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"Juuuussst A Bit Outside": A Look at Whether MLB Owners Can Justify Paying Minor Leaguers Below Minimum Wage Without Violating the Fair Labor Standards Act

Mark Stanton

"JUUUUSSST A BIT OUTSIDE": A LOOK AT WHETHER MLB OWNERS CAN JUSTIFY PAYING MINOR LEAGUERS BELOW MINIMUM WAGE WITHOUT VIOLATING THE FAIR LABOR STANDARDS ACT

I. Introduction

The North American sports industry has become a heavy weight in the revenue world, and this industry appears to be getting stronger.[1] In 2013, the National Football League ("NFL") and Major League Baseball ("MLB") alone accounted for $17 billion in combined revenues.[2] Even minor league systems, such as the MLB's Minor League Baseball ("MiLB"), have yielded impressive results.[3] In order to maintain these revenues, professional sports teams require employees in a variety of different jobs.[4] The players competing on the field at the highest level are paid very well.[5] However, the majority of teams' employees, those who play in a

1. *See* Curtis Eichelberger, *Sports Revenue to Reach $67.7 Billion by 2017, PwC Report Says*, Bloomberg (Nov. 13, 2013, 12:01 AM), http://www.bloomberg.com/news/2013-11-13/sports-revenue-to-reach-67-7-billion-by-2017-pwc-report-says.html (projecting that between ticket receipts, media rights, sponsorship and merchandise purchases among professional leagues, college level, minor league, and some individual sports properties, North American sports industry's annual revenue will grow to $67.7 billion by 2017).

2. *See* Monte Burke, *How the National Football League Can Reach $25 Billion in Annual Revenues*, Forbes (Aug. 17, 2013, 6:30 AM), http://www.forbes.com/sites/monteburke/2013/08/17/how-the-national-football-league-can-reach-25-billion-in-annual-revenues/ (discussing how NFL's estimated $9 billion revenue in 2013 season maintains NFL's status as "most lucrative in the world."); *Selig Says MLB Revenue Could Top $9 Billion*, USA Today (Mar. 28, 2014, 7:23 PM), http://www.usatoday.com/story/sports/mlb/2014/03/28/selig-says-mlb-revenue-could-top-9-billion/7022245/ (stating that MLB's annual revenues "reached $8 billion for the first time in 2013, up from less than $2 billion when Selig became acting commissioner in 1992").

3. *See* Chris Smith, *How Billionaires Like Warren Buffet Profit From Minor-League Baseball Ownership*, Yahoo! Sports (Jun. 12, 2012, 5:57 PM), http://sports.yahoo.com/news/how-billionaires-like-warren-buffett-profit-from-minor-league-baseball-ownership.html (reporting that "top 20 most valuable [MiLB] teams are worth an average $22 million, with average revenue of $11 million").

4. *See MLB Jobs and MLB Related Sports Jobs*, WorkInSPORTS.com, http://www.workinsports.com/mlb-jobs.asp (last visited Mar. 25, 2015) (noting that "each [MLB] team employs an average of 150-200 full time employees" in numerous capacities).

5. *See MLB Average Salary Up 5.4% to $3.39 Million*, ESPN (Dec. 18, 2013, 10:01 PM), http://espn.go.com/mlb/story/_/id/10158314/mlb-average-salary-54-percent-339-million (reporting that average MLB player made $3.39 million in 2013).

MLB team's minor league system or are not players at all, receive drastically less compensation.[6]

In response to being underpaid, many employees of large sports organizations have filed suits against their employers alleging violations of the Fair Labor Standards Act ("FLSA").[7] The FLSA ensures that employers grant certain rights to employees of companies or businesses involved in interstate commerce.[8] Among many other functions, it establishes the minimum wage in the United States.[9] It also mandates who an "employee" is, what records an employer must keep, and what type of employee is exempt from the rule.[10] Over the past twenty years federal courts have seen a signifi-

6. *See* Adam Rubin, *MLB Owners Voted to Allow Teams to Cut Pensions of Non-Players*, ESPN (Feb. 12, 2014, 7:54 PM), http://espn.go.com/mlb/story/_/id/10444699/mlb-owners-voted-allow-teams-cut-pensions-non-players (discussing how many MLB employees outside of players make very modest amount and MLB owners recently voted to allow teams to cut pension plans for non-players). One reporter noted the following: "The retirement plans of any baseball employee not wearing a big league uniform may be affected by the decision [to cut pension plans], including secretaries, scouts, front-office executives, and minor league staff." *See id.* (explaining that owners voted to cut pensions for non-players "despite earning more than $8 billion in revenue in 2013"). This change would significantly affect a large portion of employees in baseball because many "personnel, particularly at the minor league level and in amateur scouting, make less than $40,000 a year and rely on pensions in retirement." *See id.* (discussing implications for most employees' financial stability). *See also* Complaint para. 98, Senne v. Office of the Comm'r of Baseball, No. 3:14CV00608, 2014 WL 545501 (N.D. Cal. Feb. 7, 2014), *available at* http://s3.amazonaws.com/cdn.orrick.com/files/Senne-v-MLB.pdf [hereinafter Complaint *Senne*] (listing small salaries earned by players at each minor league level).

7. *See* Aimee Picchi, *Will the Raiders' $1.25M Settlement Fix Cheerleading?*, CBS NEWS (Sept. 5, 2014, 11:46 AM), http://www.cbsnews.com/news/will-the-raiders-settlement-fix-cheerleading/ (considering effects of Oakland Raiders' decision to settle lawsuit by team's cheerleaders alleging FLSA violations); *see also* Liger v. New Orleans Hornets NBA Ltd., 565 F. Supp. 2d 680, 689 (E.D. La. 2008) (holding that New Orleans Hornets were subject to FLSA in suit brought by former ticket sales and fan relations employees).

8. 29 U.S.C. § 202 (2011) (declaring that Congress has power to regulate any and all labor conditions related to interstate commerce that are detrimental to "health, efficiency, and general well-being of workers"). The FLSA was passed in 1938 as part of President Franklin D. Roosevelt's "Second New Deal" legislation and sought to combat the deplorable conditions of the nation during the Great Depression. *See generally* Jonathan Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, MONTHLY LAB. REV., June 1978, at 22, *available at* http://www.dol.gov/dol/aboutdol/history/flsa1938.htm (stating that FLSA for first time banned oppressive child labor, set minimum hourly wage in country at 25 cents, and maximum workweek at 44 hours).

9. *See* 29 U.S.C. § 206(a)(1)(C) (2011) (establishing current minimum wage in United States at $7.25 per hour).

10. *See* 29 U.S.C. § 203(e) (2011) (defining "employee" as "any individual employed by an employer"); 29 U.S.C. § 211(c) (2011) (stating that all employers must keep and maintain records of employee wages, hours, and conditions of work environment); 29 U.S.C. § 213(a)(3) (2011) (stating that employees working for

cant increase in the amount of suits filed alleging FLSA wage violations per year.[11] While many different sports organizations have been the target of these suits, the MLB, in particular, has been a recurring defendant.[12] The MLB has handled these challenges without much trouble, although *Senne v. Office of the Commissioner of Baseball*, an ongoing class action suit filed in February 2014, could pose substantial problems for MLB owners.[13]

In *Senne*, former minor league baseball players sued the MLB asserting FLSA violations, specifically, that the players were paid well below minimum wage and did not receive proper overtime pay.[14] The case raises a number of difficult legal questions with broad implications for MLB and professional sports organizations.[15] The MLB will likely argue that baseball is not considered a job, and thus, does not fall under the purview of the FLSA.[16] If that argument fails and the court classifies baseball as a job, the MLB will likely attempt to point to certain exemptions in the rule.[17] Regardless of the arguments made and the defenses raised, a win for

amusement or recreational establishments not operating for at least seven months of calendar year are not subject to FLSA).

11. *See* Kevin P. McGowan, *FLSA Lawsuits Hit Record High in 2012, Continuing Recent Trend of Sharp Growth*, BLOOMBERG BNA (Aug. 6, 2012), http://www.bna.com/flsa-lawsuits-hit-n12884911026/ (describing statistics showing significant increase in number of FLSA suits filed in federal court from 1993, when 1,457 were filed, to 2012 when record-high 7,064 were filed); *see also* Richard L. Alfred, *FLSA Suits Hit New Record High in 2013, Cases Spike Above 7,700*, SEYFARTH SHAW LLP (May 9, 2013), http://www.seyfarth.com/news/2279 (discussing statistics showing that record-high 7,764 FLSA suits were filed from May 2012 to May 2013).

12. For a further discussion of the recent FLSA suits filed against Major League Baseball, see sources cited *infra* notes 74-92 and accompanying text.

13. *See generally* Complaint *Senne*, *supra* note 6 (presenting claims of minor league baseball players alleging various FLSA violations against MLB); *see also* Second Amended Complaint, Senne v. Office of the Comm'r of Baseball, No. 3:14CV00608, 2014 WL 2619616 (N.D. Cal. May 16, 2014), *available at* http://www.scribd.com/doc/224796744/Senne-v-MLB-2d-Amended-Complaint [hereinafter Second Amended Complaint *Senne*] (amending complaint since filing in February to include at least one former minor leaguer from each MLB team, thus targeting all 30 MLB clubs).

14. *See* Complaint *Senne*, *supra* note 6, para. 9 (claiming that MLB violates FLSA minimum wage and overtime requirements as well as FLSA recordkeeping requirements).

15. *See* Tony Dokoupil, *Major League Baseball's 'Working Poor': Minor Leaguers Sue Over Pay*, NBC NEWS (July 15, 2014, 3:59 PM), http://www.nbcnews.com/news/sports/major-league-baseballs-working-poor-minor-leaguers-sue-over-pay-n156051 (noting that judge or jury will have to determine if job of professional baseball player is covered under FLSA).

16. *See id.* (observing that despite MLB's refusal to comment it will likely argue baseball is exempt from FLSA because it is seasonal amusement).

17. *See* Michael McCann, *In Lawsuit Minor Leaguers Charge They Are Members of 'Working Poor'*, SPORTS ILLUSTRATED (Feb. 12, 2014), http://www.si.com/mlb/2014/02/12/minor-league-baseball-players-lawsuit (suggesting that MLB will make

the minor leaguers in this case could significantly alter the landscape of professional sports.[18]

This Comment discusses the likelihood that the minor leaguers will prevail in their action by analyzing court precedent in relation to baseball and considers what legal implications such a ruling would have in baseball and other sports.[19] Section II summarizes the history of professional baseball's relationship with the law, starting with its antitrust.[20] Next, Section II discusses the efforts players made to unionize and how they achieved their first Collective Bargaining Agreement ("CBA").[21] Further, Section II addresses the FLSA suits filed against the MLB prior to *Senne*.[22] Section III analyzes *Senne* and explores the underlying background, as well as the factual allegations and legal claims brought by the minor leaguers.[23] Following an evaluation of the facts in the suit, Section IV proceeds in three parts. First, it discusses the likelihood of a win for the minor leaguers.[24] Second, it assumes *arguendo* that the court rules in favor of the minor leaguers and considers the effects of such a result.[25] Third, it contemplates the implications of such a decision for college athletics in light of the National Labor Relations Board's ("NLRB") decision regarding Northwestern Football.[26] Finally, Section V concludes with an assurance that this decision will motivate change which will cure some of the difficulties minor league players face in their quest to reach the "big

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"professional employee" argument which excludes those who perform original or unique work from coverage under FLSA).

18. *See* Dokoupil, *supra* note 15 (acknowledging that virtually every player in MLB has played in Minor League and more than 6,000 current and recent minor leaguers could be affected by case).

19. For a further discussion of possible outcomes and ramifications of the case, see sources cited *infra* notes 168-202 and accompanying text.

20. For a further discussion of MLB's antitrust exemption, see sources cited *infra* notes 28-50 and accompanying text.

21. For a further discussion of unionization in baseball and the first collective bargaining agreement, see *infra* notes 51-61 and accompanying text.

22. For a further discussion of prior FLSA suits against the MLB, see *infra* notes 74-92 and accompanying text.

23. For more background on the *Senne* lawsuit, see *infra* notes 93-66 and accompanying text.

24. For a further discussion on likely outcomes, see *infra* notes 167-82 and accompanying text.

25. For a further discussion of the effects a win for minor leaguers would have on baseball and the rest of the sports world, see *infra* notes 183-96 and accompanying text.

26. For a more detailed discussion on the impact on college athletics and the Northwestern Football issue, see sources cited *infra* notes 185-90 and accompanying text.

leagues," while maintaining the beauty of the journey and the ultimate satisfaction in achieving their goal.[27]

II. BASEBALL IN THE COURTS: HISTORY OF COURT PRECEDENT

A. The Antitrust Exemption

Baseball has been considered an anomaly under the law since 1922, when the Supreme Court first established that professional baseball is exempt from antitrust law.[28] The history of the antitrust exemption dates back to the late nineteenth century when team owners successfully curtailed player mobility through the institution of a reserve clause in players' contracts.[29] Once a team "reserved" a player, he could not sign with another team and his only option was to re-sign with his own team.[30] Such a restraint not only limited players in their freedom to choose where they wanted to play, but also severely depressed their ability to earn higher salaries because teams could not compete for their services.[31] Shortly after the es-

27. For a further discussion on likelihood for positive change, see *infra* notes 196-201 and accompanying text.

28. *See* Flood v. Kuhn, 407 U.S. 258, 283 (1972) (upholding baseball antitrust exemption citing absence of remedial legislation enacted by Congress). In *Flood*, the Court refused to stray from its precedent established in Federal Baseball Club v. National League, 259 U.S. 200 (1922) and Toolson v. New York Yankees, 346 U.S. 356 (1953), openly admitting that these decisions granted baseball an exemption from antitrust law. The Court further noted that this exemption is, "in a very distinct sense, an exception and an anomaly," and that "*Federal Baseball* and *Toolson* have become an aberration confined to baseball." *See Flood*, 407 U.S. at 282 (emphasis added) (acknowledging that baseball is only sport exempt from antitrust law while "football, boxing, basketball, and, presumably, hockey and golf" are still subject to antitrust law).

29. *See generally* Jeffrey S. Moorad, *Major League Baseball's Labor Turmoil: The Failure of the Counter-Revolution*, 4 VILL. SPORTS & ENT. L.J. 53 (1997), *available at* http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1236&context=mslj (discussing how owners responded to player mobility by establishing reserve clause in players' contracts that permanently bound them to their original team). In 1903, out of fear that players would go from one team to another seeking offers—effectively driving up the cost of their services, the National League and American League came together to form the MLB under the condition that both Leagues would use reserve clauses so that increased player costs could not jeopardize owners' financial ability to pay their players. *See generally* ROGER I. ABRAMS, LEGAL BASES: BASEBALL AND THE LAW 64-69 (1998) (outlining truce between warring leagues).

30. *See* Moorad, *supra* note 29, at 56-57 (describing how players were doomed to play for team their entire career "absent retirement or the team's decision to trade or cut them").

31. *See id.* at 55-57 (discussing overall restrictions by reserve clause system on players). Today, the ability of teams to compete for players' services through a bidding process has resulted in enormous, multi-million dollar deals. *See, e.g.*, *Albert Pujols Signs with Los Angeles Angels, Outbidding Marlins and Cardinals*, WASH. POST, Dec. 8, 2011, http://www.washingtonpost.com/sports/albert-pujols-signs-with-los-angeles-angels-outbidding-marlins-and-cardinals/2011/12/08/gIQAYI9u

tablishment of the reserve clause the players began to see how disadvantaged they were and, for years, they unsuccessfully challenged the owners.[32]

The first notable challenge to the owners' power came in the Supreme Court case of *Federal Baseball Club v. National League*.[33] In *Federal Baseball*, owners of the rival Federal Baseball Club League brought suit against the National League, known today as the MLB, alleging that National League owners conspired to destroy the Federal Baseball League and monopolize baseball itself.[34] In a unanimous decision, the Court held that even though teams were located in different states, did business with one another, and traveled across state lines to play one another, baseball was not in the business of interstate commerce.[35] Therefore, baseball was exempt from the Sherman Act—the federal antitrust law.[36]

The next challenge to the owners' stranglehold on baseball came in the Supreme Court case *Toolson v. New York Yankees* in 1953.[37] George Earl Toolson, a pitcher in the New York Yankees

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fO_story.html (reporting that Angels outbid other teams to sign 32-year-old perennial All-Star Albert Pujols to 10-year deal worth $250 million).

32. *See* Ed Edmonds, *At the Brink of Free Agency: Creating the Foundation of the Messersmith-McNally Decision – 1968-1975*, 34 S. ILL. U. L.J. 565, 571 (2010) (noting that for 75 years owners successfully defended challenges to reserve clause and limited player mobility).

33. *See* Federal Baseball Club v. Nat'l League, 259 U.S. 200, 201 (1922) (recounting suit brought by rival league against National League alleging antitrust violations).

34. *See id.* (discussing allegations by former Federal League owner of Baltimore Terrapins that National League violated antitrust law by buying out most Federal League teams but not his).

35. *See id.* at 208-209 ("The business is giving exhibitions of base ball [sic], which are purely state affairs . . . . [T]he fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business.").

36. *See id.* (holding that National League defendants "were not within the Sherman Act" because business of baseball did not constitute interstate commerce); *see also* Moorad, *supra* note 29, at 59 ("The Court, in [*Federal Baseball*] . . . held that baseball was not subject to federal antitrust laws because it was not an activity involving interstate commerce."); 15 U.S.C. §§ 1-7 (2014) (prohibiting anticompetitive behavior that restricts interstate trade or commerce, such as price-fixing and monopolies). The Court has noted that the purpose of the Sherman Act "is not to protect businesses from the working of the market; it is to protect the public from the failure of the market. The law directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself." *See* Spectrum Sports, Inc. v. McQuillan, 506 U.S. 447, 458 (1993) (explaining that purpose of antitrust law is to protect competition which in turn protects public from being taken advantage of by companies that may collude with one another to raise prices).

37. *See* Toolson v. New York Yankees, 346 U.S. 356 (1953) (challenging MLB's antitrust exemption as well as challenging reserve clause for first time).

minor league system, brought an antitrust suit against the Yankees alleging that the team's reserve clause constituted an unfair restraint of trade.[38] Ultimately, the challenge failed and the court affirmed *Federal Baseball*.[39] The court reasoned that because Congress had not changed the law since *Federal Baseball*, baseball remained exempt from antitrust law and thus the reserve clause was valid.[40]

The players finally reclaimed some power following *Flood v. Kuhn*,[41] a heavily criticized 1972 Supreme Court case.[42] Curt Flood was a star outfielder for the St. Louis Cardinals.[43] During his time in St. Louis, Flood won seven Gold Glove Awards, two World Series

38. *See id.* at 362-63 (Burton, J., dissenting) (recounting that plaintiff professional baseball players alleged they "[had] been damaged by enforcement of the standard 'reserve clause' in their contracts," and that teams violated Sherman Act by organizing as illegal monopoly and engaging in "unreasonable restraints of trade"). Following the dissolution of his minor league team, Toolson was demoted to a lower level minor league team within Yankees' farm system and refused to show up because he felt he was good enough to play in MLB yet was unable to negotiate with other teams due to the reserve clause, effectively binding him to the talent-rich Yankees with no chance to make their MLB roster. *See generally* G. RICHARD MCKELVEY, FOR IT'S ONE, TWO, THREE, FOUR STRIKES YOU'RE OUT AT THE OWNERS' BALL GAME: PLAYERS VERSUS MANAGEMENT IN BASEBALL? 52 (2001) (discussing Toolson's belief that he was being denied opportunity to play in majors due to depth of Yankees' farm system).

39. *See Toolson*, 346 U.S. at 357 (upholding antitrust exemption established in Federal Baseball).

40. *See id.* ("Congress has had [*Federal Baseball*] under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect."). Without examination of the underlying factual allegations, the *Toolson* Court affirmed the lower courts' holdings "on the authority of *Federal Baseball* . . . so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." *See id.* (emphasis added) (reaffirming that professional baseball is not subject to federal antitrust laws).

41. 407 U.S. 258 (1972).

42. *See generally* Stephen F. Ross, *Reconsidering* Flood v. Kuhn, 12 U. MIAMI ENT. & SPORTS L. REV. 169 (1994) (noting harsh criticism decision received in professional sports law field as well as ridicule Justice Blackmun received for his writing of opinion). Justice Blackmun dedicates Part I of the opinion to a lengthy, colorful account of the game's history, its origins, and its famous players. *See id.* at 172 (acknowledging that many were aware of Justice Blackmun's passion for baseball and referred to him as "Minnesota Twin" due to his love for his hometown team). For example, Justice Blackmun wrote about players who have "sparked the diamond and its environs and that have provided tinder for recaptured thrills . . . Ty Cobb, Babe Ruth, Tris Speaker, Walter Johnson, Henry Chadwick, Eddie Collins . . . Moe Berg, Rabbit Maranville, Jimmie Foxx, Lefty Grove. The list seems endless." *See Flood*, 407 U.S. at 262-63 (indicating his love for baseball by listing 83 players names in opening of majority opinion).

43. *See Flood*, 407 U.S. at 264 (explaining that flood played with Cardinals from 1958-1969).

Championships, and was captain of the team.[44] After a trade was announced that would send him to the Philadelphia Phillies, Flood refused to go.[45] He then sought injunctive relief against the reserve clause.[46] The Court yet again upheld the decisions of *Federal Baseball* and *Toolson*, noting the danger involved by overturning court precedent, but acknowledged for the first time that baseball is in fact engaged in interstate commerce.[47]

Flood paved the way for the monumental *Seitz* decision in 1975, in which an arbitrator ruled that MLB players became free agents after playing one year for their team without a contract.[48] This ended the reign of the reserve clause in baseball.[49] From there, the Major League Baseball Player's Association ("MLBPA") began to grow into what is now considered the strongest union in all of sports.[50]

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44. *See Curt Flood Statistics and History*, BASEBALL-REFERENCE.COM, http://www.baseball-reference.com/players/f/floodcu01.shtml?redir (last visited Mar. 27, 2015) (providing Curt Flood's professional baseball statistics).

45. *See* Gary Norris Gray, *Curt Flood a Man With a Cause*, BLACK ATHLETE SPORTS NETWORK, http://blackathlete.net/2011/09/curt-flood-a-man-with-a-cause/ (last updated Sept. 19, 2011) (explaining that Flood did not want to go to Philadelphia due to perception of racist fans).

46. *See Flood*, 407 U.S. at 265-66 (explaining that Flood initiated antitrust lawsuit seeking "declaratory and injunctive relief and treble damages").

47. *See id.* at 282 (concluding that professional baseball is still exempt from antitrust law but acknowledging that "[it] is a business and it is engaged in interstate commerce").

48. *See* Roger I. Abrams, *Arbitrator Seitz Sets the Players Free*, SOCIETY FOR AMERICAN BASEBALL RESEARCH (2009), http://sabr.org/research/arbitrator-seitz-sets-players-free (stating that decision was "most important labor arbitration decision of all time"). The language of the reserve clause allowed for a team to renew a contract for a period of one year following the end of a signed contract. *See id.* (noting that clause had always been read to mean team could simply resign same player year after year). The Major League Baseball Player's Association ("MLBPA") argued that the clause meant a contract could be renewed "only once," while the owners interpreted the clause as meaning a contract could be renewed in perpetuity. *See id.* (recounting disagreement leading to need for neutral arbitrator to settle dispute). Arbitrator Peter Seitz decided in favor of the MLBPA. *See id.* (summarizing decision that declared players who filed grievances to be deemed first ever free agents).

49. *See id.* (explaining how "century-old personnel system [was] demolished by Arbitrator Seitz").

50. *See* Barry Svrluga, *Tony Clark Named Executive Director of Major League Baseball Players Association*, WASH. POST (Dec. 3, 2013), http://www.washingtonpost.com/sports/nationals/tony-clark-named-executive-director-of-major-league-baseball-players-association/2013/12/03/e876855a-5c66-11e3-bc56-c6ca94801fac_story.html (noting that MLBPA is widely considered "strongest players' union in professional sports").

B. The MLBPA and CBA[51]

When antitrust challenges continuously failed, players looked to other legal remedies to counteract the MLB and its owners' power.[52] The first attempt to form a players union was in 1885.[53] Throughout the next seventy years, players attempted to unionize and were quickly shut down.[54] In 1954, a union was established in the form of the MLBPA.[55] The union, however, did not begin making significant gains until several years later.[56]

With the hiring of Marvin Miller as the head of the MLBPA in 1966, the union started to see results.[57] In 1967, the MLBPA took a great step forward when Miller guaranteed players substantial benefits.[58] The following year the MLBPA entered into the first CBA in professional sports history.[59] The 1968 CBA established League-wide minimum salaries, pension payments, and a grievance process.[60] The agreement raised the minimum salary in baseball to $10,000, and players were given the right to arbitration to settle grievances with the owners.[61]

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51. *See BLS Information*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/bls/glossary.htm (last visited Apr. 15, 2015) (defining collective bargaining as "method whereby representatives of employees (unions) and employers negotiate the conditions of employment, normally resulting in a written contract [CBA] setting forth the wages, hours, and other conditions to be observed for a stipulated period").

52. *See* Moorad, *supra* note 29, at 62-64 (summarizing history of players' unionization efforts throughout 20th century).

53. *See id.* at 62 (discussing New York Giants' player John Montgomery Ward's efforts to start Brotherhood of Professional Baseball Players).

54. *See id.* (noting efforts by players in 1914 and 1946, which were rapidly squashed by MLB team owners).

55. *See id.* at 62-63 (highlighting fact that first President of MLBPA, Judge Robert Cannon, had strong ties with owners and had never played baseball professionally).

56. *See id.* (indicating initial trouble in gaining any traction with MLBPA because Judge Robert Cannon's connections with owners delayed progress for more than 10 years).

57. *See id.* at 63 (noting Miller's success in negotiating pension plans for players). Prior to his role with the MLBPA, Marvin Miller worked with the United States Steelworkers of America, where he was largely considered an expert economist. *See* MLBPA Info, *History of Major League Baseball Players Association*, MAJOR LEAGUE BASEBALL PLAYERS ASS'N, http://mlb.mlb.com/pa/info/history.jsp (last visited Apr. 15, 2015) (describing Miller's knowledge of unions and ability to "mold the players into a bona fide labor union").

58. *See* Moorad, *supra* note 29, at 63 (finding Miller was able to double players' benefits).

59. *See id.* (discussing novelty of CBA at time and lack of one in all other professional sports).

60. *See id.* at 63-64 (outlining general provisions of 1968 CBA).

61. *See* MLBPA Info, *supra* note 57 (citing raise from $6,000 which minimum salary had been fixed at for more than two decades). Miller saw the right to arbi-

In 1972, the MLBPA flexed its newfound muscles by staging a strike.[62] The strike took the League by surprise and delayed the start of the regular season.[63] This stoppage in work led to a new CBA that further cemented the players' right to an arbitration process for settling grievances and solidified the absolute power of an arbitrator's decision.[64]

The right to an arbitration process set the table for the critical *Seitz* decision.[65] Given the lack of success the players had in the courts, their ability to settle grievances through a neutral arbitrator was critical to shifting the balance of power.[66] Thus, when Arbitrator Seitz declared the aggrieved players were free agents, it was now the MLB who sought the court's help in challenging a decision.[67] The MLB suffered its first real loss in the courts when the Eighth Circuit affirmed a lower court ruling, holding that the reserve clause issue must be settled through collective bargaining.[68] Therefore, in 1976, the two sides reached an agreement, ending the reserve clause system and instituting free agency.[69] Under the new system, a player was eligible to become a free agent after six years of service time.[70]

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tration as crucial to developing the foundation for the MLBPA's future negotiations. *See id.* (noting arbitration process would pave way for future gains). Under arbitration, when the players have a grievance with the owners, an independent arbitrator is brought in to listen to both sides and settle the dispute as opposed to taking the issue to court. *See* MLBPA Info, *Frequently Asked Questions*, MAJOR LEAGUE BASEBALL PLAYERS ASS'N, http://mlb.mlb.com/pa/info/faq.jsp#cba (last visited Apr. 15, 2015) (providing answers to common questions regarding workings of MLBPA).

62. *See* Moorad, *supra* note 29, at 64 (discussing significance of striking for future labor relations).

63. *See id.* ("This was the first league-wide work stoppage in baseball history.").

64. *See id.* (reiterating importance of grievance process considering lack of success in courts).

65. *See* Abrams, *supra* note 48 (discussing importance of Seitz's role as independent arbitrator as opposed to bringing case to court to be decided).

66. *See id.* (reiterating successful avenue in which to challenge reserve clause).

67. *See generally* Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n, 409 F. Supp. 233 (W.D. Mo. 1976), *aff'd*, 532 F.2d 615 (8th Cir. 1976) (rejecting owners' claim that, under CBA, reserve system was not subject to arbitration).

68. *See* Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n, 532 F.2d 615, 632-34 (8th Cir. 1976) (holding CBA clearly called for issue of reserve system to be settled by arbitrator and owners were forced to collectively bargain over issue with players).

69. *See* Moorad, *supra* note 29, at 66 (explaining players were free from binding perpetual contracts).

70. *See id.* (highlighting importance of new player mobility freedoms). "Service time" is related to how long a player has played in the League, and many times, teams call up players to their big League rosters in a very strategic way so as to control them for as long as they can. *See* Zachary Levine, *How MLB Service Time*

Since these early years, through collective bargaining and the grievance process, the MLBPA has enjoyed considerable success and is considered one of the best unions among all labor organizations.[71] Although, despite being affected by conditions of the CBA, minor leaguers are not represented by the MLBPA.[72] As explored in *Senne*, the MLB's exploitation of minor leaguers as a bargaining chip in CBA negotiations has become a serious problem.[73]

C. Recent FLSA Challenges Against the MLB

Another, more recent wave of challenges against the MLB have included both federal and state wage law violations.[74] Most recently, in *Chen v. Major League Baseball*, an individual who worked as a volunteer for an All-Star Weekend event sued the MLB demanding compensation.[75] The volunteer claimed that his work at MLB's FanFest in New York City qualified him as an employee under the FLSA.[76] The federal court quickly dismissed his claim.[77] In support of its reasoning, the court held that the MLB was exempt from FLSA in this circumstance because FanFest was an amusement establishment operating less than seven months a year.[78] Although this claim was trivial in nature, it is only one of what seems to be a

Dictates Top-Prospect Promotions, FOX SPORTS (Apr. 19, 2014, 12:00 PM), http://www.foxsports.com/mlb/story/how-mlb-service-time-dictates-top-prospect-promotions-041914 (discussing intricacies of when, how, and why teams may delay bringing up top-prospects in order to hold onto them for as long as possible).

71. *See* Svrluga, *supra* note 50 (noting MLBPA's reputation as excellent union).

72. For a further discussion of minor leaguers' lack of representation, see *infra* notes 113-116 and accompanying text.

73. For a further discussion of MLB's use of minor leaguers as bargaining chips in collective bargaining negotiations, see *infra* notes 117-137 and accompanying text.

74. For a detailed discussion of recent labor law litigation, see *infra* notes 81-92 and accompanying text.

75. *See* Chen v. Major League Baseball, 6 F. Supp. 3d 449 (S.D.N.Y. Mar. 25, 2014) (dismissing minimum wage claims brought by MLB volunteer).

76. *See id.* at 452-53 (claiming his work—stamping attendee's wrists, handing out paraphernalia, and directing attendees—made him employee under FLSA and entitled to minimum wage).

77. *See id.* at 453 (holding that court would not address legal issue of employee status because claim could be dismissed on other grounds).

78. *See id.* at 454 (citing amusement or recreation exemption from FLSA). Any employee who is employed by an amusement or recreational establishment is exempt from minimum wage and maximum hour requirements if the establishment "does not operate for more than seven months in any calendar year" or if "during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year[.]" *See* 29 U.S.C. § 213(a)(3) (2011) (stating language of mandate).

growing trend of claims in labor law.[79] Accordingly, this notion of seasonal businesses has become a popular defense to such claims.[80]

Determining whether a business is seasonal in nature, which would exempt it from FLSA regulation, has been an important, yet unsettled, issue in baseball.[81] In *Bridewell v. Cincinnati Reds*, the maintenance staff working for the Cincinnati Reds sued the team claiming they were not receiving proper overtime pay.[82] In defense, the Reds claimed that they did not have to pay overtime under the standards set out in the FLSA because the franchise was an amusement establishment operating less than seven months per year.[83] The lower court rejected this defense and held that the team was a year-round business.[84] On appeal, the Reds argued that their method of accounting should be taken into consideration when deciding whether or not their operations were seasonal.[85] The appellate court disagreed, and held that the method of accounting should not be taken into consideration.[86] Thus, the appellate court upheld the lower court's decision that the Cincinnati Reds, who employed 120 employees year-round, were not a seasonal organization and in turn subject to the FLSA.[87]

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79. *See* Noel Tripp, *Major League Baseball All-Star Weekend Volunteers Not Employees Under Fair Labor Standards Act*, THE NAT'L L. REV. (Apr. 3, 2014), http://www.natlawreview.com/article/major-league-baseball-mlb-all-star-weekend-volunteers-not-employees-under-fair-labor (noting popularity of claim among employees, especially unpaid interns seeking compensation).

80. *See id.* (warning businesses that recreation and amusement exemption does not apply to all).

81. *See* Bridewell v. Cincinnati Reds, 155 F.3d 828 (6th Cir. 1998) (finding Cincinnati Reds were not seasonal establishment under FLSA). *But see* Jeffery v. Sarasota White Sox, 64 F.3d 590 (11th Cir. 1995) (finding minor league team Sarasota White Sox were seasonal establishment under FLSA).

82. *See Bridewell*, 155 F.3d at 829-30 (claiming Reds violated 29 U.S.C. § 207 when they refused to pay staff time plus one-half for hours worked exceeding 40 hours per week).

83. *See id.* at 829 (citing 29 U.S.C. § 213(a)(3)) (exempting from FLSA amusement or recreational establishments that operate less than seven months per year).

84. *See* Bridewell v. Cincinnati Reds, 68 F.3d 136, 139 (6th Cir. 1995) (noting that team employed 120 employees year-round).

85. *See Bridewell*, 155 F.3d at 830 (arguing if court looked at accounting method franchise would fit exemption condition). An employer is exempt from the FLSA if its average receipts for any six months of the preceding year were not more than one-third of the total amount of its average receipts for the other six months of that same year. *See* 29 U.S.C. § 213(a)(3) (2011) (citing language of FLSA).

86. *See Bridewell*, 155 F.3d at 830-31 (holding money received during season as well as that in off-season should be used in determination of whether organization falls within FLSA exemption).

87. *See id.* at 830-32 (holding Reds franchise does not qualify for the exemption from the FLSA under 29 U.S.C. § 213(a)(3)).

In contrast, the court in *Jeffery v. Sarasota White Sox* came to a different conclusion.[88] Similar to the maintenance staff in *Bridewell*, a grounds keeper for a minor league baseball team sued the team for unpaid overtime under the FLSA.[89] The Eleventh Circuit denied the claim on grounds that the team was exempt from FLSA.[90] The court held that because the team's season was only five months long, they did not have to pay employees overtime regardless of whether or not plaintiff worked for the team in the off-season.[91] Thus, professional baseball's standing under the FLSA is currently unsettled.[92]

III. WHERE WE ARE TODAY: *SENNE V. OFFICE OF COMMISSIONER OF BASEBALL*

A. The Current Minor League System

Every MLB team has an extensive farm system with affiliated teams in every level of Minor League Baseball.[93] There are six levels of minor league baseball: Triple-A, Double-A, A Advanced, A, Short-Season A, and Rookie; therefore, at a minimum, all thirty teams employ six teams-worth of players.[94] Major League Baseball Rules allocate how many players are allowed on a roster at each level, with major league teams permitted to reserve forty players to their own rosters.[95] Thus, because every team has at least six minor

88. *Compare id.* (holding Cincinnati Reds were not a seasonal organization), *with* Jeffery v. Sarasota White Sox, 64 F.3d 590 (11th Cir. 1995) (holding Sarasota White Sox were a seasonal organization).

89. *See Jeffery*, 64 F.3d at 592-93 (alleging plaintiff received same salary each week regardless of number of hours over forty he worked per week).

90. *See id.* at 594-97 (stressing that focus under FLSA § 213(a)(3) is on duration of team's recreational-related operations, as opposed to employment of some employees on year-round basis).

91. *See id.* at 596 (holding it is time of revenue-producing operation of team as professional sports franchise during 5 month season which affords it protection of exemption).

92. For a discussion of inconsistencies in the courts on baseball's standing under FLSA, see *supra* notes 74-91 and accompanying text.

93. *See Teams by Affiliations*, MILB.COM, http://www.milb.com/milb/info/affiliations.jsp (last visited Apr. 15, 2015) (listing all thirty MLB teams and their minor league affiliates).

94. *See id.* (noting most teams retain between 7-9 teams, while Yankees retain 10 teams).

95. *See* MLB Official Info, *MLB Miscellany: Rules, Regulations and Statistics*, MLB.COM, http://mlb.mlb.com/mlb/official_info/about_mlb/rules_regulations.jsp (last visited Apr. 15, 2015) (noting clubs can reserve maximum 40 players on roster but from Opening Day – August 31 only 25 players can be on active roster).

league affiliates, each major league team pays the salaries of approximately two hundred players.[96]

Despite major league teams paying both the players and coaches' salaries of their minor league affiliates, the majority of minor league teams are independently owned.[97] On the whole, minor league teams have done very well for themselves, with the most valuable franchises worth millions of dollars.[98] While minor league owners focus on the business side of their team (i.e., selling tickets and managing stadiums), major league teams make all player development decisions and control player mobility.[99] Under this relationship, major league teams are able to cultivate their product at a cheap price while ownership of minor league franchises reap the benefits of the ability to give fans the opportunity to watch good, young, hardworking talent each night.[100] Looking at the revenues professional baseball has brought in, both at the major and minor league level, it *appears* everyone wins under the current system;[101]

96. *See Teams by Affiliations*, *supra* note 93 (listing each minor league affiliate and their corresponding rosters). An estimated 83% of the players in a MLB team's system will never play in the major league. *See* Jordan Mader, *Baseball's Minor League Labor Problem*, SB NATION: BREW CREW BALL (Mar. 27, 2014, 4:02 PM), http://www.brewcrewball.com/2014/3/27/5551758/baseballs-minor-league-labor-problem (stating it is very important to MLB owners to be able to unilaterally decide how much to pay these players that will never play for them).

97. *See* Chris Smith, *Minor League Baseball's Most Valuable Teams*, FORBES (Jul. 17, 2013, 7:44 AM), http://www.forbes.com/sites/chrissmith/2013/07/17/minor-league-baseballs-most-valuable-teams/ (noting wealthy individuals comprise majority of team owners with many having multiple ownership with stakes in numerous teams across different leagues).

98. *See id.* (estimating top 20 most valuable franchises in all of minor leagues were worth about $28 million, as of 2013).

99. *See Player Development Contracts*, MILB.COM, http://www.milb.com/content/page.jsp?ymd=20140911&content_id=94226140&fext=.jsp&sid=&vkey=news (last visited Apr. 15, 2015) (discussing affiliation between MLB team and ownership of minor league franchise established by Player Development Contract ("PDC")). The PDC allocates the duties of each party: owners of minor league franchises are in charge of "assembling a front office and staff to manage all business aspects, including game day activities such as ticket sales, promotions, broadcasting[,]" while MLB team's responsibilities are all player development related, such as hiring a coaching staff and assigning players to teams within their farm system. *See id.* (detailing duties of all party).

100. *See* Smith, *supra* note 97 (highlighting potential to profit in minor league ownership). The Dayton Dragons, Cincinnati Red's Single-A affiliate, hold the longest professional sports record for consecutive sellouts, with the streak reaching 1,000 consecutive games in May 2014. *See Dragons Sell-Out Streak Reaches 1,000*, DAYTON DRAGONS (May 10, 2014, 10:58 PM), http://www.milb.com/news/article.jsp?ymd=20140510&content_id=75062440&fext=.jsp&vkey=news_t459&sid=t459 (noting Dragons passed former record holder NBA's Portland Trailblazers who had 814 consecutive sellouts).

101. For a further discussion on profitability of both major league and minor league baseball franchises, see *supra* notes 2-3 and accompanying text.

although, as former minor leaguer Garret Broshuis brought to the country's attention, not everyone is a winner.[102]

A romantic aura has always surrounded the long, arduous journey a player makes through the minor leagues to ultimately achieving his goal and making it to the "Big Show."[103] Struggling through restless bus rides, sharing hotel beds, and playing for little money has long been considered a rite of passage for minor leaguers who hope to one day make the glamorous major leagues.[104] However, these aspects of the journey make the minor leaguer's road to the major leagues challenging both on and off the field.[105] The system weeds out those who do not have the requisite combination of talent and determination to secure a spot on a major league roster.[106] Yet, according to the plaintiffs in *Senne*, the hardships attendant to this journey have risen to a level of illegality considering the hours they work in comparison to the pay they receive.[107]

B. Exploitation of Minor League Throughout History of Collective Bargaining

As discussed in Section II, through collective bargaining major league players finally reclaimed some power from the owners.[108] Collective bargaining is the process through which a union, representing a class of employees, negotiates a contract with an employer

102. *See* Garret Broshuis, *Touching Baseball's Untouchables: The Effects of Collective Bargaining on Minor League Baseball Players*, 4 HARV. J. SPORTS & ENT. L. 51 (2012) (detailing serious issues with current system and minor league player treatment). Garret Broshuis is a former minor league baseball player who, after writing the above-mentioned law review article in 2012, became the original plaintiff in *Senne* and has continued to be the leading advocate for minor leaguers. *See generally* Complaint *Senne*, *supra* note 6 (presenting to nation alleged failings of current baseball system).

103. *See* THE ROOKIE (Walt Disney Pictures 2002) (dramatizing life of longtime minor league player who achieves his ultimate goal when called up to pitch in majors at age thirty-five).

104. *See* Josh Leventhal, *Minor League Players Sue for Better Salaries*, BASEBALL AMERICA (Apr. 1, 2014), http://www.baseballamerica.com/minors/players-sue-for-better-salaries/ (discussing *Senne* suit and traditional notions of minor league life).

105. *See id.* (noting financial hardship has always been part of route to major leagues).

106. *See id.* (concluding if player is good enough he will be in majors making millions in little time, but if he is not, then he must get another job or suffer financial hardship).

107. *See generally* Complaint, *Senne*, *supra* note 6 (alleging federal wage violations). The plaintiffs refer to the MLB throughout the complaint as a "cartel" that "has a long, infamous history of labor exploitation." *See also id.* para. 3 (citing introduction of complaint).

108. For a further discussion on the success the MLB has had with collective bargaining, see sources cited *supra* notes 51-73 and accompanying text.

to determine terms of employment.[109] As is the case in any negotiation, both parties make concessions or compromises in order to reach an agreement.[110] Thus, while the MLBPA garnered some success in ensuring exemplary working conditions for major league players, it made concessions along the way.[111] Many of these concessions came at the cost of minor league players' rights.[112]

This issue of the bargaining process—concessions detrimental to minor leaguers while beneficial for major leaguers—deservedly caused unrest among minor leaguers, because they are not represented by the MLBPA.[113] A look at the CBAs since the 1960's exposes the effects of collective bargaining on minor leaguers.[114] The first CBA in 1968 contained critical language establishing the MLBPA's representation of only major league players.[115] Despite broadly worded language that the MLBPA "contracts for and on behalf of . . . individuals who may become major league baseball players," courts narrowly read this clause to exclude minor league players.[116]

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109. *See* AFL-CIO, *Collective Bargaining*, AM. FED'N OF LABOR AND CONG. OF INDUS. ORGS., http://www.aflcio.org/Learn-About-Unions/Collective-Bargaining (last visited Apr. 15, 2015) (suggesting terms of employment usually relate to pay, benefits, hours, leave, job health and safety policies).

110. *See* Negotiate, BLACK'S LAW DICTIONARY (10th ed. 2014) ("to bring about by discussion or bargaining"); Negotiate, MERRIAM-WEBSTER ONLINE DICTIONARY, http://www.merriam-webster.com/dictionary/negotiate (last visited Apr. 15, 2015) (defining negotiate as "to arrange for or bring about through conference, discussion, or compromise").

111. *See* MLBPA Info, *supra* note 61 (stating $500,000 as minimum salary for major leaguer in 2014). On top of being very well paid, during road trips players travel first-class in chartered flights, stay in the most luxurious hotels, and every detail of their trip is taken care of for them. *See* Sean McAdam, *First Class All the Way*, ESPN (June 12, 2005), http://sports.espn.go.com/mlb/columns/story?id=2082030 (detailing accommodations provided for MLB players on road trips).

112. For a further discussion on less than exemplary minor league working conditions, see *supra* notes 103-107 and accompanying text.

113. *See* Broshuis, *supra* note 102, at 73 (citing language in 1968 CBA clarifying MLBPA's representation of major league players solely).

114. *See id.* at 72-90 (tracing history of CBAs through past five decades and detrimental effects to minor leaguers).

115. *See id.* at 73 (citing relevant portion of 1968 CBA that MLBPA "represents that it contracts for and on behalf of the major league baseball players and individuals who may become major league baseball players during the term of this Agreement).

116. *See* Silverman v. Major League Baseball Player Relations Comm., Inc., 880 F. Supp. 246, 250 (S.D.N.Y. 1995) (specifying MLBPA represents forty-person rosters of each MLB team). In *Silverman*, the MLBPA complained to the National Labor Relations Board that the MLB Owners were not bargaining in good faith and the NLRB in turn sought an injunction against the MLB in District Court. *See id.* (granting–in opinion written by then junior trial judge, now Associate Supreme Court Justice, Sonia Sotomayor–injunction against MLB after they unilaterally

With no duty owed to minor leaguers' interests, the MLBPA has continually used minor league players as bargaining chips in advancing the interests of major league players.[117] This trend started with the 1976 CBA.[118] With the fall of the reserve clause, the agreement addressed free agency for the first time.[119] Under this newfound free agency system, if a team signed a free agent away from his former team, that team had to compensate the player's former team with a draft choice in the following year's draft.[120] This compensation clause, and the general use of negotiating over matters affecting minor league players, set the stage for future deals implicating minor league players' rights.[121]

The 1981 Basic Agreement refined the compensation clause, further cementing the free use of minor leaguers' interests in negotiating terms.[122] The 1990 Agreement addressed payment of players under "split-contracts."[123] Under a split-contract, a minor league player found his salary significantly increased regardless of whether he ever made it back onto a major league roster.[124] Thus, not all negotiated decisions that affected minor league players were

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changed wage conditions by abolishing both salary arbitration and anti-collusion promise as well as prohibiting free agency).

117. For a discussion on MLBPA's use of minor leaguers as a bargaining chip, see *infra* notes 118-37 and accompanying text.

118. *See* Broshuis, *supra* note 102, at 74 (noting although most of agreement pertained to major league players—guaranteed first-class travel and first-class meals—some provisions effected minor league players).

119. *See* Moorad, *supra* note 29 (discussing no more binding contracts in wake of Seitz decision yet draft pick implications came with free agency).

120. *See* Broshuis, *supra* note 102, at 75 (describing compensation clause in which free agent's new team would have to give free agent's former team first or second round pick in next draft). If the team who acquired the free agent finished in the first half of the overall league standings the year before, they had to compensate the free agent's former team with their own first round draft pick for the upcoming draft. *See id.* (noting team who finished in bottom half of standings had to give second round draft pick in upcoming draft).

121. *See id.* (stating precedent now set to bargain away amateur player's rights which would become commonplace during CBA negotiations).

122. *See id.* at 76 (describing system in which free agents were ranked so when teams lost higher-level free agents they were compensated with certain draft picks).

123. *See id.* at 76-77 (defining split-contract as contract for players with former major league experience who were demoted back down to minor leagues).

124. *See* Broshuis, *supra* note 102, at 77 (noting if player played only one day in major leagues his subsequent minor league salary was increased to at least $26,500 under CBA). This is a significant increase for only playing one day in the major league considering the average minimum amount a minor leaguer made annually in 2010 was $7,375. *See id.* at 93 (noting from 1976 to 2010 minor league minimum has gone from $4,375 to $7,375 while major league minimum has gone from $16,000 to $400,000).

to their detriment.[125] Generally, however, CBA negotiations negatively impacted minor league players.[126]

When the National League expanded by adding the Colorado Rockies and Florida Marlins in 1993, provisions put in place in the 1990 Agreement established the procedures for the expansion draft.[127] The Agreement held that all minor league players who were not eligible for the next Rule 5 Draft were not eligible for the expansion draft.[128] Thus, a significant amount of minor league players were excluded from the possibility of entering the expansion draft for an opportunity play on a new major league expansion team.[129] In 1994-1995, due to the ongoing strike by major league players, some minor league players responded to offers by owners to serve as replacement players.[130] The strike ended during Spring Training in 1995 and, for the rest of their careers, those minor league players who took the opportunity to play in the major league as replacements were viewed as "scabs."[131]

More recently, CBA negotiations led to decisions that have had a direct negative effect on minor league players.[132] The 2007 Basic Agreement shortened the signing period for players drafted in the

125. *See id.* at 82 (discussing MLBPA successfully preventing contraction of two major league teams in 2001 which would have cost two farm-systems' worth of minor league players their jobs).

126. For a further discussion of specific instances in recent CBA negotiations in which minor league players have been detrimentally affected, see *infra* notes 127-36 and accompanying text.

127. *See* Broshuis, *supra* note 102, at 77 (detailing process in which each team could submit list of fifteen major or minor league players to be protected from expansion draft).

128. *See id.* (explaining Rule 5 Draft as annual draft, which allows other teams to select minor league player if that player is not yet on major league roster and has played requisite amount of years in minor leagues).

129. *See id.* at 78 (noting that if player was drafted in expansion draft he was automatically placed on expansion club's major league roster).

130. *See id.* at 81 (discussing how some owners coerced minor league players into signing up as replacements by either offering them money or threatening to end their contracts). For players who had toiled in the minor leagues for years, this seemed like a golden opportunity to realize their dream and play in the major league. *See id.* (acknowledging it was also difficult to turn down salary of $115,000 offered to replacement players considering how little they made in minors).

131. *See* Broshuis, *supra* note 102, at 81 (stating MLBPA's policy that once former replacement player made major league roster they were still barred for rest of their careers from union's representation). Given that the strike ended before the season started, some of the players that took the risk and played as replacement players saw only a couple of measly at-bats in spring training games before they were fired. *See id.* (noting most were given small amount of severance pay, between $2,000 and $5,000, while Montreal Expos only gave their discarded replacement players signed jerseys).

132. For a discussion on the affects of the latest CBA negotiations, see *infra* 133-37 and accompanying text.

Rule 4 Draft and pushed back the eligibility requirements for the Rule 5 Draft by a year.[133] These changes limited minor league player mobility and decreased potential opportunities to be signed to a major league contract.[134] Moreover, the 2012 Basic Agreement severely limited the amount an amateur can earn through a signing bonus and eliminated the ability of amateurs to negotiate their minor league contracts before officially playing in the minor leagues.[135] Thus, the precedent set by the 1968 Agreement in bargaining over matters that affect minor league players continues today.[136] This history leads to the current case of *Senne v. Office of the Commissioner of Baseball*, in which the court must decide if the exploitation of minor league players has gone too far.[137]

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133. *See* Broshuis, *supra* note 102, at 84-85 (explaining how shortened signing period for draftees of Rule 4 Draft limits players' ability to negotiate contract terms while extension of Rule 5 Draft eligibility allows major league teams to delay signing players another year before another team can acquire those players in Rule 5 Draft). The Rule 4 Amateur Draft is the standard draft in which amateurs enter, are drafted by a major league team, and are assigned to a minor league affiliate in that team's farm-system. *See id.* (differentiating from Rule 5 Draft, which essentially re-drafts minor league players who have been in minor leagues for several seasons without being signed to major league team).

134. *See id.* at 85-86 (telling story of former minor leaguer Mark Alexander and damaging effects rule changes had on his career). Mark Alexander pitched very well in the Dodgers' farm system for three years and – given that he was then eligible for the Rule 5 draft due to his three years of service – was hoping that the Dodgers would either protect him by signing him to their forty-man roster or that he would be picked up by another team in the Rule 5 Draft which would guarantee him a spot on that team's twenty-five-man major league roster. *See id.* (listing array of pitching awards Alexander won at different minor league levels). Although, the 2007 CBA pushed back eligibility for Rule 5 Draft to four years service time, which in turn allowed the Dodgers to wait another year before they had to decide if they wanted to protect Alexander by reserving him on the forty-man roster. *See id.* (explaining Alexander did not pitch well following year, was not picked up in next Rule 5 Draft, and retired from baseball without ever playing in MLB).

135. *See* Broshuis, *supra* note 102, at 87-90 (discussing newly established aggregated bonus pools). Under this new system, each team is granted a specific amount of money that can be used towards signing bonuses and those teams exceeding the limit must pay a harsh tax—a team that exceeds its bonus pool by 5%-10% must pay a 75% tax on the overage as well as losing a first round draft pick in the following draft. *See id.* (noting penalty tax distributed evenly among teams that stay within bonus pool). Also, the restriction of amateurs only being able to sign minor league contracts prevents the opportunity for a top-talent prospect – while a rare occurrence – to sign a major league contract right away. *See id.* (discussing players such as Stephen Strasburg who signed major league contract as amateur and benefited right away by being on 40-man roster and earning significantly more money while playing in minor leagues).

136. *See generally* Silverman v. Major League Baseball Player Relations Comm., Inc., 880 F. Supp. 246, 246 (S.D.N.Y. 1995) (noting recent court decision reiterating MLBPA only represents major league players).

137. For a further discussion of issues in *Senne*, see *infra* notes 138-52 and accompanying text.

C. The Case of *Senne*

1. *Background of* Senne

The plaintiffs in *Senne,* a group of former minor leaguers representing all thirty MLB franchises, contend their lack of union representation enabled the MLB to illegally depress their wages without providing them with any recourse.[138] Thus, because the MLB controls entry into the League, plaintiffs argue that the MLB exploits young players' desire to make a major league team by grossly underpaying them.[139] Considering consistencies at each minor league level, plaintiffs believe the MLB and Commissioner issue guidelines as to how much a player will make upon signing his initial UPC contract.[140] Currently, entry-level wages for a first-year player are $1,100 per month.[141] A player is only entitled to receive his monthly salary during the championship season, which, at its longest, is five months.[142] Thus, minor leaguers are not paid for any of the work they are required by contract to perform outside of their regular season and playoff games, such as spring training, winter workouts, and instructional leagues.[143] Due to the limited number of months in which players can receive a paycheck, plaintiffs estimate the majority of minor league players earn less than $7,500 annually.[144] Therefore, given their annual income, minor league baseball players fall well below the federal poverty guidelines.[145]

Plaintiffs further contend that, in addition to not being paid for work performed outside the championship season, players are not paid for a large amount of work performed *during* their cham-

138. For a further discussion on MLBPA and its lack of application to minor leaguers, see *supra* notes 113-116 and accompanying text.

139. *See* Complaint *Senne, supra* note 6, para. 95 (claiming MLB exploits minor leaguers by paying them below minimum wage or not paying them at all).

140. *See id.* para. 96 (noting teams deviate very little from these guidelines).

141. *See id.* para. 98 (listing monthly salaries at each level – $1,100 for Rookie and Short-Season A; $1,250 for Class-A; $1,500 for Class-AA; and $2,150 for Class-AAA).

142. *See id.* para. 101 (constituting Championship Season from start of playing regular season games to end of playing season when they are eliminated from playoffs, if they even made it).

143. *See id.* paras. 102-07 (describing all obligations under their contracts that players are required to perform in off-season yet must do so without being paid).

144. *See id.* para. 101 (noting players at lower levels earn $3,000 or less because their season is shorter).

145. *See* U.S. Federal Poverty Measure, *2015 Federal Poverty Guidelines,* U.S. DEPT. OF HEALTH & HUMAN SERVICES, *available at* http://aspe.hhs.gov/poverty/15poverty.cfm#guidelines (last visited Apr. 15, 2015) (establishing federal poverty threshold for forty-eight contiguous states at $11,770).

pionship season.[146] Plaintiffs state that during the season minor league teams, on average, play six to seven games a week, with each day at the stadium demanding eight hours of the players' time.[147] Strength trainers hired by the MLB franchises demand additional time from players for mandatory conditioning.[148] Furthermore, plaintiffs allege that the amount of travel time on busses during road trips adds considerable time to their workweek.[149] On top of that, plaintiffs claim that it takes a significant amount of time to pack and unpack for each trip.[150] Consequently, plaintiffs demand compensation for the significant overtime hours they believe they log each week.[151] Thus, plaintiffs seek to recoup damages against the MLB for paying them below minimum wage, failing to pay them overtime, and failing to pay them at all for a substantial amount of work performed.[152]

2. *Claims in* Senne

Plaintiffs and the Minor League Collective filed claims against Major League Baseball, the Commissioner, and all thirty MLB teams.[153] Plaintiffs allege wage and hour violations under both federal and state law.[154] This Comment focuses specifically on the federal claims.[155]

Count I contends that Defendants have been, and continue to be, in violation of federal minimum wage and overtime requirements established by the FLSA.[156] Plaintiffs state that at all relevant

146. *See* Complaint *Senne*, *supra* note 6, paras. 109-21 (alleging minor leaguers work well in excess of forty hours per week considering everything they are required to do).

147. *See id.* para. 110 (estimating three hours per game plus five hours total before and after for mandatory stretching, batting practice, fielding practice, throwing, and conditioning).

148. *See id.* para. 112 (stating required workouts under MLB's UPC add additional compensable time to total number of hours they work per week).

149. *See id.* para. 113 (noting half of team's games are played away from home with road trips entailing multiple bus rides lasting several hours).

150. *See id.* para. 114 (describing how players must pack all of their equipment and load it onto bus only to have process reversed when they get back).

151. *See id.* para. 116 (stating minor leaguers work roughly 60-70 hours per week and thus deserve overtime pay for 20-30 hours per week).

152. *See* Complaint, *Senne*, *supra* note 6, para. 66 (citing collective damages sought by plaintiffs through class action).

153. *See id.* para. 172 (indicating all similarly-situated minor league players are entitled to collectively participate in action by "opting-in").

154. *See id.* paras. 176-270 (bringing state claims under California, Florida, Arizona, North Carolina, and New York laws)

155. *See id.* paras. 163-75 (alleging 2 claims under FLSA).

156. *See id.* para. 164 (declaring defendants engaged in long-standing and widespread violations of FLSA).

times, they were, or continue to be, employees within the meaning of the FLSA.[157] Further, Plaintiffs allege that Defendants, at all relevant times, served as employers under the standards of the FLSA.[158] Plaintiffs state their claim is further validated by the fact that their work regularly involves interstate commerce.[159] Therefore, given these facts, as alleged, Plaintiffs contend Defendants "constructed, implemented, and engaged in a policy and practice" that failed/fails to pay minor league players minimum wage, failed/fails to pay them overtime, and failed/fails to pay them at all for much of the work they perform.[160] Plaintiffs allege Defendant knowingly committed these violations in a reckless manner.[161]

Next, Count II alleges Defendants have not properly kept records in compliance with the FLSA.[162] Plaintiffs claim Defendants failed to account for all of the extra hours minor league players work, as detailed above.[163] Therefore, Plaintiffs assert that there is a presumption that the employees' estimates of hours worked are accurate, because Defendants failed to keep proper records.[164] As a result of the violations in Count I and II, Plaintiffs state they have suffered and continue to suffer damages and, thus, are entitled to

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157. 29 U.S.C. § 203(e) (2011) (defining employee under FLSA).

158. 29 U.S.C. § 203(d) (2011) (defining employer as person acting directly or indirectly in interest of employer in relation to employee).

159. *See* Complaint, *Senne*, *supra* note 6, para. 165 (implying claimant's standing under FLSA).

160. *See id.* paras. 167-69 (listing 3 claims under FLSA Defendants are in violations of).

161. *See id.* para. 171 (claiming Defendants pattern of unlawful practices have been willful and defendants knew or should have known such practices were unlawful).

162. 29 U.S.C. § 211(c) (2011) (directing that every employer must keep records of employees in regard to wages, hours, and other conditions and employer must preserve such records).

163. *See* Complaint, *Senne*, *supra* note 6, para. 174 (claiming Defendants failed and continue to fail to properly record hours minor leaguers work in workweek).

164. *See id.* para. 175 (citing Anderson v. Mt. Clements Pottery Co., 328 U.S. 680, 687-88 (1946)). In *Anderson*, the Court held that under the FLSA an employer is required to keep proper records of wages, hours, and other conditions and if there is a violation and the employer has not kept proper records, an employee is entitled to damages if they can prove "that he has in fact worked for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." *See Anderson*, 328 U.S. at 687-88 (clarifying employer still capable of rebutting employee claims with its own evidence).

relief under FLSA.[165] The case is currently pending in Federal District Court in Northern District of California.[166]

IV. LEGAL IMPLICATIONS OF DECISION IN *SENNE*

A. Victory Unlikely for Minor Leaguers

Despite the different ways in which minor league players have sought relief, their chances of winning—not only in *Senne*, but in general—are slim.[167] In *Senne* Plaintiffs are seeking relief under FLSA.[168] However, despite apparent inequalities between major league players and minor league players, it is unlikely that the MLB or MLBPA is in violation of any federal labor laws.[169] The exploitation of minor league players as a bargaining chip in CBA negotiations is not necessarily illegal, because every decision affecting minor league players affects major league players in some way as well.[170] Therefore, given how courts have interpreted CBAs to exclude minor league players from MLBPA representation, it is unlikely that the court will find the use of minor league players as a bargaining chip to be invalid.[171]

It is unclear how the court will rule regarding whether or not minor league baseball employers are exempt from the FLSA.[172] In

165. *See* Complaint *Senne*, *supra* note 6, para. 170 (claiming all damages recoverable pursuant to FLSA). "Any employer who violates the provisions . . . of this title shall be liable to the employee or the employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages." *See* 29 U.S.C. § 216(b) (2011) (outlining damages, right of action, attorney's fees and costs, and termination of right of cost for violation of minimum wage or overtime compensation law).

166. *See generally* Second Amended Complaint *Senne*, *supra* note 13 (reporting suit has been filed in circuit court in San Francisco).

167. For a further discussion on likelihood that minor leaguers will not be afforded the relief they desire, see *infra* 168-82 and accompanying text.

168. *See generally* Complaint *Senne*, *supra* note 6 (bringing claims under FLSA).

169. *See* Broshuis, *supra* note 102, at 94 (acknowledging MLB has never recognized MLBPA as bargaining representative for minor leaguers therefore MLBPA owes no duty to minor league players and cannot be in violation of federal laws).

170. *See id.* at 95 (discussing how bargaining over draft matters affects major league free agency as well as minor league players' mobility). Although, on the whole, minor leaguers are negatively affected—as demonstrated by the institution of signing bonus pools that, if exceeded, require a team to pay a penalty tax which is then distributed among other clubs to help pay those clubs' major league players' salaries. *See id.* at 90 (noting signing bonuses of minor leaguers are limited while major leaguers salaries are paid by violations of bonus pool limitation).

171. *See id.* at 94 (noting every basic agreement since 1970 states MLBPA is "sole and exclusive collective bargaining agent for all Major League Players").

172. For further background on recent FLSA challenges against MLB and inconsistencies in court rulings, see sources cited and accompanying text *supra* notes 74-92.

response to FLSA claims against the Cincinnati Reds, the court in *Bridewell* held that the team does not fit the seasonal establishment exemption and thus is subject to the FLSA.[173] In contrast, and possibly more in line with the circumstances in *Senne*, the court in *Jeffery* found that a minor league team was a seasonal establishment and thus exempt from the FLSA.[174] Therefore, while it is undecided as to how minor league players will be treated under the FLSA, the most relevant court precedent works against them.[175] Even if the court finds that minor league teams are not exempt as seasonal establishments, the Defendants can argue that minor league players are exempt as "creative professional employees."[176] The MLB could raise the point that the overtime pay the minor leaguers demand is not for work, but rather for their own professional development.[177] In other words, minor league players who train and hone their craft outside of the games do not deserve overtime pay for attempting to improve their own professional ability.[178]

Furthermore, given the combination of the MLB's antitrust exemption and the traditional view of the minor league journey, Congress does not appear to be drafting favorable legislation for minor league players any time soon.[179] In 1998 Congress passed the Curt

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173. *See generally* Bridewell v. Cincinnati Reds, 155 F.3d 828 (6th Cir. 1998) (holding that despite length of season Reds are year-round organization subject to FLSA).

174. *See generally* Jeffery v. Sarasota White Sox, 64 F.3d. 590 (11th Cir. 1995) (holding given length of minor league team's season, at less than seven months, club was seasonal establishment exempt from FLSA).

175. *See id.* (employers of minor league team not regulated by FLSA).

176. *See* U.S. DEP'T OF LABOR, EXEMPTION FOR PROFESSIONAL EMPLOYEES UNDER THE FAIR LABOR STANDARDS ACT (FLSA), U.S. WAGE AND HOUR DIVISION (July 2008), *available at* http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.pdf (recognizing exemption from FLSA for employees who perform work requiring originality or talent in recognized field or creative endeavor).

177. *See* McCann, *supra* note 17 (discussing life of professional athlete demands long hours and tough schedule which do no equate to work requiring overtime pay).

178. *See id.* (noting baseball will cite case precedent and Department of Labor Wage and Hour materials in supporting their argument). When an employee qualifies as a "bona fide professional employee" they become exempt under Section 213(a)(1) of the FLSA and an employer is not required to pay them overtime for work in which they utilize their talent. *See* 29 U.S.C. § 213(a)(1) (2011) (qualifying creative professional employee as one whose primary duty is performance of work requiring invention, imagination, originality or talent in recognized field of creative endeavor).

179. *See* Broshuis, *supra* note 102, at 96 (citing Supreme Court cases repeatedly recognizing Congress's ability to eliminate antitrust exemption yet failure of any legislation to ever do so).

Flood Act, weakening baseball's antitrust exemption.[180] However, this act specifically held that baseball retained its exemption from antitrust laws concerning matters related to minor league players.[181] Considering Congress's refusal to enact changes in baseball for minor league players, along with the traditional notions of the requisite journey to the major leagues, efforts by minor league players to lobby for change appears futile.[182]

B. Assuming *Arguendo* Minor League Players Win

A win for the minor league players in this case would not only have huge implications in baseball but would ignite suits in other organizations, thereby reshaping professional sports.[183] If the court finds that minor league players are employees under the FLSA, the players are entitled to minimum wage and overtime pay.[184] Recently, the NLRB ruled that Northwestern University football players are employees within the meaning of federal labor laws.[185] Thus, if Northwestern football players brought a claim under the FLSA, they could argue that they are employees under labor law and are entitled to minimum wage and overtime pay.[186]

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180. 15 U.S.C. § 26(b) (1998), *available at* http://www.law.cornell.edu/uscode/text/15/26b%5C (stating antitrust laws are to apply to matters effecting employment of major league baseball players).

181. *See id.* (stating Act does not apply to anything in relation to minor league players or first-year player draft).

182. *See* Broshuis, *supra* note 102, at 98 (discussing failed attempts at passing bills and little power minor league players have in influencing any substantial change). In 2001, Congress rejected a bill proposed by Minnesota Senator Paul Wellstone, the Fairness in Antitrust in National Sports Act, which attempted to amend language of the Curt Flood Act. *See id.* (arguing Congress has given MLB team owners blank check of power by refusing to change exemption).

183. For a further discussion of ramifications across all sports, see *infra* notes 184-90 and accompanying text.

184. 29 U.S.C. § 203 (2011) (explaining definitions of FLSA and requirements for being recognized as employee under statute).

185. *See* NLRB, NLRB DIRECTOR FOR REGION 13 ISSUES DECISION IN NORTHWESTERN UNIVERSITY ATHLETES CASE, NLRB.GOV (Mar. 26, 2014), http://www.nlrb.gov/news-outreach/news-story/nlrb-director-region-13-issues-decision-northwestern-university-athletes (citing NLRB's decision supporting NW football players as "employees" under labor law allow to unionize). The NLRB reasoned that "the players time commitment to their sport and the fact that their scholarships were tied directly to their performance on the field" brought them within wide scope of the common law definition of "employee" used in the National Labor Relations Act. *See* Brian Bennett, *Northwestern Players Get Union Vote*, ESPN (Mar. 27, 2014, 9:23 AM), http://espn.go.com/college-football/story/_/id/10677763/northwestern-wildcats-football-players-win-bid-unionize (highlighting other lawsuits and scrutiny of NCAA over its amateurism rules).

186. *See* Zachary R. Fowler & Nicole J. O'Hara, *Student Athletes Could be FLSA Pitfall for Colleges*, THE LEGAL INTELLIGENCER, June 24, 2014, *available at* http://www.evergreeneditions.com/article/Student-Athletes+Could+Be+FLSA+Pitfall+For+

College football programs generate massive, yearly revenues for their respective universities, dwarfing even the most successful minor league teams' intake.[187] Hence, college football programs are generating more than enough money to compensate their players at the national minimum.[188] Therefore, if the court in *Senne* allows minor league players to share in the revenue, college football players will have a very strong case in demanding a portion of the revenue they produce as well.[189] While the weight of this issue is outside the scope of this Comment, it is important to realize that a decision in favor of minor league players could have a domino effect through college sports.[190]

A win for the minor league players would also have a significant economic effect on professional baseball.[191] Most importantly, increased salaries for minor leaguers would directly cause minor league teams in the smaller markets to fold.[192] Attendees of minor league games are drawn to the fun, family atmosphere of the game.[193] They enjoy the idea of cheap tickets, fun promotions, and wholesome entertainment while watching quality baseball.[194] Thus, increases in price would only serve to deter those trying to watch a game for a reasonable cost.[195] Therefore, while a win for minor

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Colleges/1740158/0/article.html (discussing while scholarship athletes are compensated in form of scholarships non-scholarship athletes are working without compensation).

187. *See id.* (noting in 2013 University of Texas football team generated $139 million in revenue including $34.5 million in ticket sales alone).

188. *See id.* (discussing original intent of FLSA was to promote minimum standard of living necessary for health and well-being of workers).

189. *See* Alicia Jessop, *The Economics of College Football: A Look at the Top-25 Team's Revenues and Expenses*, FORBES (Aug. 31, 2013, 10:32 AM), http://www.forbes.com/sites/aliciajessop/2013/08/31/the-economics-of-college-football-a-look-at-the-top-25-teams-revenues-and-expenses/ (listing total revenues of top NCAA teams with twenty-fifth ranked Oregon State at bottom bringing in $20.7 million in annual revenue).

190. *See* Fowler & O'Hara, *supra* note 186 (discussing recognition of college players as employees could give rise not only to FLSA claims but to claims for workers' compensation and employment discrimination as well).

191. *See* McCann, *supra* note 17 (discussing economic arguments MLB will likely raise in *Senne* case).

192. *See id.* (noting increase in pay and benefits would translate into higher ticket prices for minor league games, which fans would not pay).

193. *See Top Ten Minor League Baseball Promotions*, REAL CLEAR SPORTS (May 17, 2013), http://www.realclearsports.com/lists/top_10_minor_league_promotions/intro.html (discussing various ways minor league teams lure fans to stadium such as "Nickel Beer Night").

194. *See id.* (noting fans allure to all-you-can-eat deals and package deals for families).

195. *See* Ken Davidoff, *High Costs of Citi Visits Helping to Keep Mets Fans Away*, N.Y. POST, Apr. 5, 2014, http://nypost.com/2014/04/05/high-cost-of-citi-visits-

league players may enhance their current situation, many will lose their jobs because the overall minor league system would face extreme economic pressure.[196]

V. CONCLUSION

A win for minor leaguers in *Senne* could potentially change the face of sports, both at the professional and amateur level, forever.[197] If deemed employees within the scope of the FLSA, the MLB would have to compensate both former and current minor league players for every hour they ever worked, as well as all of the unpaid overtime hours they logged.[198] A decision awarding these damages is extremely unlikely.[199] However, regardless of *Senne*'s outcome, by peeling away the romantic outer layer of minor league baseball and showing the world its impoverished core, the MLB will be driven to institute change in a way that will benefit minor league players.[200] Be it in the form of increased wages or CBA regulations limiting use of minor league players as a bargaining chip, minor league players must be reasonably able to follow their dreams.[201] Thus, while the minor league players in *Senne* may not win, they have opened the door, and sooner or later, change will arrive.[202]

*Mark Stanton**

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helping-to-keep-mets-fans-away/ (discussing high cost to experience Mets games and lack of tickets being sold).

196. For a further discussion of economic pressures forcing minor league teams to fold, see *supra* 191-95 and accompanying text.

197. For a discussion on the ramifications of a win for minor leaguers, see *supra* notes 183-96 and accompanying text.

198. For a discussion on plaintiffs' claims and demands, see *supra* notes 153-66 and accompanying text.

199. For a discussion of likelihood of victory for minor leaguers, see *supra* notes 167-82 and accompanying text.

200. For a further discussion on salaries falling below federal poverty level, see *supra* notes 144-45.

201. For a brief discussion on the tough road to the major leagues, see *supra* notes 103-07 and accompanying text.

202. For a further discussion on likelihood of victory for minor leaguers, see *supra* notes 167-82 and accompanying text.

* J.D. Candidate, May 2015, Villanova University School of Law; Denison University, Political Science, B.A., 2012. I would like to thank everyone involved with the *Jeffrey S. Moorad Sports Law Journal* for their hard work and commitment to publishing this article. I would like to thank my parents, for their constant selflessness and for demonstrating what it means to be a good person. Finally, I would like to thank Abner Doubleday for giving us the gift of baseball.