith and McNally were in a position to test whether the renewal clause governed a player’s rights in perpetuity, as clubs contended, or expired after one season, as the clause’s plain language seemed to indicate.\(^86\)

\(^79.\) See Pietrusza, supra note 9, at 589.

\(^80.\) See Miller, supra note 43, at 97. The 1970 Basic Agreement also established a player’s right to representation in individual contract negotiations. See Helyar, supra note 16, at 89.

\(^81.\) See Mihoces, supra note 5, at 1C.

\(^82.\) See Helyar, supra note 16, at 111-22. In 1912, members of the Detroit Tigers struck to protest Ty Cobb’s suspension for fighting with a fan. See id. at 8. Much later, most MLBPA members participated in a spring training boycott in 1969 during negotiations for an upgraded benefits package, the first organized work stoppage in baseball history since the Tigers’ action. See id. at 94-96.

\(^83.\) See Pietrusza, supra note 9, at 590. The owners also granted players $500,000 in concessions at the end of the strike, a victory which was somewhat mitigated by the aggregate $600,000 in lost wages suffered by the striking membership. See Zimbalist, supra note 4, at 85.

\(^84.\) See Miller, supra note 43, at 114.

\(^85.\) See id.

\(^86.\) See id.
MAJOR LEAGUE BASEBALL'S LABOR TURMOIL

The arbitration panel consisting of Marvin Miller, John Gaherin (the PRC's director), and Peter Seitz, MLB's arbitrator, heard Messersmith and McNally's challenge to the reserve system. Free agency for major league baseball players was at stake for the first time since the introduction of the reserve system. Because Miller and Gaherin were split along obvious lines, the decision fell to Seitz.

One month before Seitz released his scholarly decision, he wrote a letter to Bowie Kuhn, the MLB Commissioner at the time, warning him about the likely outcome of the arbitration. Kuhn, either because he did not understand the implications of the arbitration or because he simply was foolhardy, ignored Seitz's warning. On December 23, 1975, Seitz released the panel's decision that the reserve clause allowed unilateral renewal for one season only, and not, as the owners had believed for nearly a century, for successive seasons beyond the first renewal. Consequently, Andy Messersmith and Dave McNally became free agents.

Seitz was fired within hours of the decision, and the owners immediately appealed to the courts. A federal district court found no impropriety on Seitz's part and upheld the arbitration, which survived an appeal to the federal appellate court. All that remained of the reserve system was its shell, because it no longer allowed owners to enslave players for their entire careers.

87. See Joe Nathan, Steeee-riiike!: Players and Owners Have Been Down This Bumpy Road Before, SPORTING NEWS, Aug. 22, 1994, at 14.

88. See MILLER, supra note 43, at 227-37. The decision to request arbitration of the validity of the renewal clause is significant because it was the first time players attempted to fight such restrictions without specifically attacking the antitrust exemption. See id. A year earlier, an arbitrator declared star Oakland A's pitcher Catfish Hunter a free agent after determining that A's owner Charlie Finley had violated a provision of his contract with Hunter. See id.

89. HELYAR, supra note 16, at 35-36. Ironically, Gaherin did not believe that the owners' interpretation of the reserve clause as an endlessly repeating renewal provision was accurate. See id. He reportedly told National League Counsel Lou Carroll: "I've read it, and to me it means you can renew a player for one year, and that's it." Id.

90. See Hopkins, supra note 17, at 308-09. Seitz suggested that owners submit the issue to further collective bargaining. See id.


92. See Hopkins, supra note 17, at 309.

93. See id. Obviously, Seitz was fired by the dissatisfied owners. See id. It should be noted, however, that since Seitz was selected by both the MLBPA and MLB owners, either side could have fired him. See id.

94. See Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n, 532 F.2d 615 (8th Cir. 1976).
E. The 1976 Basic Agreement and Successors

The fourth Basic Agreement was negotiated in the wake of the Messersmith/McNally arbitration, following a spring training lockout in 1976. The destruction of the reserve clause gave players negotiating leverage, and the owners were haunted by images of runaway free agency. Owners apparently did not understand the implications of free agency, and they were concerned that the MLBPA would demand immediate free agency for all players. Miller, however, was smarter than that. He understood a basic economic theory: the smaller the supply of free agents, the greater the demand for them, and thus the more clubs would be willing to pay for them. Miller did not want wholesale free agency.

The Basic Agreement established the basic three-tiered compensation structure in use today. Players became free agents after six seasons of major league service. Those with less than six years' experience but at least two years in the majors could submit their contracts to salary arbitration, which had been in effect since 1974. Clubs had renewal rights for players not yet eligible for arbitration, limited only by rules defining the minimum salary and maximum salary reductions.

Immediately following the establishment of free agency in 1976, baseball salaries skyrocketed: the average salary jumped from $51,501 in 1975 to $76,066 in 1976, and on to $143,756 by 1980. Despite the owners' instinctive fear of free agency, their aggressive, aggressive,
and sometimes ill-advised, signing of free agents was the principal cause of the dramatic salary increases.101

The next Basic Agreement, scheduled to take effect for the 1980 season, was only concluded after a midseason strike was narrowly averted.102 Nevertheless, a fifty day mid-season strike occurred in 1981, resulting in 719 canceled games.103 The 1980 agreement, which saw few substantive changes to the revolutionary new player compensation system established in 1976, promoted the escalation of major league salaries. In just six seasons, from 1980 to 1985, the average salary rose from $143,756 to $371,157, an increase of 158%.104 Predictably, baseball’s overlords were determined to stunt this tremendous growth.105

Baseball’s labor talks in 1985 were no more free of acrimony than any previous round. In terms of the player compensation system, management’s stated goals were to impose a salary cap, limit the raises that could be awarded players in arbitration, and raise the threshold of eligibility for arbitration from two to three years of major league service.106 In support of their oft-asserted contention that player salaries had risen beyond the capacity of the sport’s revenues to maintain MLB’s economic viability, the clubs agreed to disclose their financial records to the union. When Professor Roger Noll, a Stanford University economist, analyzed the books on the players’ behalf, however, he concluded that MLB clubs collectively had earned a profit of $25,000,000 in 1984, notwithstanding the clubs’ proclamations of a $41,000,000 loss.107 After another season-interrupting strike, this time for only two days, the parties agreed to a deal that increased the threshold for salary arbitration eligibility.

101. See Hopkins, supra note 17, at 319. In a rush to sign free agents, owners often signed mediocre or aged players, just for the sake of signing free agents. See id.


103. See id. at 287.

104. See Salary Figures, supra note 100.

105. See Hopkins, supra note 17, at 319.


107. See id. at 325-26. For a detailed look at Professor Noll’s methodology, see ZIMBALIST, supra note 4, at 64-67. The discrepancy is consistent with the observation of Peter Beeston, a Vice President with the Toronto Blue Jays, who stated: “Anyone who quotes profits of a baseball club is missing the point. Under generally accepted accounting principles, I can turn a $4 million profit into a $2 million loss, and I can get every national accounting firm to agree with me.” Id. at 62. Player skepticism of owners’ professed unprofitability was an important theme during the labor negotiations of the mid-1990s. For a discussion of this alleged unprofitability, see infra note 168 and accompanying text.
to three years of service but otherwise left substantially intact the player compensation system.\(^\text{108}\)

### F. Collusion

Dissatisfied by the relatively minor inroads into player gains won through negotiation, the owners decided to try other tactics in order to halt the growth in player compensation. Immediately upon ratification of the 1985 Basic Agreement, owners set about undercutting its provisions via collusion.

After the 1965 season, Los Angeles Dodgers star pitchers Sandy Koufax and Don Drysdale teamed up to attempt to increase their salaries through quasi-collective bargaining.\(^\text{109}\) This gambit so enraged owners that during negotiations for the first Basic Agreement they insisted that an anti-collusion provision be inserted into the agreement.\(^\text{110}\) In its present form, that provision decrees in relevant part that “[p]layers shall not act in concert with other Players and Clubs shall not act in concert with other Clubs.”\(^\text{111}\) Ironically, this provision proved instrumental in an entirely unintended context.

Taking a page from baseball’s early days, owners entered into a “gentlemen’s agreement” following the 1985 season to restrict free agent movement. Cowed by constant pressure from new MLB Commissioner Peter Ueberroth to act with “fiscal responsibility,” the owners collectively refused to sign any free agents whose previous clubs were interested in retaining their services.\(^\text{112}\)

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108. See Helyar, supra note 16, at 329. This concession, while relatively insignificant, marked the MLBPA’s first concession of a previously negotiated substantive right under the 1976 compensation system. See Miller, supra note 43, at 335-39 (explaining and criticizing compromises made in 1985).

109. See Zimbalist, supra note 4, at 18. Koufax and Drysdale, the two best pitchers of MLB’s 1965 season and integral elements in the Dodgers’ two consecutive World Series victories in 1964 and 1965, had been offered contracts substantially below what they felt their performance merited. See id. Deciding that by negotiating together they would have better success than each would individually, the two hired an attorney to negotiate their new deals. See id. The pitchers refused to attend spring training in 1966, and threatened to find work in engagements as diverse as acting (Koufax had apparently been offered a movie deal) and playing in Japanese exhibition games. See id. Ultimately, the dispute was settled, with Koufax and Drysdale signing at significantly higher salaries than they had received in 1965. See id. The settlement provided players with an early indication of the power of collective bargaining. See id.

110. See Helyar, supra note 16, at 337.

111. See Basic Agreement of 1990, supra note 16, art. XX(F)(1).

ence, nature and extent of the agreement did not remain a secret for long.\textsuperscript{113}

The owners made little effort to disguise their collusive behavior; rather, they flaunted their unwillingness to compete with each other for the services of free agents.\textsuperscript{114} A conspiracy to bypass mediocre free agents could have gone undetected, or at least unproven. However, when a player such as the 1984 American League Most Valuable Player Kirk Gibson was unable to attract any interest on the free agent market,\textsuperscript{115} and a mega-star like the Chicago Cubs' Andre Dawson was forced to sign for substantially less than he had earned in the previous year,\textsuperscript{116} suspicions quickly grew to near certainties.

Shortly after the extent of the restrictions on free agent signings became clear in 1985, the Players Association filed a grievance against the clubs claiming collusion ("Collusion I").\textsuperscript{117} After the free agent crop available following the 1986 season was similarly spurned, the MLBPA filed a second grievance, alleging that owners had not altered their behavior and again had colluded to restrict the free agent market ("Collusion II").\textsuperscript{118} Following the 1987 season, club owners tried a different tactic, bidding for free agents but using an "information bank" in which they shared information about offers made to free agents.\textsuperscript{119} The MLBPA challenged this practice as well ("Collusion III").

The owners' concerted effort to lower player costs was certainly effective: the average player salary for the 1987 season, $412,454, actually represented a decline from the 1986 average of $412,520.\textsuperscript{120} The information bank in use following the 1987 season was almost as effective, limiting the average salary increase in 1988 to about six percent ($438,729).\textsuperscript{121}
While providing temporary respite from the large annual increases in player costs, collusion ultimately carried a very large price tag. In Collusion I, the arbitrator rejected the owners' claims that there could be no collusion without a formal agreement, and eventually held that the dramatic changes in the free agent market could not have occurred without some form of agreement. In Collusion II, the arbitrator found that the club's claims of the existence of a free agent market were untenable and that the owners had again acted in concert to eliminate the free agent market. After the MLBPA's challenge to the information bank, Collusion III, was also upheld, it was clear that the industry-wide effort to control labor costs through "fiscal restraint" was a complete failure. Determination of damages was a challenge since estimates of the degree to which the free agent and even arbitration markets were depressed by collusion were highly speculative. Ultimately, the three cases were settled for $280,000,000, to be distributed to individual players by the MLBPA.

Collusion proved costly in another way as well. The owners' collusive behavior reinforced suspicions held by MLBPA veterans that owners could not be trusted to abide by their agreements. For younger players, who may have been only vaguely aware of the "bad old days" prior to 1976, collusion was an education and an affirmation of the need for vigilance.

G. The 1990 Basic Agreement

Following the end of collusion, player salaries surged to an extent never-before experienced by professional athletes. The 1989 average salary of $497,254 shot to $597,537 in 1990 and to $851,492 in 1991. Owners were alarmed by the rapid growth. These increases, however, represented an appropriate correction after collusion created a huge imbalance between MLB revenues and player salaries. For example, in 1985, the last year prior to collusion, MLB's total revenues were $717,813,000. While collusion held salaries relatively flat for the next three seasons, revenues continued to climb, reaching $1,007,519,000 in 1988 and $1,241,059,000

122. See Willis, supra note 95, at 122.
123. See id. at 124-25.
124. See HELYAR, supra note 16, at 332-47.
125. See PROPOSED FRAMEWORK, supra note 119, at 3.
126. See id. at 4.
127. See Salary Figures, supra note 100.
the following season.129 Further, clubs were flush with national television broadcast rights money; CBS agreed to pay $1,060,000,000 for the rights to televise baseball’s 1990-1993 seasons, double the previous network contract.130 Former salary standards fell quickly.131

In this setting, the PRC and MLBPA sat down to discuss a new Basic Agreement. As had become standard in the industry, an agreement came only after a 32 day work stoppage, in this case a spring training lockout in 1990.132 The major point of contention in the negotiations was salary arbitration.133 Players desired to return to the two year threshold for arbitration eligibility that had been obtained prior to the 1985 Basic Agreement.134 Owners, on the other hand, wanted to eliminate the arbitration process entirely, which they blamed for dramatic salary increases. They also demanded a salary cap.135

The lockout was ended and an agreement was reached only through the intervention of MLB Commissioner Fay Vincent.136 The owners agreed to set the threshold for salary arbitration back below the three year level.137 In addition, players received an in-

129. See id.
130. See HELVAR, supra note 16, at 387.
131. The highest paid players in baseball in 1989 were pitchers Orel Hershiser (Los Angeles Dodgers) and Frank Viola (New York Mets), who earned $2,600,000 per year. In the nine-week period from November 17, 1989, through January 22, 1990, the mantle of “highest paid player” passed from the Kansas City Royals’ Bret Saberhagen ($2,966,667 per year) to the Minnesota Twins’ Kirby Puckett ($3,000,000) and the Oakland Athletic’s Rickey Henderson ($3,000,000), to the California Angels’ Mark Langston ($3,250,000) and the Royals’ Mark Davis ($3,250,000), to the Athletics’ Dave Stewart ($3,550,000), and then to the San Francisco Giants’ Will Clark ($3,750,000). See Woes Could Jeopardize ’93 Season, USA TODAY, Mar. 4, 1992, at 3C. The Clark signing was particularly vexing to some owners, because Clark was still two years away from reaching the six years of major league service necessary for free agency when he signed. See id.
132. See Baseball’s Short, but Stormy Labor History, USA TODAY, July 29, 1994, at 2C.
133. See ZIMBALIST, supra note 4, at 26.
134. See Hopkins, supra note 17, at 310 n.75. Players alleged that when the threshold moved up to three years, owners would delay placing a player on the 40 man roster for a week or two to delay the players’ achievement of the three-year threshold. See id.
135. See Pietrusza, supra note 9, at 594.
137. See Basic Agreement, supra note 16, art. VI (F)(1). Under the new threshold, players became arbitration eligible if they were within the top 17 percent in total service time of players with at least two but less than three years of major league service. See id.; see Jeffrey S. Moorad, Negotiating for the Professional Baseball Player, The Law of Professional and Amateur Sports, § 5.05[4][b] (Gary Uberstine ed., 1994). These arbitration-eligible players with less than three years of service are commonly called “super-two’s.” See id.
crease in management's pension contributions from $39,000,000 to $55,000,000, and the major league minimum salary was increased from $68,000 to $100,000.138 The owners' victories included a lower pension plan amount139 and a change in the rules concerning collusion.140

II. THE PLAYER COMPENSATION SYSTEM

As noted above, the three-tiered player compensation system has been in place, with few changes, since free agency emerged twenty years ago.141 Players with six years of major league service are unrestricted free agents; they can offer their services to any team.142 Players with less than six but more than two-plus years143 of service may arbitrate their salaries, but will remain the sole property of their club unless the club refuses to participate in arbitration and permits the player to become a free agent.144 Finally, players not yet eligible for arbitration are subject to the clubs' renewal rights.145

Although this structure is far more favorable to players than the old reserve system that prevailed for the first three-quarters of this century, owners retain a great degree of discretion over the size and allocation of their payrolls. Obviously, owners are in complete control of salaries for all players who fall into the third tier, as they are not able to seek employment independently, nor are they eligible for salary arbitration. In 1995, while the average player salary

138. See Basic Agreement of 1990, supra note 16, art. VI(B).
139. See Pietrusza, supra note 9, at 594. Players had demanded $80,000,000. See id.
140. See id. More than acting similarly is now necessary to show collusion; teams must actively agree to collude. See id.
141. See Yasser et al., supra note 97, at 265. For the first decade after free agency emerged, owners selected the right to negotiate with free agents through a re-entry draft. This practice was abolished in 1985. See id.
142. See Basic Agreement of 1990, supra note 16, art. XX(B)(4). Provided, of course, that they are not under contract with a team at the time. See id. There are some limitations upon the frequency with which a player may exercise such rights (repeater rights), and draft choice compensation may be required of clubs signing free agents. See Basic Agreement of 1990, supra note 16, art. XX(B)(4).
143. See supra note 137 and accompanying text.
144. See Basic Agreement of 1990, supra note 16, art. XX(A). This process, called "non-tendering," essentially involves the club's intentional failure to comply with the rule that requires a team to tender a new contract by December 20 to a player in order to retain exclusive rights to the player under the reserve system. See id. While free agency generally is desired by in-demand players, non-tendered players are usually non-starters who find a crowded and inhospitable market. See id.
145. See id. This renewal right is set forth in paragraph 10a of the Uniform Player Contract. See id.
was $1,110,766, the average for those players not yet eligible for salary arbitration was $170,778, only $61,778 more than the major league minimum salary. As exactly one-half of the major league players surveyed (412 out of 824 total players) fell into this grouping, the average club has near-total discretion over the salaries paid roughly half the players on its roster. Under current rules, players must participate in at least three major league seasons before arbitration becomes an option, giving clubs a reasonable period during which they can obtain a player’s services very cheaply.

The arbitration process forces clubs to pay players a market price that is determined by similarly situated players on other clubs. Arbitration hearings are relatively rare, as most filed cases settle prior to hearing. Nevertheless, even players who compromise prior to hearing or who actually lose their arbitration cases tend to receive substantial raises.

Increasingly, clubs have elected to avoid the arbitration process, either by signing younger players to long term contracts that preempt arbitration or by non-tendering players. In the off-season prior to 1995, of the 194 players with at least three but less than six years of major league service, only seventy actually filed for arbitration, of which only nine proceeded to hearing. Of the 210 players entering 1995 with adequate service time for arbitration eli-

146. See Salary Figures, supra note 100.
147. See id. The survey includes all players included on a club’s active roster or disabled list as of August 31, the day before clubs’ active rosters are expanded to 40 in order to allow minor league players to gain some major league experience. See id.
148. A player who makes his major league debut on Opening Day of 1997 and never plays another day in the minor leagues will have major league service time of exactly one year at the end of 1997, exactly two years at the end of 1998, and exactly three years at the end of 1999, assuming that each of these seasons is played to completion. Thus, his first opportunity to use the arbitration process will be prior to the 2000 season, after he has already played three major league seasons. Even a super-two player, see supra note 137, will have played at least significant portions of three major league seasons in order to garner sufficient service time to qualify.
149. See BASIC AGREEMENT OF 1990, supra note 16, art. VI (F). The niceties of the arbitration process are described in the Basic Agreement.
150. See Moorad, supra note 137, § 5.05[4][d], at 5-20.
151. See Salary Figures, supra note 100. 222 of 398 cases since 1974 resulted in decisions for the club. See id.
152. See Moorad, supra note 137, § 5.05[4][d], at 5-20. For a description of “non-tendering,” see supra note 144 and accompanying text. The threat of a non-tender will sometimes motivate a fringe player to sign a new contract with the club and thereby forego the opportunity to arbitrate should the club have elected to tender the player after all. See Moorad, supra note 137, § 5.05[4][d], at 5-20.
153. See Salary Figures, supra note 100.
gibility (including super-two's), whether they were actually afforded the opportunity to file for arbitration, the average salary for that season of $1,580,044 was considerably higher than even the average for all players ($1,110,766).154

The third group of players, the free agents with at least six years of service, are the most highly compensated. In 1995, the 202 players in this category earned an average of $2,542,186.155 Because pure market forces drive the contracts signed by players in this grouping, there can be no argument but that the owners are ultimately in control of the salaries paid to this group.

The three-tiered approach to player compensation under the Basic Agreements leaves MLB ownership in virtually complete control of player salaries for the bulk of the players on the roster. Of 824 major league players in 1995, only seventy-six filed for arbitration and only ten had their salaries set by an arbitrator. The rest signed as free agents, re-signed with clubs who already held their rights, were bound to multi-year deals signed in 1994 or earlier, or were renewed by their clubs pursuant to paragraph 10a of their 1994 contracts.156

III. THE FAILURE OF THE OWNERS' COUNTER-REVOLUTION

The foregoing history should illuminate two recurrent themes in labor-management relations in baseball. First, it should be clear that owners have resisted player attempts at emancipation at every turn. Second, it should be clear that owners have acted in what may be uncharitably termed "bad faith" in their attempts to regain what they perceive to be lost ground. While owners were able to forestall efforts at player advancement from the beginning of professional baseball well up to the mid-1970s, the revolutionary system established in 1976 has survived all serious challenges.

Following the conclusion of the most recent Basic Agreement in 1990, owners launched the most ambitious strategy yet for re-asserting control over player salaries and freedom. This counter-revolution has left the game in shambles, economically and reputationally, while thus far failing to achieve anything close to the sweeping overhaul of the player compensation system.

154. See id.
155. See id.
156. See id.
A. Preparations for War

The end of collusion, the agreement upon a new collective bargaining contract in 1990 which preserved (in fact, from the players' perspective, improved) the previous player compensation system, and the adjustment of the market for player salaries in the post-collusion years undeniably resulted in a reduction of club profitability. This reduction in the owners' share of the ever-burgeoning revenue pot proved problematic for some clubs, because MLB revenues are distributed among the member clubs in a famously inequitable fashion. While more extensive revenue sharing among the clubs clearly could have abated whatever financial difficulties some teams encountered, the prevailing view among baseball owners (particularly those with the greatest revenue streams) was that any redistribution of funds to the poorer clubs should come from players first and from richer clubs second, if at all.

The first step in management's plan for an overthrow of the player compensation system was the ouster of Commissioner Vincent. Vincent, less than a year into his term as Commissioner, had stepped into the 1990 spring training lockout and pressured owners to abandon their efforts to eliminate arbitration and impose a salary cap. In response to this pressure, the owners, in an attempt to prevent Vincent from participating in future labor talks, tried to strip him of his power to act. The owners also hired Richard Ravitch to conduct the next round of labor negotiations. After Vincent refused to permit the diminution of his powers, which he felt he had exercised in "the best interests of baseball," he was forced to resign. His replacement, Milwaukee Brewers' owner Allan H. "Bud" Selig, was unlikely to provide a similar threat to any hard line stance adopted by management.

157. See ZIMBALIST, supra note 4, at 69-73. Local broadcast fees and gate receipts are two significant revenue sources that are not shared equally amongst the clubs. See id. at 48-50, 57. "Top-team to bottom-team ratios in either franchise values or revenues exceed three to one." Id. at 69.

158. See supra note 136-140 and accompanying text.

159. See HELYAR, supra note 16, at 506-09.

160. See id. at 471. In an obvious slap at Vincent, Ravitch was hired at a higher salary ($750,000) than the MLB Commissioner earned ($650,000). See id.


162. The threat of Vincent's interference in labor matters was a significant, if not crucial, element in his ouster. See Pietrusza, supra note 9, at 595. However the owners had other complaints about their Commissioner as well. See, e.g., HELYAR, supra note 16, at 493-517; ZIMBALIST, supra note 4, at 45.

163. Although designated MLB's "Acting" Commissioner, Selig retained that office some four years after Vincent's resignation.
The Basic Agreement of 1990 was set to expire on December 31, 1993. Article XXIII(B), however, provided that either the PRC or the MLBPA could reopen the agreement at the close of the 1992 season to reconsider the minimum salary, salary arbitration or the reserve system. On December 7, 1992, owners, attempting to recalibrate team profits and players' salaries, voted to reopen the agreement.

B. "Negotiations"

The reopening of the Basic Agreement in 1992, which was MLB ownership's rather dramatic statement of discontent with the status quo, turned out to be entirely symbolic. There were no negotiations of any kind between labor and management from the reopening to the natural expiration of the Basic Agreement at the end of calendar year 1993. In late 1993, after failing to reach an agreement among themselves on revenue sharing, owners promised not to lock out players during spring training in exchange for players' promise not to strike. Thus, the 1994 season began in April without a new Basic Agreement.

On June 14, 1994, claiming that nineteen of the twenty-eight MLB teams were losing money and declaring an immediate need to remedy this condition, the owners offered their first proposal. The proposal called for an equal split in revenues between players and owners, a salary cap, the elimination of salary arbitration, the

164. See Basic Agreement of 1990, supra note 16, art. XXIII(A).
165. See id. art. XXIII(B).
166. See Strike Chronology, supra note 8. The vote was 15-13 in favor of reopening the agreement. See id.
167. See id.
168. See Pietrusza, supra note 9, at 597.
169. During this period, the parties were bound by the key terms of the 1990 Basic Agreement. By law, parties to an expired labor contract are required to honor its mandatory provisions during the interim between agreements. Mandatory provisions are those which concern wages, hours, and other terms or conditions of employment. Courts in recent years have applied this definition liberally. See Silverman v. Major League Baseball Players Relations Comm., 880 F. Supp. 246, 253 (1995).
170. See Grabiner, supra note 55, at C6. One of the most dependable elements of baseball is owners' claims of poverty. As noted previously, owners have been warning the public of impending bankruptcy since 1881. In 1994, the estimated number of teams losing money peaked at 22. This figure was later reduced to 12. See id.
lowering of the free agent threshold to four years and a raise of the minimum salary.\footnote{172}

It is fair to say that this proposal was hardly calculated to lead to a quick agreement. The MLBPA rejected the owners' proposal and countered on July 18. The players' counter-proposal included the elimination of repeater rights for veteran free agents,\footnote{173} a reduction in the salary arbitration threshold to two years, a raise in the minimum salary to between $175,000 and $200,000, and an increase in pension payments to players who played before 1970.\footnote{174} The PRC quickly rejected the counter-proposal.\footnote{175}

Ten days after making their proposal,\footnote{176} players set a strike deadline for August 12, 1994.\footnote{177} On August 1, owners failed to pay $7.8 million into the players' pension and benefit funds, as required by the Basic Agreement.\footnote{178} Unable to bridge the distance between their positions and angered by owners' failure to make the mandatory payment, players struck as planned on August 12.\footnote{179}

\footnote{172. See Rogers, \textit{supra} note 161.}

\footnote{173. The Basic Agreement of 1990 provided, in pertinent part: "Any player who becomes a free agent . . . shall not subsequently be eligible to exercise his right to become a free agent until he has completed an additional 5 years of Major League Service." \textit{Basic Agreement, supra} note 13, art. XX(D)(1).}

\footnote{174. See Rogers, \textit{supra} note 171.}

\footnote{175. See Pietrusza, \textit{supra} note 9, at 598.}

\footnote{176. See \textit{Strike Chronology, supra} note 8.}

\footnote{177. See Ross Newhan, \textit{Baseball Season Might End Today/Labor: Angered By the Owners' Latest Maneuver, Players' Representatives Will Vote and Could Call For an Immediate Strike}, \textit{L.A. Times}, Aug. 4, 1994, at 1. It has been suggested that players could have hurt clubs more seriously by waiting until September 30 to strike, at which point players would have received virtually their entire compensation for the season while threatening owners' television and attendance revenues from post-season play. See \textit{id.} The much-earlier August 12 deadline was chosen because by that point players had received two-thirds of their total compensation for the season, the date threatened lucrative Labor Day weekend games, and there remained more time to secure an agreement and preserve the post-season. See \textit{id.}}

\footnote{178. See Ross Newhan, \textit{Baseball Owners Pull Plug on Talks/Labor: Their Executive Council Implements Payroll Limits and Gets Rid of Arbitration}. \textit{Players Will Appeal to NLRB}, \textit{L.A. Times}, Dec. 23, 1994, at 1. The failure to make this payment prompted the first of several complaints filed with the NLRB against owners. See \textit{id.} The NLRB issued a complaint against owners on December 14, 1994. See Chuck Johnson, \textit{Owners, Players Hear Same Ruling in Different Ways}, \textit{USA Today}, Mar. 15, 1995, at 7C. Owners may have failed to make these payments in an effort to provoke an immediate strike, which would have advanced three aims: (1) ensuring that the strike was over prior to the playoffs; (2) ensuring that the players did not elect to ignore their own strike deadline and target September 30 for a walkout, see \textit{supra} note 177 and accompanying text; and, (3) obtaining a public relations edge over the players by portraying them as overreactive and too eager to strike. See Newhan, \textit{supra} note 177, at 1.}

In the month following the beginning of the strike, management and union representatives met sporadically.\textsuperscript{180} Initial meetings ended in failure; neither the players nor the owners were willing to grant each other even minor concessions.\textsuperscript{181} On September 8, however, players submitted a new proposal to owners that would establish a payroll tax and a revenue sharing plan.\textsuperscript{182} Owners rejected this proposal, calling it "unresponsive."\textsuperscript{183} On September 14, after little movement by either side, Commissioner Selig announced the cancellation of the 1994 season.\textsuperscript{184}

C. The 1994-1995 Nuclear Winter and Thereafter

As negotiations broke down in mid-September, MLBPA Executive Director Donald Fehr focused his efforts on gaining Congressional assistance in eliminating baseball’s antitrust exemption.\textsuperscript{185} The proposed bill easily passed a House subcommittee, as well as the House Committee on the Judiciary.\textsuperscript{186} Unfortunately for the players, Congress was set to adjourn six days after the bill passed through the committee.\textsuperscript{187} A decision was made to postpone the vote until after Congress resumed in January of 1995.\textsuperscript{188}

One month after the owners canceled the 1994 season, President Bill Clinton appointed William J. Usery to mediate the dispute.\textsuperscript{189} Usery was President Ford’s Secretary of Labor after

\textsuperscript{180} See Strike Chronology, supra note 8.
\textsuperscript{181} See id.
\textsuperscript{182} See Phil Rogers, Players Plan Labor War’s Next Stage/Fehr Says Attack to Move Against Baseball’s Antitrust Exemption, Dallas Morning News, Sept. 11, 1994, at 15B. The inclusion of a revenue sharing plan in the players’ proposal was a significant compromise. See id. Revenue sharing is thought to reduce the likelihood of the shared funds being spent on player salaries, because poorer teams are more likely to use shared funds to counter losses or retire debts rather than to increase payroll. See id. Nevertheless, in the interest of both making a deal and in improving the sport, the MLBPA designed and proposed a revenue sharing plan that met the PRC’s initial figures. See id. Players’ efforts to design a mutually satisfactory plan were continually frustrated by owners’ arbitrary changes to their professed target figures for redistribution. See id.
\textsuperscript{183} Mark Maske, Players Union Offers to Form Partnership; Licensing Fees Would Aid Development, WASH. POST, Dec. 10, 1994, at C2.
\textsuperscript{184} See Pietrusza, supra note 9, at 599.
\textsuperscript{186} See id. Only one congressman opposed the bill. See id.
\textsuperscript{188} See id.
\textsuperscript{189} See Mediator Sets Ground Rules with Players, Owners/Baseball: He Uses the Labor Negotiating Session to Get Acquainted with Both Sides of the Dispute, ORANGE COUNTY REG., Oct. 20, 1994, at D3.
directing the Federal Mediation and Conciliation Service in the early 1970s. Despite optimism on both sides that Usery would help the parties reach an agreement, formal negotiations did not begin until November 10.

On November 17, 1994, owners submitted their first new proposal since June. The proposal called for a luxury tax that would be applied to payrolls over $35,600,000, which owners acknowledged was designed to limit salary growth. The tax was graduated, with rates increasing with increases in payroll. The maximum rate was seventy-seven percent.

On November 30, owners set a negotiation deadline for December 7, the last day that they could make salary arbitration offers to players under the terms of the expired (but still operative) 1990 Basic Agreement. The same day, after the players failed to submit a counter-proposal to the owners’ November 17 tax plan, the owners threatened to play the 1995 season with replacement players.

On December 9, the MLBPA proposed a partnership between players and owners under which the two parties would become involved in cooperative revenue generating ventures. The proposal also brought the union’s September salary tax proposal closer to the owners’ November proposal. Owners quickly responded with two counter-proposals of their own: the first was the salary cap they claimed they would implement if players refused to accede to owners’ demands, while the second was a partnership-and-tax plan that included some elements of the players’ most recent proposal.

191. See Baseball Labor Talks Begin Again, BALTIMORE EVENING SUN, Nov. 10, 1994, at 4C.
192. See Strike Chronology, supra note 8.
193. See Hal Bodley, Players Take Time-out to Study Plan, USA TODAY, Nov. 21, 1994, at 2C. If players had received their full-year’s compensation in 1994, 19 of the 28 teams were over this threshold, some by as much as $19,000,000 or more. See id.
195. See Strike Chronology, supra note 8.
196. See id.
198. See id.
199. See Maske, supra note 183.
200. See id.
201. See Mark Maske, Labor Department Certifies Baseball Strike, WASH. POST, Dec. 12, 1994, at C1. The partnership-and-tax proposal was two pages long, while the
Players refused to accept the tax elements of the owners’ proposal, and talks broke down completely on December 14.202 On December 23, the owners declared an impasse and unilaterally implemented their salary cap provisions, including the elimination of salary arbitration and anti-collusion provisions from the expired Basic Agreement.203

A declaration of “impasse” is a tool that allows management to implement unilaterally its last good faith offer if negotiations reach a stalemate. The policy behind impasse is to encourage movement in labor negotiations.204 Under the circumstances, the MLBPA did not believe that their negotiations had reached the point of impasse; they had in fact made serious efforts to reach an agreement that satisfied both parties. Consequently, the MLBPA immediately filed an unfair labor practices claim with the National Labor Relations Board (NLRB) and instituted a signing freeze, under which players were prohibited from signing individual contracts with clubs.205

Negotiations resumed in late January, after President Clinton set a settlement deadline for February 6, 1995.206 Both sides feared that failure to resolve their differences before the deadline would mean losing control over the resulting settlement for two reasons. First, President Clinton had asked Usery to structure his own settlement agreement if the dispute was not resolved before February 6. Second, previous labor disputes had been brought to an end through legislation proposed by the President.207

On February 3, owners revoked the salary cap plan they had unilaterally implemented in December, fearing an imminent NLRB complaint.208 However, after revoking the salary cap, Selig insti-
tuted a signing freeze, barring teams from negotiating individually with players. The players immediately filed another unfair labor practices charge with the NLRB.

President Clinton’s February 6 deadline passed without an agreement, leaving the President “exasperated.” The President ordered negotiators to attend a meeting in the White House the next day, in which Labor Secretary Robert Reich, Vice President Al Gore, Usery, and the President would take part. Usery presented his proposal for settlement to the parties, but neither side accepted his suggestions. Additionally, the President asked the parties to submit to binding arbitration. The players agreed, but the owners did not. Spring training began on February 16, with “replacement players,” who were minor leaguers and some renegade ex-major league players, filling out the rosters.

On March 15, the NLRB issued a complaint against owners for unfair labor practices stemming from their failure to return to the pre-existing system of salary arbitration and free agency when they revoked their implemented salary cap plan on February 3. Two weeks later, on March 27, the NLRB voted 3-2 to seek an injunction against owners, which was filed later that day in the United States District Court for the Southern District of New York. That same

209. See President Strikes Out at White House/Labor: Clinton “Exasperated” That He Can’t Get a Settlement in Baseball Strike; Mediator Gets Nowhere, L.A. Times, Feb. 8, 1995, at 1. Selig’s letter, which was sent from the owners to the players, read in part:

until such time as the [PRC and MLBPA] ratify a new collective bargaining agreement or until further notice, individual Major League Clubs shall have no authority to negotiate terms and conditions of employment (or any element thereof) with the [MLBPA] or individual players or certified agents. The [MLBPA] is now on notice that individual [c]lubs are not authorized to negotiate or execute individual player contracts with bargaining unit players during the pendency of collective bargaining between the [PRC and the MLBPA].


210. See Labor Dispute Chronology/Baseball Owners Say Play Ball, BALTIMORE SUN, Apr. 3, 1995, at 5C.

211. Id.

212. See id.

213. See Baseball’s Labor Negotiations, ST. LOUIS POST-DISPATCH, Apr. 2, 1995, at 8D.


215. See Baseball’s Labor Negotiations, supra note 213.

216. See Mark Maske, NLRB Requests Injunction; If Granted, Baseball Strike Could End, WASH. POST, Mar. 28, 1995, at C1. The Players Association stated at the time that if the injunction were granted, they would return to work immediately. See
day, owners submitted a new proposal to the MLBPA calling for a fifty percent luxury tax on all team salaries over $44,000,000.217

On March 31, U.S. District Court Judge Sonia Sotomayor ruled in favor of the NLRB. Under the National Labor Relations Act, if a court determines that the NLRB had reasonable cause to issue an unfair labor practices complaint, and that equitable relief is “just and proper” under the circumstances, then the injunction will be granted.218 Judge Sotomayor ruled that these conditions had been met. Her decision was based on a finding that salary arbitration and free agency were mandatory subjects of collective bargaining, and that unilateral changes made to the free agency system by the owners in the absence of an impasse amounted to a refusal to bargain in good faith.219

This decision meant the end of the strike, as players had pledged to return to work if the injunction were granted.220 Fulfilling their promise, players offered to end the strike unconditionally.221 The owners accepted the players offer, released the “replacement players” that they had hired in February at the start of spring training, and postponed the season’s start until April 26.222

While this accord was taking place, the owners appealed the District Court’s ruling to the Second Circuit, seeking a stay of the injunction.223 The three judge panel that heard the case, led by Chief Judge Jon Newman, seemed unimpressed with the owners’ position at oral argument.224 Thus, it came as no surprise several

217. Peter Schmuck, Baseball Owners Present New Bid to Settle Strike, BALTIMORE SUN, Mar. 28, 1995, at lA.
219. See id. at 257.
220. See Hal Bodley, Now is Time for Compromise / Labor Ruling Throws Ball Back to Players, Owners, USA TODAY, Mar. 15, 1995, at 7C.
221. See Ross Newhan, It’s Now Official: Baseball to Return / Labor Ruling Throws Ball Back to Players, USA TODAY, Mar. 15, 1995, at 7C.
222. See Labor Dispute Chronology/Baseball Owners Say Play Ball, BALTIMORE SUN, Apr. 3, 1995, at 5C.
223. See id.
224. See Judges Fire A No-Hitter at Owners, Com. Appeal (Memphis), Apr. 5, 1995, at D1. At one point in his argument, PRC counsel Frank Casey claimed that the injunction eliminated the players’ incentive to negotiate. Judge Newman stopped Casey and asked: “You really believe it? . . . Is that your position? . . . [W]hat will it take to persuade you that that position is wrong?” Dave Van Dyck, Appeals Judges Mock, Reject Baseball Owners’ Plea, CHI. SUN-TIMES, Apr. 5, 1995, at 134. MLB’s owners fired Casey, who had been MLB’s counsel for a decade, as a result of this humiliation. See Baseball Owners Hire New Attorney, LEGAL INTELLIGENCER, Apr. 27, 1995, at 10.
months later when the Circuit Court upheld Judge Sotomayor's decision.225

While the shortened 1995 season was played without interruption, an uneasy calm settled over the off-field conflict.226 A handful of negotiating sessions in the 1995-1996 off-season appeared to narrow the differences between the parties. The end of the 1996 season was the first complete major league season played since 1993. It appeared that a new Basic Agreement was on the horizon; one which had increased minimum salaries, minor changes to salary arbitration procedures but not eligibility, revenue sharing among clubs, a payroll and/or luxury tax, regular season interleague play, and credit to individual players for major league service time lost due to the strike.227

D. The Cost of the Strike

At this writing, the four-year old conflict between MLB owners and players remains unresolved. It is appropriate to ask what the cost of this conflict has been, and what has been gained.

As the 1996 season began, estimates placed the total cost of the strike to both parties in the area of $1,000,000,000. Players were reported to have lost $243,000,000 in wages due to canceled games, while owners lost $376,000,000 in reduced attendance and television revenues in 1994 and $326,000,000 in lost attendance in 1995.228 Almost incalculable are the lost opportunities for all involved in the sport, including endorsement and other marketing opportunities and ancillary revenue sources. Attendance in 1996 was noticeably below pre-strike levels,229 and television ratings were positively anemic,230 raising the specter of lost revenue for years to come. Fan cynicism and disillusionment must be at an all-time high.

226. The 1995 season was shortened to 144 games to reflect the late-April start.
228. See Baseball Owners Taken Deep with $700 Million in Losses, S.F. EXAMINER, Apr. 11, 1996, at D1.
To the extent that the owners’ destructive efforts to overthrow the sport’s player compensation system were truly motivated by a straightforward desire to control costs, the irony is that the average salary of MLB players has remained static for most of this decade following the post-collusion market correction previously discussed. In 1992, the average salary was $1,028,667.231 In 1993, after the owners voted to reopen the Basic Agreement but before any substantive negotiations occurred, the average salary was $1,076,089, less than five percent higher.232 In 1994, the first strike year, the average salary (not adjusted for wages lost to the strike) was $1,168,263, an increase of less than nine percent. Salaries the following year, in 1995, averaged $1,110,766, a five percent decline.233 Thus, over a four-year period, the average salary of a major league baseball player increased only eight percent from 1992 to 1995. Even without the strike, the rapid salary growth of the post-collusion years was finished.

Further, it has been clear from the start that any financial difficulties that some franchises face could be eliminated or at least alleviated through more extensive revenue sharing. In a very real sense, the root cause of many owners’ dissatisfaction with their clubs’ bottom lines was not that too great a share of the industry’s revenues were flowing to the players, but that too great a share of the industry’s revenues were flowing to other owners.234 It seems clear, then, that the owners’ counter-revolution has been a dismal failure. It was launched from the disingenuous premise that the extant player compensation system was in need of overhaul, or that the players could be forced to dismantle their hard won gains. The counter-revolution was neither subtle in its tactics — eviscerating the Office of the Commissioner, failing to make contractually required benefits payments, declaring impasse and imposing a new compensation system when bargaining clearly remained available, misleading the NLRB concerning their intent to reinstate the old rules, refusing to accept the President’s offer of binding mediation, foisting the replacement player debacle upon

231. See supra Salary Figures, supra note 100.

232. See Hal Bodley, Salaries Continue to Rise but So Do Revenues of Clubs, USA TODAY, Aug. 17, 1994, at 3C. MLB revenues in 1993 were $1,879,737,000, an industry record and an increase of 13% over the 1992 total. See id.


the public — nor effective in attaining its goals. As it stands now, salary arbitration and free agency will not be eliminated. There will be no salary cap. When a new Basic Agreement is ratified, it seems more than likely that business will continue as before.235

IV. The Future

Of the many features of major league baseball that set it apart from other professional sports in America, one of its most troubling is its lengthy history of virulent antagonism between labor and management. Buoyed by the fortuitous protection of the special anti-trust exemption, baseball owners held their athlete employees in virtual bondage throughout their professional careers. When negotiations and litigation compelled changes in the way ownership has run its industry over the past 20 years, all such changes, and indeed even agreements to maintain the status quo, have come only after continued acrimony and “hardball” measures.

In recent years, owners’ twin desires to gain greater authority over players’ freedom and redistribute a greater portion of industry revenues from players to clubs have, if anything, exacerbated the historic tension between the two camps. Like the boy who cried “wolf,” owners have destroyed their own credibility when it comes to assertions of heavy financial losses. Further, their naked efforts to crush union loyalty, whether through the deprivation of benefits, the retention of replacement players, the arbitrary refusal to negotiate in good faith, and even the advancement of spurious legal positions have done little to suggest that baseball’s ownership has emerged from the feudal (and therefore futile) model of management-labor relations.

Baseball players and owners have a mutual stake in the economic health of the game. Clearly, the most economically advantageous relationship for both sides would be one that permitted the formation of a true partnership in the celebration and promotion of baseball. Unfortunately, relations between the two sides have been so poor that collective bargaining negotiations tend to take on the character of a sporting contest themselves, with owners scoring wins or losses depending upon the degree to which they can roll back player rights or impede their exercise. When restoration of hegemony is the primary goal for owners, there is no chance that

235. With one important exception: owners are likely to incorporate a real revenue sharing plan to reduce some of the most severe imbalances in clubs’ economic stability.
the sides can progress to the point of understanding and evaluating each other’s needs and interests in the negotiation setting.

The unfortunate consequence of the most recent conflict, apart from short-term monetary losses and diminished fan support or loyalty, is the perpetuation of the deep-seeded mistrust and hostility between owners and players. Until ownership is willing to put the good of the game over individual desire for authority and ever-increasing shares of the revenues, there is no hope that a fully productive and efficient bond can be formed with players.