CAN'T ANYBODY HERE RUN THIS GAME? THE PAST, PRESENT AND FUTURE OF MAJOR LEAGUE BASEBALL

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INTRODUCTION

Major League Baseball is at a crossroads. After nearly destroying itself by canceling parts of two seasons and the 1994 World Series, the game is making a comeback. Interleague play, expansion, and the record-setting home run hitting of Mark McGwire and Sammy Sosa have once again sparked fan interest in the "National Pastime." The 1997 Basic Agreement has ensured labor peace through the end of the decade. Baseball players and owners must acknowledge, however, that they cannot continue to run the game with the selfishness and shortsightedness displayed in recent years. Major League Baseball requires long-term stability to remain an economically viable sports alternative in the face of stiff competition from the three other major professional sports leagues and an ever-widening array of entertainment options.

This article analyzes the state of Major League Baseball at the turn of the century. First, the article highlights problematic issues that led to eight work stoppages since 1972. The commentary then analyzes the competing interests in Major League Baseball (for example, interests of the players, owners, league, and fans). Finally, this discussion presents alternatives to the present collective bargaining agreement and provides a blueprint for Major League Baseball's success in the next century.

I. THE RISE OF THE MLBPA

A. Early Unionism and Marvin Miller

The current tensions between Major League Baseball's ("MLB's") players and owners originate with the formation of the Major League Baseball Players Association ("MLBPA"). In 1946, team owners responded to a failed attempt at player unionization and to competition for playing talent from the rival Mexican League by instituting a pension plan, modifying the waiver rules, and granting players a weekly spring training expense allowance.[1] The players voted to create the MLBPA in 1954 as their official representative in the ongoing pension plan discussions with the owners.[2] Shortly thereafter, the MLBPA reached an agreement with the owners to allocate sixty percent of annual national television and radio revenues from the World Series and All-

1. *See* GERALD W. SCULLY, THE BUSINESS OF MAJOR LEAGUE BASEBALL 34 (1989).

2. *See* ANDREW ZIMBALIST, BASEBALL AND BILLIONS: A PROBING LOOK INSIDE THE BIG BUSINESS OF OUR NATIONAL PASTIME 17 (updated ed. 1994). For a discussion of player unionization prior to the MLPBA (including the Brotherhood of Professional Base Ball Players, the Players Protective Association, and the Fraternity of Professional Baseball Players of America), *see generally* DAVID Q. VOIGT, AMERICAN BASEBALL, VOLUME ONE: FROM GENTLEMAN'S SPORT TO THE COMMISSIONER SYSTEM (1983); *see also* ROBERT F. BURK, NEVER JUST A GAME: PLAYERS, OWNERS, AND AMERICAN BASEBALL TO 1920 (1994).

Star Game to the pension fund.[3]

Initially, the MLBPA did not view itself as the owners' negotiating adversary. Its first president, Cleveland Indians pitcher Bob Feller, was actually opposed to unionism.[4] In fact, during the early 1960's, the *owners* paid Judge Robert Cannon to be the MLBPA's legal advisor, in violation of federal laws forbidding employers from contributing to their employees' labor organizations.[5] Even though Cannon was the owners' salaried employee, the union accepted Commissioner William Eckert's assurances that Judge Cannon could effectively represent its interests.[6]

The players generally trusted the owners to treat them fairly, believing the owners to be good businessmen who knew what was best for baseball.[7] While they perceived some injustice in the industry, they were too disorganized to force changes.[8] The perpetual reserve system, which bound players to their teams for as long as management desired, kept salaries low and reduced players' bargaining power in salary negotiations.[9] The minimum salary had not increased appreciably in real dollars since the turn of the century, even though the season schedule had increased by eight games to the present-day 162-game schedule.[10] The 1962 expansion

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3. *See* LEE LOWENFISH, THE IMPERFECT DIAMOND: A HISTORY OF BASEBALL'S LABOR WARS 188 (revised ed. 1991).

4. *See* SCULLY, *supra* note 1, at 34. New York Yankees pitcher Allie Reynolds, one of the MLBPA's early organizers, told The Sporting News in 1953 that although he was not opposed to unions in industry, "If I had any suspicion that we in baseball were moving towards a union, I would not have anything to do with the enterprise." CHARLES P. KORR, *Marvin Miller and the New Unionism*, *in* THE BUSINESS OF PROFESSIONAL SPORTS 115, 116 (Paul D. Staudohar and James A. Mangan eds., 1991).

5. *See* LOWENFISH, *supra* note 3, at 200. The Taft-Hartley Act states, in relevant part, "It shall be an unfair labor practice for an employer . . . to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." 29 U.S.C. § 158(a)(2) (1998).

6. *See* KORR, *supra* note 4, at 118.

7. *See* MARVIN MILLER, A WHOLE DIFFERENT BALL GAME: THE SPORT AND BUSINESS OF BASEBALL 39 (1991).

8. *See* SCULLY, *supra* note 1, at 34. As one critic observed at the time, the players were incapable of forming a strong union because "ball playing is a calling brief in duration, migratory and seasonal in character." Comment, *Monopsony in Manpower: Organized Baseball Meets the Antitrust Laws*, 62 YALE L. J. 576, 635 (1953).

9. *See* ZIMBALIST, *supra* note 2, at 4-7.

10. *See id.* at 85.

from sixteen to twenty teams generated more revenues for the sport, but was not accompanied by increased pension benefits.[11] Players were receiving very little of the revenues entering baseball from growing national television coverage and expansion fees.[12] Although such developments made the players more adversarial by the mid-1960's, the union leaders knew too little about labor law and collective bargaining to change the status quo.[13] As Jim Bunning, a player active in the MLBPA during the 1960's and now a Republican congressman from Kentucky, later reflected, the MLBPA "needed someone to pull away [the owners'] friendly, fatherly image. . . . [We knew] something was screwed up. It was another matter to have some idea about how to fix it."[14]

The MLBPA's role changed dramatically in 1966 when Marvin Miller became the union's first permanent, full-time director.[15] Miller brought extensive negotiating experience and legal knowledge to the MLBPA from his tenure as a United Steelworkers of America official.[16] According to Bunning, Miller "knew labor-management law better than anyone [either] side ever hired."[17] Unlike past MLBPA leaders, Miller viewed himself as a partisan labor negotiator between the union he represented and the commissioner who was management's representative.[18] Miller's sole allegiance was to the union, and he sought to develop a relationship between the players and owners that was "dignified and mutually respectful."[19]

Miller's first accomplishment was to unify the players and, to that end, he established a permanent office for the MLBPA to promote year-round communication between the players and union leadership.[20] Initially, Miller focused the union's efforts on relatively minor issues such as the pension

11. *See* LOWENFISH, *supra* note 3, at 191.
12. *See* MILLER, supra note 7, at 7; *see also* LOWENFISH, *supra* note 3, at 191.
13. *See* MILLER at 9.
14. *See* KORR, *supra* note 4, at 120.
15. *See* ZIMBALIST, *supra* note 2, at 17.
16. *See* LOWENFISH, *supra* note 3, at 196.
17. *See* KORR, *supra* note 4, at 120.
18. *See* MILLER, *supra* note 7, at 47.
19. *See* LOWENFISH, *supra* note 3, at 202.
20. *See id.* at 201.

fund, minimum salary, and player grievances.[21] The disputes over these issues yielded small victories for the union and, more importantly, served to educate the players of the need for a strong players' union and helped to allay the players' fears of the word "union."[22]

A prime example of the need for a union was the owners' bad faith in discontinuing the practice of using the pension fund to finance the MLBPA.[23] The owners rescinded the union's funding when Miller took office, claiming they had only recently learned that the Taft-Hartley Act prohibited such payments.[24] The owners then rejected the players' suggestion to fund the MLBPA from All-Star Game proceeds, a revenue source the owners previously had permitted to be used for union purposes.[25] Miller's eventual solution to fund the MLBPA by collecting two dollars from each player gave the union greater independence and showed the players that the owners were much less benevolent than they once appeared.[26] Within a year of assuming the MLBPA's leadership role, Miller transformed the union into an effective advocate for the players and established himself as the unquestioned spokesperson for a united workforce just beginning to comprehend the need for drastic industry-wide changes.[27]

B. *Collective Bargaining*

In 1967, the MLBPA's growing strength persuaded owners to form their own labor relations organization, the Player Relations Committee ("PRC"), to engage in collective bargaining with the union.[28] A standard labor-management practice in other industries, the collective bargaining process involves player-owner negotiations over MLB's economic and legal framework, theoretically, resulting in an agreement by both sides to abide by the guidelines upon which they

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21. *See* MILLER, *supra* note 7, at 153-154.
22. *See id.* at 155.
23. *See* LOWENFISH, *supra* note 3, at 200.
24. *See* MILLER, *supra* note 7, at 68.
25. *See* LOWENFISH, *supra* note 3, at 200.
26. *See* KORR, *supra* note 4, at 126.
27. *See* LOWENFISH, *supra* note 3, at 201.
28. *See id.* at 203.

settle.[29] Miller convinced the players that the baseball industry was sufficiently prosperous to give the players a greater share of revenues, as long as the union remained united in its demands for a higher minimum salary and improved working conditions.[30] Collective bargaining with the owners was the means by which the players could assert their newfound power.

The 1968 Basic Agreement was a landmark event in the history of baseball's labor relations because it gave the players a collective voice, for the first time, in determining the conditions of their employment.[31] The players obtained a $4,000 increase in the minimum annual salary; in the twenty years preceding Miller's hiring in 1966, the minimum salary had risen only $2,000.[32] The players also obtained the right to formal grievance arbitration.[33] Whereas the owners previously had been the sole arbiters of player-owner disputes, the arbitration process allowed the commissioner to resolve conflicts.[34] Furthermore, the parties incorporated the Uniform Player's Contract (the standard employment contract signed by all major-league players) into the Basic Agreement, thus establishing player contracts as an appropriate subject for arbitration.[35] The incorporation of the UPC also meant that any future changes to the Uniform Player's Contract must be accomplished through collective

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29. For a more thorough treatment of the collective bargaining process, *see, e.g.*, Robert A. McCormick, *Baseball's Third Strike: The Triumph of Collective Bargaining in Professional Baseball*, 35 VAND. L. REV. 1131 (1982). *See also* Milton Handler and William C. Zifchak, *Collective Bargaining and the Antitrust Laws: The Emasculation of the Labor Exemption*, 81 COLUM. L. REV. 459 (1981); Nancy Jean Meissner, *Nearly a Century in Reserve: Organized Baseball: Collective Bargaining and the Antitrust Exemption Enter the 80's*, 8 PEPP. L. REV. 313 (1981).

30. *See* LOWENFISH, *supra* note 3, at 202.

31. *See id.* at 203.

32. *See id. See also*, ZIMBALIST, *supra* note 2, at 18.

33. *See* LOWENFISH, *supra* note 3, at 203.

34. *See id.* The significance of grievance arbitration under the 1968 Basic Agreement was reduced by the fact that the commissioner worked for the owners, who actually fired Commissioner Eckert in December 1968 for ruling in favor of a player in a grievance arbitration hearing. *See* ZIMBALIST, *supra* note 2, at 18. For further discussion of the grievance arbitration process, *see, e.g.*, Stephen L. Willis, *A Critical Perspective of Baseball's Collusion Decisions*, 1 SETON HALL J. SPORT L. 109 (1991); Scott S. Morrisson, *Consider Binding Arbitration to Resolve Your Next Dispute*, 40 RES GESTAE 18 (May 1997).

35. *See* MILLER, *supra* note 7, at 97.

bargaining; owners could no longer able to unilaterally alter its terms and conditions.[36] Although the owners' concessions appeared minor, they proved crucial to Miller's long-term plan. As he later recalled, "[i]t didn't seem earth-shattering at the time, but in many ways the 1968 agreement was the building block for major gains to come."[37]

The players obtained binding *impartial* grievance arbitration in the 1970 Basic Agreement,[38] a concession the owners granted in response to the threat to the reserve system posed by St. Louis Cardinals outfielder Curt Flood's lawsuit against Major League Baseball.[39] By agreeing to impartial arbitration, the owners and new commissioner Bowie Kuhn acknowledged the players' dissatisfaction with a dispute resolution process in which a management representative exercised ultimate authority.[40] Replacing the commissioner in the role of grievance arbitrator was a tripartite panel comprised of two partisan members and one neutral member, who would act as Chairman and be selected by joint agreement of the players and owners. As stated in the 1970 Basic Agreement, the panel was authorized to resolve all disputes "which involve the interpretation of, or compliance with, the provisions of any agreement between . . . a Player and a Club."[41] The panel had original jurisdiction over such disputes, and its rulings were legally binding upon both sides. The commissioner, however, retained exclusive authority over matters affecting the public's confidence in, or the integrity of, the game of

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36. *See id.*

37. *Id.*

38. *See* Basic Agreement Between The American League of Professional Baseball Clubs and The National League of Baseball Clubs and Major League Baseball Players Association (1970) [hereinafter 1970 BASIC AGREEMENT], Article X. Other owner concessions in the 1970 Basic Agreement included an increase of the minimum salary to $12,000 and the right to have agents negotiate individual player contracts. *See* LOWENFISH, *supra* note 3, at 211.

39. *See* Flood v. Kuhn, 407 U.S. 258 (1972). The commissioner's dual role as arbitrator and management employee under the previous arbitration system undermined the owners' assertion in the *Flood* case that they treated players fairly. *Flood* is discussed more fully *infra* Part I.C.

40. *See* BOWIE KUHN, HARDBALL: THE EDUCATION OF A BASEBALL COMMISSIONER 141 (1987).

41. 1970 BASIC AGREEMENT, Article X.

baseball.[42]

In April 1972, the MLBPA demonstrated unprecedented unity by calling the first industry-wide players' strike and thus delaying the start of the regular season. The immediate cause of the strike was the owners' refusal to use a surplus in the players' pension fund to add a cost-of-living increase to the players' medical and retirement benefits.[43] Although Miller initially thought it unwise to strike on the issue, the players were angered by the owners' unwillingness to let the players use money that they felt was rightfully theirs in a manner they deemed appropriate. In actuality, both sides viewed the strike as a test of the parties' resolve, rather than a significant disagreement over the issues. As Miller later recalled, "[m]oney was not the issue . . . The real issue was power. Set on having their way, the owners believed the players would back down, or if they did strike, fold [soon after]."[44]

The strike lasted thirteen days, after which the owners retreated from their hard-line stance and agreed to the players' original demands.[45] The players gained $500,000 from the strike settlement, but lost $600,000 in foregone wages.[46] The owners realized a net savings of $100,000 in player salaries, but lost $5.2 million in revenue from the eighty-six games that were canceled.[47] Additionally, the

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42. *See* KUHN, *supra* note 40, at 141.

43. *See* Daniel R. Marburger, *What Ever Happened to the 'Good Ol' Days'?*, *in* STEE-RIKE FOUR!: WHAT'S WRONG WITH THE BUSINESS OF BASEBALL 7, 16 (Daniel R. Marburger, ed. 1997) [hereinafter STEE-RIKE FOUR!].

44. MILLER, *supra* note 7, at 210.

45. *See id.* at 221. The New York Times summarized the absurdity of the owners' stubbornness during the 1972 strike in the following manner:

> Players: We want higher pensions.
> Owners: We won't give you one damn cent for that.
> Players: You don't have to - the money is already there. Just let us use it.
> Owners: It would be imprudent.
> Players: We did it before, and anyhow, we won't play unless we can have some of it.
> Owners: [After two weeks] Okay.

MILLER, *supra* note 7, at 222. Oakland Athletics owner Charles Finley stated that "very few owners knew there was any surplus in the pension fund. That was the main problem. . . . The owners didn't understand what it was all about." *Players Reject Upgraded Offer*, WASHINGTON POST, Apr. 11, 1972, at D1.

46. *See* ZIMBALIST, *supra* note 2, at 19.

47. *See id.*

strike alienated baseball fans across the country; less than 8,000 people attended the St. Louis Cardinals - Montreal Expos Opening Day game at Busch Stadium in St. Louis.[48] Although attendance soon improved, it was an ominous sign for the baseball industry that its players and owners were willing to sacrifice regular-season games to gain bargaining leverage.

C. The Antitrust Exemption

The players and owners fought their next battle over professional baseball's antitrust exemption. The perpetual reserve system clearly violated the Sherman Act's prohibition against monopolistic practices and unfair restraints of trade,[49] but remained virtually unchanged due to MLB's exemption from antitrust law. The Supreme Court first granted the exemption in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*.[50] The Baltimore club had been a member of the Federal League, a rival professional league that operated from 1914 to 1915.[51] The National League attempted to destroy the new Federal League by buying some of its franchises and convincing others to abandon the league.[52] Baltimore ownership responded by bringing an antitrust suit against the National League for violating Section One of the Sherman Act.[53]

The Supreme Court ruled in favor of the National League in 1922, agreeing with the National League's assertion that professional baseball games were entirely intrastate affairs, rather than "interstate commerce."[54] As Justice Oliver

48. *See* JOHN HELYAR, LORDS OF THE REALM: THE REAL HISTORY OF BASEBALL 128 (1994).

49. *See e.g.,* 15 U.S.C. §§ 1, 2 (1998). Section 1 of the Sherman Act states "Every contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States . . . is hereby declared to be illegal." 15 U.S.C. §1 (1998). Section 2 states "Every person who shall monopolize . . . any part of the trade or commerce among the several States . . . shall be deemed guilty of a felony." 15 U.S.C. § 2 (1998).

50. 259 U.S. 200 (1922).

51. *See* SCULLY, *supra* note 1, at 27.

52. *See id.*

53. *See* Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 259 U.S. 200, 207 (1922).

54. *Id.* at 208.

Wendell Holmes wrote for the unanimous Court, "[T]he fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business. . . . [T]he transport is a mere incident, not the essential thing."[55] Holmes also noted that professional baseball was an "exhibition" and not "trade or commerce in the commonly accepted use of those words."[56] Holmes' opinion thus did not reach the question of the reserve system's legality under antitrust law because, as an "exhibition" and not interstate commerce, MLB was not obligated to abide by the Sherman Act.

The Supreme Court next considered the Sherman Act's application to professional baseball in *Toolson v. New York Yankees Baseball Club, Inc.*[57] Career minor-leaguer George Toolson alleged that the New York Yankees, as a part of MLB's monopoly of the professional baseball industry, had violated the Sherman Act by reserving his rights and restricting his freedom to change employers.[58] The Court reaffirmed professional baseball's antitrust exemption in a 7-2 *per curiam* decision in favor of the Yankees.[59] The Court again failed to consider the reserve system's legality under antitrust law, upholding *Federal Baseball* on *stare decisis* grounds without reaching the merits of Toolson's argument.[60] Fearful of harming America's "National Pastime," the Court insisted that Congress determine the fate of baseball's antitrust exemption, stating that "the [baseball] business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. . . . We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation."[61]

Justice Burton's thoughtful dissent viewed *Federal Baseball* as an anachronism, in light of Major League

55. *Id.* at 208-09.
56. *Id.* at 209.
57. 346 U.S. 356 (1953) (per curiam).
58. *See id.* at 362.
59. *See id.* at 357.
60. *See id.*
61. *Toolson*, 346 U.S. at 357.

Baseball's emergence as a powerful economic force.[62] Noting professional baseball's significant national advertising, radio, and television revenues, Burton asserted that "it is a contradiction in terms to say that the defendants in the cases before us are not now engaged in interstate trade or commerce as those terms are used . . . in the Sherman Act."[63] He believed the Court should correct its own mistakes, rather than wait for congressional intervention.[64] Although baseball retained its privileged status in *Toolson*, Burton's dissent laid the foundation for future rulings that other professional sports, such as football, basketball, hockey, and boxing, were not entitled to similar antitrust exemptions.[65]

In 1972, Curt Flood presented the Supreme Court with a third opportunity to consider MLB's antitrust exemption. Flood had been a St. Louis Cardinals outfielder for twelve seasons before being traded to the Philadelphia Phillies in October 1969.[66] Flood vehemently protested the transaction, as he had developed numerous personal and economic ties to the St. Louis area.[67] Moreover, as an African-American, he was also uncomfortable with the prospect of living and working in Philadelphia, a city he considered hostile to blacks.[68] Baseball's strict reserve system provided him with few options, so Flood wrote a letter to Commissioner Kuhn in which he demanded the freedom to contract with other teams:

> After twelve years in the major leagues, I do not feel that I am a piece of property to be bought and sold irrespective of my wishes. I believe that any system that produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States. . . . I believe I have the right to

62. *See id.* at 364 (Burton, J., dissenting).
63. *Id.* at 358 (Burton, J., dissenting).
64. *See id.* at 364 (Burton, J., dissenting).
65. *See, e.g.*, Radovich v. National Football League, 352 U.S. 445 (1957); Haywood v. National Basketball Association, 401 U.S. 1204 (1971); Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc.., 351 F. Supp. 462 (E.D. Pa. 1972); U.S. v. International Boxing Club, 348 U.S. 236 (1955).
66. *See* Flood v. Kuhn, 316 F. Supp. 271, 272 (S.D.N.Y. 1970).
67. *See* MILLER, *supra* note 7, at 172.
68. *See* LOWENFISH, *supra* note 3, at 208. In his autobiography, Flood unflatteringly referred to Philadelphia as "the nation's northernmost southern city." CURT FLOOD with RICHARD CARTER, THE WAY IT IS 188 (1971).

consider offers from other clubs before making any decisions.[69]

Kuhn denied the request, prompting Flood to file an antitrust suit challenging the reserve system.[70]

After the Southern District of New York and the Second Circuit decided against Flood,[71] the Supreme Court ruled 5-3 in *Flood v. Kuhn* that *stare decisis* mandated continued adherence to the principles set forth in *Federal Baseball* and *Toolson*.[72] While Justice Blackmun acknowledged that professional baseball is a business engaged in interstate commerce, he interpreted congressional inaction following *Toolson* as tacit approval of MLB's antitrust exemption.[73] Blackmun wrote that the Court's treatment of professional baseball is an aberration, but "it is an inconsistency and illogic of long standing that is to be remedied by Congress."[74]

D. *The Reserve System*

Although the owners emerged victorious in *Flood*, they believed congressional intervention was imminent and were willing to compromise in the 1973 Basic Agreement on the players' demands for changes in the reserve system. The owners' most significant concession was final-offer salary arbitration for all players with more than two years of MLB

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69. FLOOD, *supra* note 68, at 194-95.

70. *See* ZIMBALIST, *supra* note 2, at 18.

71. *See* Flood v. Kuhn, 316 F. Supp. 271 (S.D.N.Y. 1970); Flood v. Kuhn, 443 F.2d 264 (2d Cir. 1971).

72. *See* Flood v. Kuhn, 407 U.S. 258, 282 (1972).

73. *See id.* at 283. The Court's decision to perpetuate MLB's antitrust exemption was surprising in light of the National Labor Relations Board's 1969 decision conferring union status upon the MLBPA, in which the Board stated that professional baseball must abide by federal *labor* laws as "an industry in, or affecting interstate commerce." American League of Professional Baseball Clubs, 180 N.L.R.B. 190, 192-93 (1969).

74. *See* Flood v. Kuhn, 407 U.S. at 284. Congress finally heeded the Court's call to action by passing the Curt Flood Act of 1998. *See* 112 Stat. 2824 (1998). The Flood Act revokes MLB's antitrust exemption only as it relates to labor relations; baseball is still exempt from antitrust laws for matters such as franchise relocation, broadcast rights, and league expansion. *See* 15 U.S.C. §27(a) and (b) (1998).

The practical effects of the Flood Act are extremely limited. Because of the Supreme Court's decision in Brown v. Pro Football, Inc., 518 U.S. 231 (1996), that unionized employees cannot file antitrust suits, the MLBPA will have to decertify before the players can ever seek to challenge the owners under antitrust laws. Considering the important role that the union plays in the baseball industry, such action is highly unlikely.

service.[75] Previously, when a player and club were unable to agree on a salary figure, the player's only leverage was to hold out into the season or to retire. These alternatives hurt both sides, as the player did not collect salary and the team missed his on-field contributions. The 1973 Basic Agreement permitted the player and club to submit their best offers to a neutral arbitrator once the two sides reached a bargaining impasse.[76] The arbitrator would consider past performance, comparable peer salaries, and other evidence before awarding the salary figure he deemed more appropriate.[77] As a corollary, the 1973 Basic Agreement required the owners to disclose all player salaries to ensure fair arbitration hearings.[78] The players immediately benefited from the arbitration process, as the average salary increased significantly between 1973 and 1974.[79]

The 1974 *James Hunter v. Charles Finley* grievance arbitration negated any progress salary arbitration may have made in satisfying players' demands for changes in the reserve system.[80] Prior to the 1974 season, star Oakland Athletics pitcher Jim "Catfish" Hunter signed a one-year contract for $100,000, half to be paid as regular salary and half to be used in any manner he chose.[81] Hunter subsequently asked Oakland owner Charles Finley to use the discretionary half to purchase a $50,000 non-taxable annuity in Hunter's name.[82] Finley refused Hunter's request several times during the 1974 season because the payment would not be tax-deductible for Finley until Hunter collected

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75. *See* Marburger, *supra* note 43, at 11. The owners' other main concession was the so-called "Curt Flood Rule," which allowed players with at least ten years of MLB experience (the last five with the same team) the right to veto any trade. *See id.* at 11-12. The Curt Flood Rule gave players some control over where they played for the first time since 1879. *See* ZIMBALIST, *supra* note 2, at 21.

76. *See* LOWENFISH, *supra* note 3, at 218.

77. *See* SCULLY, *supra* note 1, at 36.

78. *See id.*

79. *See* ZIMBALIST, *supra* note 2, at 85. Although the $4,000 1973-74 increase was slightly less than the 1967-68 and 1969-70 increases, the latter two were due in large part to $4,000 and $2,000 increases in the minimum salary, respectively. *See id.* The 1973-74 increase in average salary was more significant because the minimum salary remained constant between 1973 and 1974. *See id.*

80. *See* Panel Dec. No. 23 (1974).

81. *See* MILLER, *supra* note 7, at 227.

82. *See id.*

the money a decade later.[83] The MLBPA filed a grievance on Hunter's behalf in October 1974, claiming that Finley's failure to purchase the annuity voided Hunter's playing contract under the terms of the 1973 Basic Agreement.[84]

In December 1974, arbitrator Peter Seitz ordered Finley to purchase the annuity for Hunter and declared the pitcher free to contract with any club he wished.[85] One of baseball's best pitchers, Hunter soon signed an unprecedented five-year, $3.75 million contract with the New York Yankees.[86] More significantly, Hunter's experience gave the players a glimpse of their true market value and strengthened the MLBPA's faith in the arbitration process. The owners were furious at Finley for allowing Hunter's grievance to reach arbitration, but could not restrain themselves from bidding up Hunter's salary.[87] As Commissioner Kuhn later recalled, "It was fiscal insanity. Baseball did not know it yet, but the Hunter deal heralded an era of fiscal irresponsibility by ownership that has not abated to this day. Finley . . . had opened the door for what would soon be the greatest player affluence in the history of sports."[88]

In 1975, Los Angeles Dodgers pitcher Andy Messersmith presented the MLBPA with the test case it needed to challenge the reserve system in grievance arbitration. After signing a $90,000 one-year contract in early 1974, Messersmith had a spectacular season and won twenty games for the pennant-winning Dodgers.[89] Because he enjoyed playing in Los Angeles, he requested a "no-trade"

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83. *See id.* at 228.

84. *See id.* at 231. Paragraph 7(a) of the Uniform Player's Contract stated: "The Player may terminate this contract . . . if the Club shall default in payments to the Player . . . or shall fail to perform any other obligation agreed to be performed by the Club." 1973 Uniform Player's Contract, § 7(a) (incorporated as an appendix to The Basic Agreement Between the American League of Professional Baseball Clubs and the National League of Professional Baseball Clubs and the Major League Baseball Players Association (1973) [hereinafter 1973 BASIC AGREEMENT]) (quoted in MILLER, *supra* note 7, at 228).

85. *See* MILLER, *supra* note 7, at 233.

86. *See id.* at 237. By comparison, owner George Steinbrenner had purchased the entire Yankees franchise in January 1973 for only $10 million. *See* KUHN, *supra* note 40, at 143.

87. *See* KUHN, *supra* note 40, at 141, 143.

88. *See id.* at 143.

89. *See* MILLER, *supra* note 7, at 241.

provision in his 1975 contract so that the Dodgers could not trade him to another team without his consent.[90] The Dodgers refused and unilaterally renewed Messersmith's contract for the 1975 season under Section 10(a) of the Uniform Player's Contract.[91]

After the 1975 season, the MLBPA filed a grievance on behalf of Messersmith and Montreal Expos pitcher Dave McNally.[92] The union claimed that Section 10(a) only granted teams a one-year renewable option, after which players were free to negotiate with other teams.[93] The arbitration panel was authorized to rule on the reserve clause and its meaning, the union reasoned, because the players and owners had incorporated the Uniform Player's Contract into the 1973 Basic Agreement.[94] Furthermore, the owners had asserted in *Flood* that the perpetual reserve system was a "mandatory collective bargaining issue."[95]

The owners first argued that the reserve system was outside the arbitration panel's jurisdiction.[96] Article XV of the 1973 Basic Agreement explicitly stated that the Agreement did not "deal with the reserve system."[97] Since the panel could only rule on disputes covered by the Basic Agreement, the owners claimed that the *Messersmith* case was beyond its authority. The owners further maintained that even if the arbitration panel did have jurisdiction, the reserve clause was perpetual in nature.[98] They claimed that a club's renewal of a player's contract carried over all of its terms, including the provision for a subsequent one-year

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90. *See id.*

91. *See id.* Section 10(a) provided, in relevant part: "If [prior to the beginning of the season] the Player and the Club have not agreed on the terms of [a] contract, . . . the club shall have the right . . . to renew this contract for the period of one year on the same terms." 1973 Uniform Player's Contract, § 10(a) (incorporated as an appendix to the 1973 BASIC AGREEMENT).

92. *See* In re: Professional Baseball Clubs, 66 Lab. Arb. (BNA) 101 (1975) (Seitz, Arb.) [hereinafter *Messersmith*]. McNally chose to quit professional baseball during the 1975 season rather than sign a new contract with the Expos. *See* MILLER, *supra* note 7, at 245.

93. *See* 66 Lab. Arb. at 110.

94. *See id.*

95. *See* LOWENFISH, *supra* note 3, at 212.

96. *See* 66 Lab. Arb. at 103.

97. *See* 1973 BASIC AGREEMENT, Article XV.

98. *See* 66 Lab. Arb. at 102.

reserve.[99] Isolating Section 10(a) from the purpose of the reserve system, asserted the owners' attorneys, "was to describe the human skeleton omitting the backbone."[100]

After hearing both sides' arguments in November 1975, Chairman Seitz strongly urged the owners and players to reach a settlement. He was inclined to rule for Messersmith and McNally but, like the Supreme Court before him, feared being remembered as the man who destroyed baseball.[101] Seitz contacted the owners prior to rendering his decision and suggested that they reach a compromise over the reserve system in their negotiations with the players for the 1976 Basic Agreement.[102] As Seitz explained to the owners, "Clearly, it would be vastly more desirable and profitable for the parties . . . to accommodate their objectives and interests in their bargaining than for this Panel to make a final award. . . . [Otherwise], [t]he Panel will . . . make a decision *promptly* on the merits."[103]

The owners ignored Seitz's warning, and the panel ruled 2-1 that the dispute was within its jurisdiction and that the reserve clause bound an unsigned player for only one additional year beyond the explicit length of his contract.[104] The decision analogized the owners' claims of a perpetual reserve to those "of some nations that persons once its citizens, wherever they live and regardless of the passage of time and other circumstances . . . are still its own nationals and subject to the obligations that citizenship in the nation imposes."[105] The ruling effectively granted free agency without a minimum service requirement, without the team's right to retain the player, and without any compensation to the club losing the player.[106] The apparent result was that any major-league player with a one-year contract for 1975

99. *See id.*
100. LOWENFISH, *supra* note 3, at 16.
101. *See id.* at 18.
102. *See id.*
103. *Id.*
104. *See* 66 Lab. Arb. at 116. The three-member arbitration panel consisted of Marvin Miller (the players' delegate), John Gaherin (the owners' delegate), and Seitz (the neutral arbitrator and panel chairman). *See* LOWENFISH, *supra* note 3, at 17.
105. 66 Lab. Arb. at 114.
106. *See* MILLER, *supra* note 7, at 256.

could refuse to sign a new contract for 1976, play out his option year, and become a free agent at season's end.[107]

Although *Messersmith* severely weakened their bargaining position, the owners belatedly followed Seitz's advice and negotiated a new reserve system with the MLBPA in the 1976 Basic Agreement. Miller actually bargained for a *more* restrictive system than the unfettered free agency granted in *Messersmith*, based on the theory that limiting the supply of available free agents each year would increase owners' demand for them and drive up salaries.[108] Under the new rules, teams could still reserve players with less than six years of major-league experience, so that clubs developing players in their farm systems could reap the initial benefits of their investments.[109] After six years of major-league service, players could declare themselves free agents and participate in a post-season "re-entry draft," in which up to twelve teams could bid on their services.[110] No team could bid on a player after twelve teams had already done so.[111] To maintain competitive balance, teams would bid in reverse order of their previous season's winning percentage. The signing team would then compensate the team losing the free agent with a draft pick in the following year's amateur draft.[112] To protect against player agents "packaging" sets of free agents, the owners insisted upon a clause prohibiting both players and clubs from acting in concert when exercising their rights under the free-agency system.[113]

E. Conclusion

When ratified by the players and owners in July, the 1976 Basic Agreement signaled the beginning of a new economic

107. *See* LOWENFISH, *supra* note 3, at 20.

108. *See* MILLER, *supra* note 7, at 259.

109. *See* The Basic Agreement Between the American League of Professional Baseball Clubs and the National League of Professional Baseball Clubs and the Major League Baseball Players Association (1976) [hereinafter 1976 BASIC AGREEMENT], Article XVII(B).

110. *See* 1976 BASIC AGREEMENT, Article XVII(B), (C).

111. *See* 1976 BASIC AGREEMENT, Article XVII(C).

112. *See id.*

113. *See* 1976 BASIC AGREEMENT, Article XVII(G). This provision would come back to haunt the owners in the mid-1980's, when the owners were found guilty of colluding to restrict player movement. *See infra*, at note 206.

era in Major League Baseball. Over the span of a decade, the MLBPA had forced the owners to accept the players as equal partners in the baseball industry. The main reason for the players' unprecedented gains was Marvin Miller. Rather than lead a full-scale revolt against the owners, he methodically educated the players of their rights and informed them of all their options. Miller highlighted examples of the owners' bad faith, which angered the players and made them more willing to fight the owners.

More importantly, Miller gained the players' trust. Miller was the first players' union leader willing to work full-time for the players' interests. He ceaselessly sought new ways for the players to benefit from their status as major-league baseball players. For example, the Topps Chewing Gum Company had sold cards with players' likenesses since 1951, paying each player $5 for their initial rights and $125 annually.[114] In 1968, Miller negotiated a new contract with Topps affording the MLBPA several million dollars in royalties.[115] Miller used the players' faith in him to convince rookies, veterans, stars, and bench players of their common interests, presenting the owners with a united front that could not be broken. Miller persuaded the players to sacrifice for the good of players present and future, even though many would not be around to reap the full benefits of their actions.

The players also succeeded in gaining rights because the owners consistently failed to recognize the MLBPA as a serious threat to their interests. The owners had exercised total control over professional baseball for so long that they did not effectively respond when opposition emerged. They stubbornly refused to compromise on the reserve system, even after they admitted in *Flood* that it was a mandatory collective bargaining issue.[116] They ignored Seitz's warning that he would rule for the players in *Messersmith*, which gave the MLBPA a stronger bargaining position in negotiations for the 1976 Basic Agreement. As Miller later recalled, the owners "had no experience in compromise, no

114. *See* MILLER, *supra* note 7, at 144.
115. *See id.* at 149.
116. *See* LOWENFISH, *supra* note 3, at 212.

inclination to do anything other than what they wanted when they wanted."[117] Miller exploited their weaknesses to the fullest, and the players gained confidence and bargaining leverage with every victory.

II. TWO DECADES OF CONFLICT

Messersmith and the 1976 Basic Agreement drastically changed the economic framework of Major League Baseball. Free to negotiate in an open market, free-agent players found that the demand for their talents far outweighed the available supply. Fierce competition developed for the best players during the off-season, driving owners to pay ever-increasing salaries. The owners also soon regretted granting players the right to salary arbitration, as rising free-agent salaries drove up arbitration awards.[118] At the same time, record attendance and television ratings were generating more revenue that could be used to pay free agents.[119] The result was an increase in the average annual major-league salary from $19,000 in 1967 (the year preceding the first Basic Agreement), to $76,000 in 1977 (the year after the first free-agent re-entry draft), to $1.4 million in 1998.[120]

These economic changes soured relations between the players and owners. The owners sought to regain control by restricting free agency, and the players fought to retain the gains they had achieved through collective bargaining. This conflict between the two sides led to four work stoppages between 1981 and 1994.

A. The 1981 Player Strike

The specific issue that caused the 1981 strike was free-agent compensation. The 1976 Basic Agreement, which expired at the end of 1979, compensated teams losing free agents with amateur draft picks from the signing team.[121]

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117. MILLER, *supra* note 7, at 265.

118. For a more thorough discussion of this development, *see infra*, at Part III.B.1.

119. *See* LOWENFISH, *supra* note 3, at 220.

120. *See* ZIMBALIST, *supra* note 2, at 85; *see also Pay Display: O's Payroll 7.5 Times Expos'* (visited Apr. 1, 1998) <http://espnet. sportszone.com/mlb/news/980401/00645416.html>.

121. *See* ZIMBALIST, *supra* note 2, at 84.

The owners wanted to add a major-league player to the compensation package, hoping that stiffer penalties would deter free-agent signings and halt salary escalation.[122] They also sought to win a victory over Miller and the MLBPA before Miller's imminent retirement.[123] Accordingly, the owners hired a tough management negotiator (C. Raymond Grebey, previously of General Electric), purchased $50 million in strike insurance from Lloyd's of London, and created a $15 million strike fund from the 1979 and 1980 gate receipts.[124] To maintain a united front, the owners imposed a $50,000 fine upon any owner discussing labor relations with the media.[125]

The players and owners opened negotiations and established a joint committee to study free-agent compensation.[126] The committee's January 1981 report failed to offer an acceptable compromise, however, and the owners unilaterally implemented their own compensation plan a month later.[127] In response, the players struck on June 12.[128] For almost two months, neither side showed any sign of backing down. In fact, some of the poorer teams were actually making a profit as a result of the strike fund and strike insurance.[129] Personal animosity between Grebey and Miller also helped prolong the strike, as neither wanted to appear weak by offering to compromise.[130]

The depletion of the owners' strike insurance finally led to a settlement on August 1, seven days before the fund would have run out of money.[131] The compensation compromise was a plan Miller had originally suggested months before and did little to deter free-agent signings. Each team signing a Type-A free agent (a player ranked in the top twenty percent

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122. *See* PAUL D. STAUDOHAR, PLAYING FOR DOLLARS: LABOR RELATIONS AND THE SPORTS BUSINESS 30 (3d ed. 1996).

123. *See* LOWENFISH, *supra* note 3, at 227.

124. *See* ZIMBALIST, *supra* note 2, at 22.

125. *See id.* This was not a hollow threat, as Milwaukee Brewers owner Harry Dalton learned in May 1980 after being fined $50,000 for telling a reporter that he hoped both sides would compromise to end the strike. *See id.*

126. *See* MILLER, *supra* note 7, at 291.

127. *See id.* at 292; *see also* SCULLY, *supra* note 1, at 39.

128. *See* SCULLY, *supra* note 1, at 39.

129. *See* LOWENFISH, *supra* note 3, at 240.

130. *See id.* at 233.

131. *See* ZIMBALIST, *supra* note 2, at 22.

at his position) would place all but twenty-four protected players into a pool.[132] Each team losing a Type-A free agent could select a player from the pool as compensation, although not necessarily a player from the signing team.[133] Teams not signing Type-A free agents in a given year could protect twenty-six players, and up to five teams agreeing to not sign Type-A free agents for a three-year period could protect all of their players.[134]

The strike consumed fifty days and 713 games, which were not rescheduled.[135] Net owner losses totaled $72 million and players' foregone salaries exceeded $34 million.[136] Ratings and attendance were low for the remainder of the 1981 season, but rebounded in 1982.[137]

B. *The 1985 Player Strike*

The three issues that led to the brief 1985 strike were the owners' pension contributions, salary arbitration, and the free-agent compensation pool. The 1981 Basic Agreement allocated one-third of MLB's national television revenue to the players' pension fund; in 1983, this amounted to $15.5 million.[138] The 1984-89 television contract quadrupled such revenues, so that subsequent owner contributions would exceed $60 million per year.[139] The owners wanted to reduce the percentage earmarked for the pension fund in order to ensure their franchises' continued profitability. They claimed that almost all clubs were losing money due to escalating player costs, although economists differed in their analyses of the teams' financial statements.[140] The owners

132. *See id.* at 23.
133. *See* MILLER, *supra* note 7, at 298.
134. *See* ZIMBALIST, *supra* note 2, at 23.
135. *See id.* at 22.
136. *See id.*
137. *See* LOWENFISH, *supra* note 3, at 246-47.
138. *See* STAUDOHAR, *supra* note 122, at 42.
139. *See id.*
140. *See id.* at 43-44. Professor George Sorter, a New York University accounting professor hired by the owners, determined the annual losses to be $27 million rather than the $43 million dollar the owners claimed. *See id.* at 44. Professor Roger Noll, a Stanford economics professor representing the MLBPA, found almost all teams to be profitable, with an industry-wide profit of $9 million. *See id. See also* ZIMBALIST, *supra* note 2, at 24.

also sought to increase the service requirement for salary arbitration to three years; the players wanted to lower it to one year. Finally, both sides were displeased with the 1981 free-agent compensation plan and sought to revise it to their liking.

After a two-day strike in early August and threats from Commissioner Peter Ueberroth to force the parties into a settlement,[141] the players and owners compromised on the main issues in a five-year Basic Agreement. The players would receive $32.7 million annually in their pension fund over the next six years,[142] which doubled the owners' prior contributions but was only 18 percent of national television revenue.[143] The owners succeeded in raising the salary arbitration service requirement to three years. The free agent re-entry draft and the compensation pool were eliminated, so that teams losing a free agent only received a first or second-round amateur draft pick from the signing team.[144]

C. The 1990 Owner Lockout

Negotiations for the next Basic Agreement resulted in the owners locking out the players from spring training for thirty-two days in 1990.[145] The owners refused to go through another season under the old free-agency rules due to escalating salaries and fears of reduced competitive balance. They proposed radical changes, including a salary cap limiting player payroll to 48 percent of the owners' pooled revenues from ticket sales and broadcast rights.[146] The owners also sought to implement a pay-for-performance wage scale for players not yet eligible for free agency.[147]

141. *See id.* at 44. Ueberroth succeeded Bowie Kuhn as commissioner in 1984. *See* MILLER, *supra* note 7, at 385. The MLBPA was represented by Donald Fehr, Marvin Miller's replacement and the MLBPA's attorney in *Messersmith. See id.* at 280, 338. Former American League President Lee MacPhail represented the owners. *See id.* at 391.

142. *See* ZIMBALIST, *supra* note 2, at 24.

143. *See* STAUDOHAR, *supra* note 122, at 44.

144. *See* ZIMBALIST, *supra* note 2, at 24.

145. *See* LOWENFISH, *supra* note 3, at 274-276. The lockout began on February 16 and ended March 18. *See id.*

146. *See* STAUDOHAR, *supra* note 122, at 45.

147. *See* ZIMBALIST, *supra* note 2, at 26.

Salaries would be determined by the player's seniority and on-field performance as compared to other players over the prior two seasons.[148] The players responded by rejecting the salary cap and wage scale proposals and demanded an increase in the minimum salary from $68,000 to $125,000. They also wanted arbitration eligibility restored to two years of MLB service, a substantial increase in pension fund contributions, and team rosters expanded from twenty-four to twenty-five players.[149]

Like Ueberroth before him, Commissioner Fay Vincent took an active role in the negotiations in hopes of resolving the dispute.[150] The owners were initially prepared to end the lockout after Vincent convinced them to relent on their more extreme proposals, but reconsidered when the players insisted on two-year arbitration eligibility. Eventually the two sides compromised on salary arbitration for players with three years service, as well as for the top 17 percent of second-year players.[151] The minimum salary rose to $100,000, and the owners agreed to make slightly higher pension fund contributions.[152] As per the players' request, rosters expanded to twenty-five players. Ominously, the players and owners agreed that either side could reopen the 1990 Basic Agreement to renegotiate major economic issues after three years.

D. *The 1994-95 Player Strike*

The increasing disparity in broadcast revenues among the major-league teams caused the lengthy 1994-95 strike. Because CBS and ESPN lost millions of dollars televising baseball between 1990 and 1993, the national networks had little interest in a new television contract unless MLB lowered its asking price significantly below the 4-year/$1.465 billion deal that MLB had previously

148. *See* STAUDOHAR, *supra* note 122, at 46.

149. *See id.*

150. Vincent succeeded A. Bartlett Giamatti as commissioner after Giamatti died of a heart attack in 1989. *See* LOWENFISH, *supra* note 3, at 272.

151. *See* ZIMBALIST, *supra* note 2, at 26. In the first year under this system, only thirteen players with between two and three years of MLB service were eligible for arbitration. *See id.*

152. *See* STAUDOHAR, *supra* note 122, at 49.

commanded.[153] While shared national television revenues were declining, however, unshared local television revenues were rising drastically. As a result, teams in large media markets were becoming increasingly wealthier and could pay more for players than teams in small markets, who had to either keep payroll low or lose money. The small-market teams demanded that large-market teams share their local broadcast revenues and comprised a voting bloc large enough to reject any Basic Agreement that did not include revenue sharing. The large-market teams would only agree to share revenues if the players accepted a salary cap, so that the large-market teams could recoup in reduced labor costs what they lost through revenue sharing.[154] The players demanded that the owners maintain the status quo and rejected their offer of a salary cap, wage scale, and fifty-fifty split of total revenues between players and owners (player salaries were 58 percent of total revenue at the time).[155] They could not reach a compromise, and the players walked out on August 12, 1994.

The 1994-95 strike was the most disastrous, and ultimately fruitless, work stoppage in the history of professional sports. The strike lasted 232 days, forcing the unprecedented cancellation of the 1994 playoffs and World Series.[156] The owners lost $500 million in revenue, and the players forfeited $250 million in salaries.[157] Unlike 1985 and 1990, there was no commissioner to urge settlement for the good of the game; the office had remained vacant since the owners forced Vincent from office in 1992.[158] The parties

153. *See id.* at 20.

154. *See* Marburger, *supra* note 43, at 29.

155. *See id.*

156. *See* STAUDOHAR, *supra* note 122, at 49-50. The last time the World Series had been cancelled was 1904, when New York Giants owner John T. Brush refused to allow his National League championship team to play against the "minor league" Boston Red Sox. *See* HAROLD SEYMOUR, BASEBALL, VOLUME TWO: THE GOLDEN AGE 14 (1971).

157. *See* Jim Impoco et al., *Down to the Last Out? Baseball Struggles to Settle its Labor Problems and Avoid a Financial Slump*, U.S. NEWS & WORLD REPORT, Feb. 13, 1995, 66.

158. *See* STAUDOHAR, *supra* note 122, at 27. Although Milwaukee Brewers owner Bud Selig became "Acting Commissioner" in 1992, he did not officially assume the title of Commissioner until July 1998. *See Bud Selig* (visited Oct. 19, 1999) <http://www.infoplease.com/ipsa/A109635.html>.

refused to compromise: the small-market teams demanded revenue sharing; the large-market teams refused to share revenues unless they could limit labor costs; and the players would not agree to any system imposing artificial salary restraints. The owners declared a bargaining impasse in December 1994 and unilaterally imposed their salary cap proposal, prompting the MLBPA to file a complaint with the National Labor Relations Board ("NLRB") for unfair labor practices.

Despite the efforts of federal mediators and President Bill Clinton to broker a settlement, the strike continued through spring training, during which the owners hired replacement players for the 1995 season. The strike ended just before Opening Day, however, when the NLRB agreed to seek an injunction against the owners. U.S. District Court Judge Sonia Sotomayor granted the injunction on March 31,[159] implementing the terms of the 1990 Basic Agreement for the 1995 season (and, as it turned out, the 1996 season).[160] Satisfied that they had maintained the status quo, the players returned to spring training in early April and belatedly opened the regular season in mid-May.

The players and owners eventually ratified a new Basic Agreement in November 1996, which took effect for the 1997 season. It extends through the 2000 season, with a union option for 2001.[161] The players accepted a luxury tax to moderate salary escalation, so that the teams with the five highest payrolls would pay a 35% tax (34% in 1999) on the amount by which their payrolls exceed the threshold amount.[162] The players also agreed to contribute 2.5% of

159. *See* Silverman v. Major League Baseball Player Relations Committee, 880 F. Supp. 246, 261 (S.D.N.Y. 1995), *aff'd*, 67 F.3d 1054 (2d Cir. 1995).

160. *See id.*

161. *See* 1997 BASIC AGREEMENT, Article XXVII(A). If the MLBPA exercises its option, the players will lose approximately $24 million in postseason revenues and the owners will not adjust the minimum salary for cost-of-living increases in the 2000 and 2001 seasons. *See id.*; *see also* Appendix, STEE-RIKE FOUR!, *supra* note 43, at 199.

162. *See* 1997 BASIC AGREEMENT, Article XXIII(B)(5). The stated payroll thresholds are $51 million in 1997, $55 million in 1998, and $58.9 million in 1999. *See* Article XXIII(B)(3). If more than five teams exceed the threshold (as was the case in 1997 and 1998), the threshold will rise to the payroll midpoint between the teams with the fifth and sixth-highest payrolls. *See* Article XXIII(B)(3)(a). There will be no luxury tax in 2000 and 2001 (assuming the players extend the

their 1996 and 1997 salaries to the Industry Growth Fund, a joint endeavor between the players and owners to promote baseball in the United States and around the world.[163] The owners implemented a revenue-sharing plan that will transfer 22% of the thirteen wealthiest clubs' local revenues to the other clubs by the year 2000.[164] Salary arbitration rules remained unchanged, although many hearings are now conducted before three arbitrators rather than one to reduce the likelihood of aberrant decisions.[165] Finally, in an effort to avoid another prolonged work stoppage, the players and owners agreed to jointly petition Congress to eliminate MLB's antitrust exemption as it applied to labor matters.[166]

III. THE PRESENT STATE OF MAJOR LEAGUE BASEBALL

The labor peace achieved in the 1997 Basic Agreement is most likely temporary. Every round of collective bargaining negotiations since 1972 has resulted in a player strike or owner lockout.[167] To return stability to Major League Baseball, players and owners must devise and agree upon long-term solutions to the problems associated with dividing the significant revenues generated by the industry.

Any successful long-term solution must consider and satisfy the interests of the four parties chiefly involved in the business of Major League Baseball: the players, the owners, the league as a single entity, and the fans who follow the sport through the media or by attending games. Analyzing the precise nature of these interests is crucial to resolving MLB's unsettled economic and labor issues.

1997 Basic Agreement through 2001). *See* Article XXIII(B)(1).

163. *See* 1997 BASIC AGREEMENT, Articles XXIV(E)(4) and XXVI(A).

164. *See* 1997 BASIC AGREEMENT, Article XXV(A)-(C). "Local revenues" include ticket sales, local broadcasting fees, and stadium revenues (i.e. concessions, parking, etc.). *See* Article XXV(A)(2) and (4).

165. *See* 1997 BASIC AGREEMENT, Article VI(F)(7).

166. *See* 1997 BASIC AGREEMENT, Article XXVIII. This effort culminated in the passage of the Curt Flood Act of 1998, discussed *supra*, note 74.

167. *See* Mark Maske, *The Saddest of Possible Words: Labor Talks; The Past Eight Sets Have Had Work Stoppages. Is There Reason to Hope the Streak Will End?*, THE WASHINGTON POST, Apr. 2, 1999, at H11. Player strikes occurred in 1972, 1980, 1981, 1985, and 1994-95, and the owners locked out the players from spring training in 1973, 1976, and 1990. *See id.*

A. Player Interests

1. Maximizing Salary

Professional baseball is the means by which major-league players earn their living. Accordingly, a player's chief interest is to make as much money as possible during his playing career. Players are the most transient of the four parties in the baseball industry; whereas fans often retain their rooting interests for life, the league has existed virtually unchanged since 1903, and owners can keep teams under the control of their families or corporations indefinitely, the average major-league player's career lasts only 4.5 years.[168] Less than half the players who appear in at least one major-league game in a given season are still in the majors two years later.[169] A significant majority of the players who bargain for and vote on a collective bargaining agreement will therefore no longer be major-league baseball players when the next agreement is negotiated. As a result, MLBPA leadership must ensure that the economic structure created by each individual agreement is acceptable in the short term to its membership, rather than make present concessions to management in exchange for mutually beneficial long-term gains.

Free agency has demonstrated that the highest player salaries result when teams bid for players' services in an open labor market with minimal salary restraints. Before *Messersmith*, the average major-league player earned eight times the mean annual income in the United States.[170] After 15 years of free agency, the average player in 1991 earned forty-seven times the mean annual U.S. income.[171] Furthermore, players prefer mobility and free choice of work environment because they derive economic, social, and psychological benefits from such autonomy.[172]

In an open labor market, players will seek a salary representing a high percentage of the marginal revenue they

168. *See Status Quo*, VANCOUVER SUN, Apr. 1, 1995, at B3.
169. *See* ZIMBALIST, *supra* note 2, at 245.
170. *See id.* at 77.
171. *See id.*
172. *See,* FLOOD, *supra* note 68 at 194-95.

will generate for their team, while the owners typically bear the risk of underperformance.[173] Such marginal revenue may take the form of additional tickets sold, increased concession sales, higher television ratings, or a better chance at the World Series and the additional revenue and exposure that accompany a championship. In 1984, the marginal value of a win to a franchise was approximately $200,000, independent of the team's market size; by 1990, this figure had risen to $400,000.[174] When projected in light of MLB's increased revenues from television, ticket sales, and concessions, the value of an extra win today may be as high as $1 million.

To illustrate how marginal revenue affects salaries, consider a hypothetical player who helped his team win eight extra games in 1999 (hereinafter "Smith," who plays for the New York team). Smith was worth approximately $8 million in additional revenue to the New York franchise (8 wins x $1 million per win). In an open market with competitive bidding, Smith's 2000 salary will approach his projected marginal revenue, as teams will bid on him up to the salary figure at which they still expect to profit from his addition. Artificial restraints on the labor market, however, reduce the percentage of Smith's marginal revenue that owners would be willing to pay him as salary.[175]

In general, both direct restrictions on player movement (such as the reserve system) and indirect restrictions (*e.g.*, "hard" and "soft" salary caps) will result in lower player salaries. Team owners have at least seven methods by which they can limit players' choices over their work environment and artificially reduce salaries: a reserve system, unpublicized player salaries, collusion, a hard salary cap, a

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173. *See* SCULLY, *supra* note 1, at 153. Unlike many other professional sports, the vast majority of baseball player contracts are for guaranteed salary amounts. Many contracts also provide incentive bonuses for exceptional play. Because most contracts are guaranteed, the owner must still pay the player his full salary over the life of the contract even in the event of injury, worse-than-expected performance, or if the player is released.

174. *See* SCULLY, *supra* note 1, at 155; Independent study updating Scully analysis, conducted by David Grabiner, January 30, 1995, available at Internet Newsgroup <Rec.Sport.Baseball>.

175. *See* PAUL C. WEILER and GARY R. ROBERTS, CASES, MATERIALS, AND PROBLEMS ON SPORTS AND THE LAW, Ch. 3, p. 4 (draft)(2d ed., forthcoming).

soft salary cap, a salary or "luxury" tax, and revenue sharing.

The reserve system, as has existed in professional baseball in some form from 1880 through the present day, grants a team the exclusive right to contract with a player.[176] For players with less than six years of major-league service, the reserve system permits teams to retain such exclusive rights beyond the explicit length of the player's contract. After his contract expires, a reserved player's only options are to re-sign with his previous team or play for a team not bound by the National Agreement.[177] The reserve system allows owners to pay players far below their marginal revenue because there is only one bidder for each reserved player's services.[178] Owners may pay their reserved players whatever salaries they deem appropriate, provided that annual pay cuts do not exceed 20 percent of a reserved player's previous yearly salary or 30 percent of his prior two years' salary.[179] As a result, the hypothetical New York owner could choose to pay Smith, who generated $8 million in additional revenue for his team in 1999, a salary near the 2000 league minimum of $200,000 and retain the difference as profit.[180] In this manner, Major League Baseball teams were consistently profitable under the perpetual reserve system that existed until 1976: the salaries of reserved players rose and fell with team revenues, while owner profits remained relatively stable.

Keeping player salaries unpublicized was a method that

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176. *See* ZIMBALIST, *supra* note 2, at 4. The 1997 Basic Agreement permits each team to reserve up to forty players. *See* 1997 BASIC AGREEMENT, Article XX(A).

177. The National Agreement is a pact among major and minor-league teams to honor each other's player contracts. *See* SCULLY, *supra* note 1, at 3.

178. During the 1968 and 1969 seasons, for example, MLB's top players, such as Bob Gibson, Roberto Clemente, Reggie Jackson, and Carl Yastrzemski, were paid between $100,000 and $125,000 per year and were individually worth about 10-15 wins per season to their respective teams. *See* SCULLY, *supra* note 1, at 156. During the same period, the marginal revune generated by each additional win was approximately $64,000 per team. *See id.* With little bargaining leverage under the reserve system, the top players were thus paid less than 10-20 percent of their $640,000 to $1 million contributions to team revenues. *See id.*

179. *See* 1997 BASIC AGREEMENT, Article VI(D).

180. *See* 1997 BASIC AGREEMENT, Article VI(B)(1). The minimum salary could be raised to include a cost of living adjustment rounded to the nearest $500 if the Players Association does not exercise its option to extend the 1997 Agreement pursuant to Article XXVII.

owners used to deflate player salaries until 1973. Before salary arbitration required owners to reveal individual player compensation, players had no way of knowing during their annual salary negotiations how much other teams were paying comparable players. Owners could exploit players' imperfect information and pay them an amount below their actual market value. For example, the Los Angeles team might pay a player with comparable statistics and experience to Smith—and who generated equal revenues for Los Angeles as Smith did for New York—a salary of $9 million for the upcoming season. Regardless of whether the Los Angeles player is actually worth $9 million to his team, Smith could use the $9 million figure during salary negotiations with New York to demonstrate the market value for a player of his caliber. If Smith does not know how much other teams are paying comparable players, he is more likely to accept New York's salary offer without threatening to hold out for more money.[181] Without the publication of player salaries, therefore, a single team's generosity would therefore not affect the salaries of comparable players on other teams.

Collusion replicated the reserve system's effect on salaries by restricting player movement during the free-agent signing periods following the 1985, 1986, and 1987 seasons.[182] Team owners kept player salaries low by agreeing not to pursue each other's free agents.[183] After filing for free

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181. In his now-infamous book BALL FOUR, former New York Yankees pitcher Jim Bouton recounted the following anecdote, epitomizing the manner in which teams typically took advantage of players' imperfect information in the years before salaries were publicized:

> [White Sox GM Ed] Short had offered [pitcher Bob] Locker $16,000 and he was asking for $18,000. Short said he was asking a lot, and that. . .[Dodger pitcher Phil] Regan had just signed a contract for $23,000. . .Locker said, 'You check that. If [Regan] signed for $23,000, I'll sign for $16,000.' The next day Short called him and said, 'I called Buzzie Bavasi (the Dodger GM) and he told me Regan was making $23,000 this year.'. . . After he signed [for $16,000] he . . . wrote Regan a letter . . . Regan wrote back saying he signed for $36,500.

JIM BOUTON, BALL FOUR: MY LIFE AND HARD TIMES THROWING THE KNUCKLEBALL IN THE BIG LEAGUES, 198-99 (Leonard Shecter, ed. 1970).

182. *See* SCULLY, *supra* note 1, at 153.

183. *See* ZIMBALIST, *supra* note 2, at 25. Every Basic Agreement since 1976 has prohibited both owners and players from acting in concert to exercise their rights under free agency. *See, e.g.*, 1997 BASIC AGREEMENT, Article XX(E). The MLBPA won two grievances against the owners for colluding during the 1985-86 and 1986-87 off-seasons, resulting in "second-look" free agency for the players

agency, the players found they had little choice but to re-sign with their former teams, typically for salaries lower than they would have commanded in an open market.[184] The inevitable result was a sharp decline in the rate of increase of player salaries during the collusion period.[185] For example, if Smith became a free agent and was expected to again generate $8 million in additional revenue in 2000, he would expect to receive offers up to $8 million from other teams. If Smith was a free agent during collusion, he might receive offers in the $2-3 million range from maybe one or two other teams. Unless he had an unusually strong desire to leave New York, Smith would likely re-sign with New York for slightly more than the second-highest offer.[186] As in the case of the reserve system, the New York owner would retain the difference between Smith's marginal revenue and his artificially low salary.

The National Basketball Association ("NBA") and National Football League ("NFL") utilize salary caps to reduce salaries and minimize player movement.[187] A salary cap is an agreement by all teams to place an upper limit (and typically a lower limit) on the total amount of money each team may

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colluded against. *See* MLBPA v. The Twenty-Six Major League Baseball Clubs, Grievance No. 86-2, Panel Dec. No. 76 (1987) (Roberts, Arb.); *see also* MLBPA v. The Twenty-Six Major League Baseball Clubs, Grievance No. 87-3, Panel Dec. No. 79 (1988) (Nicolau, Arb.). The owners also agreed in December 1990 to pay the MLBPA $280 million in damages for their collusive behavior. *See* ZIMBALIST, *supra* note 2, at 26. Any future collusion by the owners will automatically result in triple damages. *See* 1997 BASIC AGREEMENT, Article XX(E).

184. *See* ZIMBALIST, *supra* note 2, at 25. After the 1985 season, for example, twenty-nine of thirty-three free agents re-signed with their former teams without receiving any other bids. *See id.* at 24-25. The four players who did change teams were marginal players whose teams expressed no interest in re-signing them. *See id.* at 25.

185. *See id.*

186. The case of Andre Dawson highlights how difficult it was for free agents to change teams during the collusion period. A star player with the Montreal Expos for most of the 1980's, Dawson hoped to sign with a team that played on a natural grass field after the 1986 season because of chronic knee problems. *See* LOWENFISH, *supra* note 3, at 265. Upon finding no interest from other teams, Dawson's agent gave the Chicago Cubs a blank contract for 1987. *See id.* Under pressure from fans and the local media, Cubs' management gave Dawson a one-year contract for $500,000, a 60% cut from his 1986 base salary. *See id.* Dawson subsequently won the 1987 National League Most Valuable Player Award. *See* ZIMBALIST, *supra* note 2, at 25.

187. *See* James Quirk, *The Salary Cap and the Luxury Tax: Affirmative Action Programs for Weak-Drawing Franchises*, *in* STEE-RIKE FOUR!, *supra* note 43, at 97.

spend on player salaries.[188] Such limits are typically set at a certain percentage of total league revenue.[189] A salary cap is an effective way to control salaries because each of the four major professional leagues (MLB, NFL, NBA, and the National Hockey League ("NHL")) enjoys monopoly power in their respective sports, thus eliminating the possibility of competitors making better offers to the players.

In a system utilizing a soft salary cap, such as the NBA, individual teams may exceed the cap amount to re-sign their own free agents who have played with the team for at least three seasons.[190] In practice, a soft cap is like a player-friendly reserve system. Players can become free agents and sign elsewhere, but often find that their original team offers the best deal. Soft salary caps typically present free agents with a choice between moving to new surroundings for less money, or remaining with their old team for more money. To illustrate, Smith might be offered $8 million to stay in New York, whereas Los Angeles can offer him no more than $6 million under its cap. Unless Smith feels he can gain more than $2 million in personal utility or outside income from playing in Los Angeles, the soft salary cap will compel him to remain in New York.

Under a hard salary cap system like the one utilized by the NFL, no team's total player payroll can exceed the cap amount.[191] As a result, free-agent players can only sign with

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188. An individual team's decision to set a budget is not a salary cap. In the absence of a cap, each team is free to set its own budget as it chooses. A salary cap is essentially an agreement whereby every team has the same budget. Salary caps constitute concerted action by two or more teams under Article XX(E) of the 1997 Basic Agreement, and they must be approved during collective bargaining by both players and owners.

189. *See* Quirk, *supra* note 186, at 103.

190. *See* Greg Boeck, *Players' Union Expects Re-opening of Agreement,* USA TODAY, Mar. 20, 1998, at 12C. For example, Michael Jordan's individual salary exceeded the team salary cap by over $6 million after he re-signed with the Chicago Bulls for the 1997-98 season. *See* David DuPree, *Jordan's $33.14M Tops in NBA,* USA TODAY, Feb. 26, 1998, at C1. Commonly referred to as the "Larry Bird" exception, this feature of the NBA's pre-1999 salary cap is the main reason that only five NBA teams had total player payrolls under the $26.9 million cap for the 1997-98 season. *See NBA Team-By-Team Salaries,* USA TODAY, Feb. 26, 1998, at C10.

191. *See* Quirk, *supra* note 186, at 97. In practice, NFL team payrolls do sometimes exceed the cap amount because of certain loopholes in the system, such as the exclusion of signing bonuses from the calculation of total team payroll.

teams that can afford their salary demands under the cap. If no team can meet a free agent's asking price, he will have to accept a lower salary from a team that can fit him under the cap. For example, the most space any team may have under its cap to sign Smith might be $5 million, even though Smith's marginal revenue would be $8 million. Smith would have little choice but to accept the best deal offered, even though the signing team will acquire his services at a cost far below his marginal revenue.

A salary, or "luxury," tax is a penalty levied upon teams whose payrolls exceed a certain threshold amount. The owners can pay their players whatever salary they wish, but the tax increases the marginal cost of all salaries paid above the threshold amount. Under baseball's recently adopted luxury tax system, each of the five teams with the highest payrolls[192] must pay a tax equal to 35 percent (34 percent in 1999) of the amount by which their payroll exceeds the threshold amount.[193] Teams paid $6.5 million in luxury taxes for 1998,[194] which went to the Industry Growth Fund to promote baseball around the world.[195]

In theory, a low tax threshold and high tax rate will

See id. at 103. An example is the Cowboys' 1995 signing of Deion Sanders, whom the team fit under the cap by paying a large signing bonus, along with a relatively low annual salary. *See id.*

192. For luxury tax purposes, team payrolls include the average annual value of each player's contract, all earned performance bonuses, and a 1/30th share of player benefit costs (approximately $5.6 million in 1998). *See* 1997 BASIC AGREEMENT, Article XXIII(C), (E).

193. *See* 1997 BASIC AGREEMENT, Article XXIII(B)(5). The 1998 threshold was $70.5 million. *See Orioles Top Tax List at $3.1 Million* (visited Jan. 8, 1999) <http://cnnsi.com/baseball /mlb/news/1999/01/08/luxury_tax/index.html>, at 1. The 1998 luxury tax was originally to be levied on teams with payrolls exceeding $55 million. *See* 1997 BASIC AGREEMENT, Article XXIII(B)(2). Although fourteen teams had 1998 payrolls in excess of $55 million, the 1997 Basic Agreement assesses a tax only on the teams with the five highest payrolls. *See* 1997 BASIC AGREEMENT, Article XXIII(B). The $70.5 million threshold was the midpoint between the fifth-highest payroll (Los Angeles Dodgers - $70.6 million) and the sixth-highest payroll (Cleveland Indians - $70.4 million). *See Orioles Top Tax List, supra,* at 1-2.

194. *See Orioles Top Tax List, supra* note 193, at 2. For the 1997 season only, $10 million of the $12 million collected in luxury taxes was used to cover a shortfall in the teams' new revenue-sharing plan, while the remainder was distributed among the five American League teams with the lowest net local revenue. *See* 1997 BASIC AGREEMENT, Article XXIII(H).

195. *See supra,* at Part II.D.

decrease salaries and player movement, while giving teams under the threshold an advantage in signing free agents. For example, even though New York might be willing to pay Smith the full $8 million in additional revenue he projects to generate during the 2000 season, New York will tender a lower offer if its payroll exceeds the tax amount. Smith would be worth only $5.9 million in salary because New York would have to pay an additional $1.45 million in luxury tax (35% of $4.15 million). Smith would still cost New York $8 million, but the difference between Smith's salary and his marginal revenue would be diverted to the Industry Growth Fund. Smith, thus, would receive a greater percentage of his marginal revenue from a team under the threshold that is unencumbered by the salary cap.

The final method owners can use to lower player salaries is revenue sharing. MLB teams generate two types of revenue - fixed and variable. Fixed revenues, such as income from television and radio broadcasts, are negotiated at a set level and remain relatively predictable from year to year. Although adding or subtracting a player does not affect a team's fixed revenues, teams with high fixed revenues can pay players more than their expected marginal revenue. Variable revenues, like gate receipts and concession sales, depend largely on local fan interest during the current season. As a result, teams can generate greater variable revenues by adding a star player.

Reallocating fixed and variable revenues from high-revenue teams to low-revenue teams decreases salaries in a manner similar to a luxury tax. To illustrate, if Smith will generate $8 million in variable revenues for New York, but New York has to share 35% of its variable revenues with low-revenue teams, signing Smith will cost New York an additional $2.8 million (35% of $8 million) over the cost of Smith's salary. Therefore, New York should only offer Smith up to $5.2 million in annual salary ($8 million in additional generated revenues, minus $2.8 million distributed as shared revenue). Although New York could offer Smith a salary above his marginal revenue and still remain profitable if the franchise also has high fixed revenues, the further sharing of fixed revenues will moderate teams' salary offers to reflect only the net fixed and variable revenues that teams will be permitted to keep.

2. Maintaining Baseball's Profitability and Popularity

Assuming an open labor market with competitive bidding for their services, it is in the players' best interests for MLB and its teams to be profitable and financially stable. High broadcast ratings and game attendance ensure large fixed and variable revenue streams. As shown below, player compensation increases when league and team revenues rise, as teams can afford to make higher salary bids to free agents.

Team Revenue and Player Salaries: 1974-1997[196]

	Average Team Revenue	Total National TV	Average Salary	Payroll as a % of Revenue
1974	$7.0 million	$23.2 million	$40,839	17.6
1983	$20.1 million	$47.5 million	$289,194	41.1
1989	$47.7 million	$187.5 million	$489,539	31.6
1991	$59.1 million	$365 million	$845,383	42.9
1995	$58.0 million	$182 million	$1,110,766	66.0
1997	$62.6 million	$340 million	$1,336,609	61.0

The above chart demonstrates the correlation between team revenues, player salaries, and an open labor market with competitive bidding for free agents. In 1974, two years before free agency, the average annual player salary was $40,839.[197] Team revenues were approximately $7 million per team, and player salaries comprised 17.6% of average

196. *See* ZIMBALIST, *supra* note 2, at 49-52, 85, 87; *see also* SCULLY, *supra* note 1; Marburger, *supra* note 43; *Average Salary Rises by 4.7 Percent in 1998*, N.Y. TIMES, Dec. 22, 1998, at D5; STAUDOHAR, *supra* note 122, at 32; Impoco et al., *supra* note 157.

197. *See* ZIMBALIST, *supra* note 2, at 85.

team revenue.[198] National television contracts with NBC and ABC generated $23 million per year and league-wide attendance approached 29 million.[199]

After seven years of free agency, annual player salaries had risen to $289,194. Player payroll was 41.1% of team revenues, which revenues averaged $20.1 million per team. National television revenue had increased to $47.5 million and attendance was 45.5 million.[200] In the span of nine years, team revenues tripled due to increased television and gate revenues. Free agency gave players the bargaining leverage to demand a greater proportion of these growing revenues, leading to a seven-fold increase in average annual player salaries.

Conversely, collusion deflated player salaries between 1985 and 1988.[201] Teams became wealthier, as annual national television revenues averaged $187 million and attendance rose to 53 million by 1988.[202] Player salaries stagnated, however, hovering around $400,000 per year.[203] Average player salaries actually declined by approximately $8,000 between 1986 and 1987.[204] As a percentage of team revenues, player payroll fell to 31.6% by 1989.[205] The collusion years proved that players will make less money when precluded from contracting in an open labor market, even if owners have more money to spend on salaries.

Player salaries soared after the owners agreed to pay players $280 million in collusion damages[206] and MLB agreed to a $365-million annual television package with CBS and ESPN.[207] 1991 salaries averaged $891,188, an increase of 53.9% over the 1990 average salary.[208] As a percentage of team revenues, player payroll stood at 42.9%, up from 31.6% in 1989.[209] Fueled by the new national television contract,

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198. *See* ZIMBALIST, *supra* note 2, at 87.
199. *See id.* at 52.
200. *See* Impoco et al., *supra* note 157.
201. *See* ZIMBALIST, *supra* note 2, at 25.
202. *See* Impoco et al., *supra* note 157.
203. *See id.*
204. *See id.*
205. *See* ZIMBALIST, *supra* note 2, at 87.
206. *See id.* at 26.
207. *See id.* at 49.
208. *See Extra Bases*, NEWSDAY, Apr. 2, 1998, at 105.
209. *See* ZIMBALIST, *supra* note 2, at 86.

record-breaking attendance, and growing local broadcast revenues, average team revenues rose to $59.1 million by 1991.[210] MLB was prospering, and the players had the bargaining power to reap the benefits through free agency and salary arbitration.

The 1994-95 strike demonstrated how a decline in revenues will lower player salaries, even in an open labor market. Contracts with ESPN and The Baseball Network generated approximately $85 million in 1994 and $182 million in 1995.[211] Player salaries fell 10% between 1994 and 1995, the first decline in a non-collusion year since the players unionized in the 1950's.[212] Player payroll increased to 66% of team revenues in 1995, but decreased in absolute terms because owners were forced to pay salaries from a shrinking revenue pool.[213]

MLB's 5-year, $1.7 billion contract with Fox, NBC, ESPN, and Fox Sports / Liberty Media, coupled with a post-strike attendance rebound, has once again helped to inflate player salaries.[214] The average player made $1.34 million in 1997, and management officials estimated player payroll to be 61% of team revenues.[215] Average team revenues rose to almost

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210. *See* Impoco et al., *supra* note 157.

211. *See* Marc Chalpin, *It Ain't Over 'til it's Over: The Century Long Conflict Between the Owners and the Players in Major League Baseball*, 60 ALB. L. REV. 205, 226 n.190 (1996). The Baseball Network was a consortium between Capital Cities, NBC, and MLB in a short-lived attempt to share advertising revenue with the national television networks. *See id.* at n.189. The Baseball Network and ESPN generated only $6.5 million per team in revenue in 1995, down from $15 million from CBS and ESPN in 1993. *See* Larry Stewart, *Fox Gets Baseball; NBC is Part of Deal*, L.A. TIMES, Nov. 6, 1995, at C1.

212. *See Extra Bases*, *supra* note 208, at 105.

213. This figure has been reached by utilizing the average team revenue figures provided by *Team-by-Team Total Revenue*, (visited Feb. 3, 1999) <http://espn.go.com/mlb/features/01076707.html> and the payroll figures provided by *Team Payrolls in the '90s* (visited Feb. 3, 1999) <http://espn.go.com/mlb/features/01072323.html>.

214. *See* Mike Eisenbath, *4 Networks Set to Share Baseball Deal; All Postseason Contests to be Aired Nationally, Some on Cable Television*, ST. LOUIS POST-DISPATCH, Nov. 7, 1995, at 01C.

215. *See supra* note 213. By comparison, the NFL salary cap is set at 64% of average team revenue and the pre-1999 NBA salary cap at 54%. *See* James D. Whitney, *Whither Baseball after the Strike of 1994?*, in STEE-RIKE FOUR!, *supra* note 43, at 123, 130. Most NBA teams' payrolls exceeded the salary cap prior to the 1999 Collective Bargaining Agreement, due to the "Larry Bird" exception for re-signing a team's own free agents. *See NBA Team-By-Team Salaires, supra* note 189, at C10.

$62.6 million.

As these figures demonstrate, as long as the labor market remains open and work stoppages are avoided, the players will continue to benefit financially from MLB's widespread popularity.

3. Strong Labor Union

Finally, the players must maintain a strong union to preserve the gains they achieved through collective bargaining. Economist Gerald W. Scully has estimated that prior to free agency, players were paid only 10 to 20 percent of their contributions to club revenue.[216] Today, player salaries are roughly 60 percent of total team revenues and average over $1.4 million per year.[217] The players fought for almost a century to permit competitive bidding for their services and the subsequent redistribution of wealth from management to labor; since *Messersmith*, their main goal has been simply to maintain that status quo.

Because of the players' short average career span and diverse personal concerns at different stages of their careers, a solid, stable union is indispensable to furthering the players' cause. The MLBPA provides continuity in the face of ever-changing membership and acts in the interests of players both present and future. Accordingly, MLBPA General Counsel Gene Orza recently remarked that he believes the players have a "duty" to players past and future to get the highest salaries they possibly can.[218] It is this keen sense of history and solidarity that has made the union so successful. Without strong union leadership, accompanied by the unwavering backing of its members, the players could easily relinquish the wealth and power they gained at the owners' expense.[219]

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216. *See* SCULLY, *supra* note 1, at 7.

217. *See Average Salary Rises*, *supra* note 196, at D5; *see also Pay Display*, *supra* note 120.

218. Interview by Christopher Russo with Gene Orza, MLBPA General Counsel, WFAN Radio, New York, NY (Feb. 19, 1999).

219. A prime example of the need for an effective union to protect the players' interests was the experience of Andy Messersmith after he became a free agent. Messersmith unwittingly relinquished his newly won free-agent status by signing a contract with the Atlanta Braves that gave the Braves the right of first refusal when the contract expired. *See* MILLER, *supra* note 7, at 253. Atlanta

B. Owner Interests

1. Franchise Profitability

Unlike the players, most owners do not consider professional baseball to be their main source of income. Franchise owners tend to be successful businessmen or corporations, who naturally seek to keep costs low relative to revenues. Thus, the owners' basic motivation is to profit from their investment by holding down player salaries, while maintaining consistently high revenue streams. For this reason, the reserve system in place prior to 1976 was ideal for the owners. They retained total control over player movement, so that players had only one bidder for their services. Other than refusing to play, players had almost no bargaining leverage to bring to bear on ownership during contract negotiations. The result was an industry in which management retained at least 80-90 percent of the revenues generated by labor.[220]

Under the pre-1976 reserve system, owners could profit even during periods in which team revenues were low. They could simply reduce salaries at will (knowing their players could not seek better offers elsewhere) or trade players to teams for which they would generate more revenue, receiving in exchange lower-priced players or cash.[221] Furthermore, the owners faced relatively little financial risk by overestimating a player's marginal value; contracts were typically for only one year, and owners could release unwanted players with only ten days notice.[222]

Even though *Messersmith* destroyed the reserve system as

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management removed the clause only when Marvin Miller threatened arbitration and informed them that the Basic Agreement prevented players from giving up rights negotiated by the union in collective bargaining. *See id.*

220. *See* SCULLY, *supra* note 1, at 156.

221. A good example of the latter practice was the behavior of the Kansas City Athletics' ownership between 1955-60. *See* John L. Fizel, *Free Agency and Competitive Balance*, in STEE-RIKE FOUR!, *supra* note 43, at 65. During this period, the small-market Kansas City Athletics and the large-market New York Yankees exchanged 29 players. *See id.* While the Yankees acquired up-and-coming stars like Roger Maris and Ralph Terry, the Athletics typically received unproven low-priced rookies and cash so the Athletics franchise could remain profitable. See *id.*

222. *See, e.g.*, Metropolitan Exhibition Co. v. Ward, 9 N.Y.S. 779, 781-83 (1890).

originally conceived, controlling player movement to the greatest extent possible remains a high priority for ownership. Player movement in and of itself does not concern the owners. In fact, players changed teams at the same rate – 4.7 players per club per year – during the first 18 years of free agency as in the 15 years preceding free agency.[223] Rather, owners have suffered financially from free agency because they no longer *control* player movement. As predicted by economist Ronald Coase's theorem, a reassignment of property rights will only affect the distribution of wealth among parties to a transaction.[224] The demise of the traditional reserve system and the implementation of free agency reassigned the players' property rights from the owners to the players,[225] as the players realized a larger share of their teams' revenues.[226]

The economic effects of the owners' loss of control over player movement are epitomized by the case of Barry Bonds, who left the Pittsburgh Pirates as a free agent to sign with the San Francisco Giants before the 1993 season.[227] Pittsburgh ownership estimated that Bonds' marginal revenue as a Pirate was approximately $5 million per year.[228] The Giants were willing to pay Bonds over $7 million per year, as he could sell more tickets and local advertising in large-market San Francisco than in small-market Pittsburgh.[229] Under the old reserve system, Pittsburgh could have realized a profit of $2 million by trading Bonds to San Francisco for $7 million in players and/or cash.[230] Under the free-agency system, Pittsburgh received nothing when Bonds signed with San Francisco for $7 million. The incentives for the transaction were identical under either scheme, because Bonds was worth more to San Francisco than to Pittsburgh. Free agency, however, transfers the

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223. *See* STAUDOHAR, *supra* note 122, at 37; *see also* Erik Brady and Mel Antonen, *Big Money, Big Trades Changing Face of the Game*, USA TODAY, July 2, 1998, at A1-2.

224. *See* Ronald H. Coase, *The Problem of Social Cost*, 3 J. L. & ECON. 1 (1960).

225. *See* Fizel, *supra* note 221, at 62; *see also* SCULLY, *supra* note 1, at 84.

226. *See supra* Part III.A.2.

227. *See* Fizel, *supra* note 221, at 64.

228. *See id.*

229. *See id.*

230. *See id.* at 65.

difference in expected marginal revenue (in the case of Bonds, $2 million) to the player, rather than to the small-market team.[231]

Besides transferring wealth to the players, the owners dislike the current system of free agency and competitive bidding because it pressures individual owners to match other owners' salary offers. Each owner must compete against twenty-nine other potential bidders for free agents. If one owner pays a free agent more than his expected market value, other comparable or better free agents will demand salaries in accordance with this new pay scale. The competition for free agents thus presents owners a Hobson's Choice between paying a player more than his marginal revenue or risking not getting the player at all.[232]

A recent example of the effects of competitive bidding on free-agent salaries was the New York Yankees' recent negotiations with Bernie Williams. Prior to the start of the 1997 season, the Chicago Cubs, Florida Marlins, and Chicago White Sox signed outfielders Sammy Sosa, Gary Sheffield, and Albert Belle, respectively, to long-term contracts averaging almost $11 million per year.[233] Because Williams was eligible for free agency after the 1998 season, he would not sign a multi-year deal with the Yankees during the 1997-98 off-season unless offered a contract at least as lucrative as that given to Sosa, Sheffield, and Belle, as he believed he deserved comparable compensation as a comparably talented player.[234] When Williams became a free agent after the 1998 season, the standard created by the Sosa, Sheffield, and Belle signings helped him obtain a contract worth an average of $12.5 million annually over seven years from the Yankees.[235] Williams may not generate

231. *See* Fizel, *supra* note 221, at 65.

232. The owners temporarily solved this problem in the mid-1980's by agreeing not to pursue each other's free agents, resulting in the moderation of player salaries. *See supra*, note 184 and accompanying text. After the collusion era, however, average salaries rose from $500,000 in 1989 to $1.4 million in 1998. *See Average Salary Rises*, *supra* note 196, at D5.

233. *See Vaughn Gets Heavenly Deal With Angels; Williams Stays With Yankees*, BUFFALO NEWS, Nov. 26, 1998, at 1C. (Sheffield averages $11,416,667, Belle averages $11,000,000 and Sosa averages $10,625,000). *See id.*

234. *See id.* Williams rejected an offer of $37.5 million for five years and instead signed a one year, $8.25 million deal wit the Yankees. *See id.*

235. *See* Tom Verducci and Kostya Kennedy, *Inside Baseball*, SPORTS

$12.5 million in revenue, but the Yankees were willing to pay Williams that much to prevent other teams from outbidding them. In this manner, competitive bidding for free agents leads owners to devote an increasing percentage of total revenue to player salaries.

The high player salaries that result from competitive bidding also raise the salaries of reserved players that are eligible for salary arbitration. The threat of arbitration reduces the owners' bargaining leverage stemming from the reserve clause, forcing both parties to negotiate in good faith and arrive at a figure comparable to what similarly situated players earn.[236] Under the present rules, players having between three and six years of major league service remain reserved to their teams, but can have an arbitrator (or a three-person arbitration panel) determine their salaries for the upcoming season.[237] The owner and player each submit a salary figure, and the arbitrator decides which of the two figures is more appropriate.[238] Factors the arbitrator may consider when making this ruling include the quality of the player's contribution to the club during the most recent season, the consistency of such contributions over prior seasons, the player's past compensation, and the salaries of comparably talented players.[239]

The owners' main criticism of salary arbitration is that arbitrators can also consider free-agent salaries when ascertaining a player's fair value.[240] The salaries given to

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ILLUSTRATED, Dec. 21, 1998, at 116.

236. *See* Dworkin, *supra* note 239, at 79.

237. *See* 1997 BASIC AGREEMENT, Article VI(F)(1). In addition, the top seventeen percent of players between two and three years of major league service are arbitration-eligible, as are free agents who are offered salary arbitration by their former teams in December of the year in which they become free agents. *See id.*

238. *See* 1997 BASIC AGREEMENT, Article VI(F)(5), (6). The owners demanded "final-offer" arbitration because they distrusted the dispute resolution process. *See* SCULLY, *supra* note 1, at 36. They feared that arbitrators would otherwise arrive at a fair salary figure by splitting the difference between the owner's and player's offers. *See id.* Such a process would likely encourage players to submit unreasonably high figures, so that they would still receive high salaries when the arbitrator split the difference. Final offer arbitration forces both sides to submit salary figures that will appear reasonable to the arbitrator and leads to a high rate of settlement prior to the arbitration hearing. *See id.* at 37.

239. *See* 1997 BASIC AGREEMENT, Article VI(F)(12).

240. *See id.* Arbitrators have considered free-agent salaries as evidence of a player's value since the 1980 *Sutter* arbitration hearing. *See* Marburger, *supra* note

free agents during a given off-season are reflected in the salary requests of arbitration-eligible players in the ensuing years. To illustrate, a ten-year veteran might sign a contract as a free agent for $5 million per year, a figure derived in part from the large number of teams bidding for his services. A four-year player with similar recent performance statistics can then present the ten-year veteran's salary to the arbitrator as proof of the younger player's fair value, even though the younger player does not possess the bargaining advantages conferred by free agency. A single owner's misjudgment of a free agent's market value will thus be reflected in the salaries of all comparable arbitration-eligible players, who benefit from a privilege for which they have not yet qualified.

Although owners win about 55 percent of arbitration hearings in a typical off-season, the overall effects of salary arbitration have been overwhelmingly favorable for the players.[241] Since the late 1970's, the exponential growth of arbitration-awarded salaries has closely tracked the growth rate of free-agent salaries.[242] An arbitration-eligible player faces three possibilities: he may win, or lose, or he can settle with his team for a median figure. Players winning at

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43, at 15. Bruce Sutter was a Chicago Cubs relief pitcher with three years of MLB experience who had won the 1979 Cy Young Award as the National League's top pitcher. *See id.* In his arbitration hearing, Sutter sought an annual salary equal to those paid to other top pitchers. *See id.* The Cubs argued that such a comparison was unfair, because the pitchers to which Sutter compared himself had all signed their contracts as free agents. *See id.* Arbitrator Tom Christenson held for Sutter, ruling that free-agent salaries are admissible evidence in salary arbitration hearings for players with less than six years of MLB service. *See id.*at 16. The owners attempted and failed to solve this problem in the 1990 CBA by insisting upon a clause directing arbitrators to give particular weight to the salaries of players not exceeding one annual service group above the service group of the player in question; *e.g.*, an arbitrator should generally not consider salaries of players with more than four years service time when determining the salary of a three-year player. *See* Dworkin, *Final Offer Salary Arbitration (FOSA) - a.k.a. Franchise Owners' Self-Annihilation, in* STEE-RIKE FOUR!, *supra* note 43, at 81. However, the players and owners also added a provision stating that an arbitrator can consider all other salaries without regard to service time in light of any special accomplishments by the arbitration-eligible player. *See id.* In practice, the "special accomplishments" provision has rendered the "service group" clause meaningless. *See id.* at 81-82.

241. *See id.* at 79.

242. *See* William H. Kaempfer, *Salary Arbitration in Major League Baseball: A Case of Dog Wags Tail*, in STEE-RIKE FOUR!, *supra* note 43, at 85, 88.

arbitration typically more than double or triple their salaries.[243] Players losing at arbitration still increase their annual salary by an average of 50 percent.[244] Players settling before their hearings net, on average, twice their previous season's salary.[245]

Considering the effects of free agency, competitive bidding, and arbitration upon player salaries, it is understandable that the owners demanded a salary cap or luxury tax during the 1994-95 strike. Either salary restraint would lower player salaries[246] and restore some owner control over player movement. Furthermore, the owners might reap the added benefit of dividing the players' union. If teams have restrictions on how much they can spend on players, they will tend to give a greater percentage of available payroll space to a few revenue-generating superstars. The rest of the players will be paid from the small proportion of money remaining under the cap or tax threshold. Because a gulf would thus emerge between the interests of the wealthy stars and the other players, the owners could get the players to accept a cap or significant tax by also offering a substantial increase in the minimum salary. This strategy would best take advantage of the diversity of interests within the MLBPA and might lead the players with short career expectancies (the majority of players) to approve owner-friendly salary restraints over the objections of the superstar minority.[247]

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243. *See Owners Catch No Breaks in Arbitration* (visited Feb. 22, 1999) <http://www.fastball.com/auto/mlb/news/Arbitration Study_0222991405.html>.

244. *See* Kaempfer, *supra* note 241, at 88.

245. *See id.* Even though the owners won 9 of 11 arbitration hearings during the 1998-99 off-season, the 62 arbitration-eligible players averaged a record 169% annual salary increase. *See Owners Catch No Breaks in Arbitration* (visited Feb. 22, 1999) <http://www.fastball.com/auto/mlb/news/ArbitrationStudy_0222991 405.html>.

246. *See supra* notes 191-195 and accompanying text.

247. The NBA owners effectively used this strategy to get the NBA Players Association to accept stricter salary restraints in the 1999 Collective Bargaining Agreement that ended the 1998-99 NBA lockout. The owners' main goal in the 1998-99 NBA lockout was to achieve the cost certainty that the soft salary cap had failed to provide. *See Owners Win, Players Lose in the Post-Lockout NBA*, THE DES MOINES REGISTER, Jan. 10, 1999 (available at 1999 WL 7189428). The players were divided into two camps: the highly-paid superstar minority and the growing lower-paid majority. *See id.*

After a six-month work stoppage, the owners persuaded the union to agree to

2. Franchise Values

The owners also have a strong interest in protecting their franchise values. Accordingly, they seek to maintain a popular, financially-sound league with competitive teams. Even with free agency inflating player salaries, owners will typically make money if their teams enjoy on-field success or are well-marketed as entertainment alternatives.

In fact, the post-*Messersmith* years have proven team ownership to be a lucrative investment. There were ten franchise sales in the 1960's, at an average price of $7.6 million.[248] Nine teams were sold in the 1970's for an average of $12.6 million, and twelve teams were sold in the 1980's for $40.7 million each.[249] The Baltimore Orioles sold for $12 million in 1979, $70 million in 1988, and $173 million in 1993—an annual compound growth rate of 21 percent.[250] The Texas Rangers sold for $10.47 million in 1974, $79.3 million in 1989, and $250 million in 1998, despite reaching the playoffs only once during that time-span.[251] In March 1998, the owners approved the sale of the Los Angeles Dodgers to Rupert Murdoch's Fox Group for $350 million.[252]

The recent rise in franchise values stems in large part from increased fan interest in baseball since the implementation of free agency. High attendance and widespread media coverage have resulted in greater stadium, broadcast, and advertising revenues, offsetting rising player costs.[253] In fact, according to Commissioner Bud Selig, at

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a harder salary cap with absolute limits on individual salaries, in exchange for higher minimum salaries and a generous wage scale for veteran players. *See Here's the Deal*, NEWARK STAR-LEDGER, Jan.7, 1999, at 57. The superstar players suffer most under this agreement, because they are now subject to maximum salary limits. *See id. See also Owners Win, Players Lose, supra*, (listing minimum salary players as winners under the agreement and superstars among the losers).

248. *See* ZIMBALIST, *supra* note 2, at 68.

249. *See id.*

250. *See* Lawrence Hadley and Elizabeth Gustafson, *Increased Revenue Sharing for Major League Baseball?*, in STEE-RIKE FOUR!, *supra* note 43, at 117.

251. *See* ZIMBALIST, *supra* note 2, at 68; *see also AL Notes: Texas Rangers*, USA TODAY BASEBALL WEEKLY, Jan. 21-27, 1998, at 13.

252. *See* Hal Bodley, *Dodgers' New Owners Plan Subtle Changes*, USA TODAY, Mar. 20, 1998, at C1. The sale price includes the team, Dodger Stadium and the land on which it sits in Los Angeles, the Dodgers' spring training complex in Vero Beach, Florida, and a training complex in the Dominican Republic. *See id.*

253. *See* ZIMBALIST, *supra* note 2, at xvii.

least ten teams made a profit in 1998.[254] As a result, today's owners are almost guaranteed a large capital gain if they decide to liquidate their financial interest in professional baseball.[255]

3. Ancillary Ownership Benefits

Owners often seek to use their baseball franchise to benefit their non-baseball business interests, typically through the tax advantages conferred by team ownership. For tax purposes, up to fifty percent of a baseball team's purchase price may be allocated to player contracts.[256] The Internal Revenue Service treats the contracts as intangible assets to be depreciated over players' five-year "useful lives,"[257] even though player contracts typically constitute much less than half of a team's purchase price and baseball players' values often *increase* over time, rather than decrease like buildings or machines. The depreciation losses that owners claim from player contracts constitute a taxpayer subsidy to MLB (and the other professional sports leagues) that owners can use to offset other business losses.

The ancillary benefits of team ownership arise in several other forms, as well. Some owners use the public exposure they receive from their baseball activities to raise consumer awareness of their other businesses. Examples include former Milwaukee Brewers owner Bud Selig, who also owns a chain of automobile dealerships in the Midwest, and St.

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254. *See* David Schoenfield, *Is It Really That Bad?* (visited Feb. 6, 1999) <http://espn.go.com/ mlb/state/wrap.html>. Because of creative accounting and the owners' general refusal to make their financial statements public, it is extremely difficult to ascertain how much profit, if any, that individual teams realize in a given year. A prime example is the 1997 Florida Marlins. Then-owner Wayne Huizenga claimed the Marlins lost $34 million in 1997. *See id.* Forbes Magazine estimated the Marlins' losses at only $5.5 million. *See id.* Economist Andrew Zimbalist examined the financial reports given to new owner John Henry and determined that the Marlins actually made a profit in 1997, in light of the fact that Huizenga also owned the Marlins' stadium and local broadcast rights. *See id.*

255. The best investment of all may have been George Steinbrenner's purchase of the Yankees from CBS, Inc. for approximately $10 million in 1973. *See* ZIMBALIST, *supra* note 2, at 68. According to recent estimates, the franchise may now be worth as much as $1 billion. *See Yankees, Nets to Merge* (visited Feb. 25, 1999) <http://espn.go.com/gen/news/1999/990225/01125231.html>.

256. *See* 26 U.S.C. § 1056(d) (1998).

257. *See* Selig v. United States, 740 F.2d 572, 575 (7th Cir. 1984).

Louis Cardinals owner August Busch, whose team ownership increases sales of Anheuser-Busch beers.[258] Other owners view their baseball franchises as useful, high-profile pieces of larger corporate empires. Examples include Ted Turner's use of Atlanta Braves' broadcasts to promote Turner-owned cable stations and Fox and Disney's ownership of the Los Angeles Dodgers and Anaheim Angels, respectively, to promote their myriad of other entertainment endeavors.[259] Several owners, such as New York Yankees owner George Steinbrenner and Baltimore Orioles owner Peter Angelos, have already achieved financial security from other businesses and simply enjoy the fame and prestige that accompany ownership of a professional sports franchise.[260] Such owners may value winning games as much as, or more than, making a profit.[261]

C. *League Interests*

Major League Baseball is currently comprised of thirty individual teams. Although each team competes against the others on the playing field, no team could survive independent of the MLB structure. Quality players and prosperous, well-managed franchises help create a strong league. A healthy league in turn attracts more fans and

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258. *See* SCULLY, *supra* note 1, at 133.

259. *See* Dean Bonham, *Sports as an Arsenal: Media Tycoons Use Games to Capture Enormous Audiences*, ROCKY MOUNTAIN NEWS, Aug. 16, 1998, 11G.

260. Steinbrenner made his fortune through his ownership of the American Shipbuilding Company. *See* ZIMBALIST, *supra* note 2, at 36-37. Before buying the Orioles, Angelos was a successful attorney in Baltimore representing workers who had been exposed to asbestos. *See* HELYAR, *supra* note 48, at 535.

261. Florida Marlins owner H. Wayne Huizenga is a prime example of the benefits and drawbacks associated with this style of ownership, where owners can exhibit fan-like desires to see their team win. After having committed the franchise to several long-term player and manager contracts worth $120 million, Huizenga admitted that "[w]hen it comes to the Marlins, [I] have not been a good business person. [I]'ve let winning get in the way of some good business decisions." Richard Alm, *Revenues, Rising Salaries Still Tough Outs for Baseball*, DALLAS MORNING NEWS, July 7, 1997, at B2. By Opening Day 1998, thirteen of the twenty-five players on the World Series roster no longer played for the Marlins. *See Go Figure*, SPORTS ILLUSTRATED, Mar. 2, 1998, at 20. By 1999, only four players remained, and the franchise had been sold to commodities trader John Henry for $150 million. *See* Ronald Blum, *Sale of Marlins Approved; Owners Appoint Panel to Study Change*, (visited Jan. 13, 1999). <http://www.fastball.com/auto/mlb/news/Owners_ 0113992222.html>.

revenue, which benefits both players and owners. League objectives, however, are not always identical to those of the individual players, franchises, or fans. This fact is acknowledged in the Major League Agreement, which authorizes the commissioner "to investigate . . . any act . . . not in the best interests of the national game of Baseball."[262] The best interests of Major League Baseball as a single entity, therefore, must be considered in any long-term solution to the industry's present problems.

1. Financially-Sound Franchises

A main concern of the league is the financial health of its individual franchises. MLB cannot survive unless its teams are sufficiently well-managed to generate revenues, are consistently competitive, and cultivate fan interest. In terms of profitability, MLB has remained in good financial health relative to the NBA and NFL. Financial World estimated that in 1993, for example, MLB franchises averaged a profit of $6 million.[263] Only eight of twenty-eight teams lost money, none of which lost more than the $6.3 million lost by the Kansas City Royals.[264] The Baltimore Orioles had the highest profit ($28 million), and ten teams had profits over $10 million.[265] Even without artificial salary restraints, MLB's financial performance was nearly identical to that of the NBA, which averaged $6.3 million in profits per team in 1993 with a soft salary cap.[266] Seven of twenty-seven teams lost money, with the New York Knicks the most profitable team ($29.1 million), and the Philadelphia 76ers the least profitable, losing $7.9 million.[267] The NBA had little financial parity, however, as four teams (the Los Angeles Lakers, Detroit Pistons, Phoenix Suns, and the Knicks) accounted for over 60% of total league profits.[268] In its final

262. WEILER, *supra* note 175, at Ch. 1, p.3 . The Major League Agreement is a constitution-like agreement between the thirty teams detailing Major League Baseball's governance structure. *See* Preamble to the 1997 BASIC AGREEMENT.

263. *See* Michael K. Ozanian et al., *The $11 Billion Pastime*, FINANCIAL WORLD, May 10, 1994, available in LEXIS, Nexis Library, Sports File.

264. *See id.*

265. *See id.*

266. *See id.*

267. *See* Ozanian et al., *supra* note 263.

268. *See id.*

year without a salary cap, thirteen of twenty-eight NFL teams lost money and the average team showed a $400,000 loss.[269] Only the Dallas Cowboys ($15.6 million) had profits exceeding $10 million, and the Detroit Lions *lost* $17.3 million.[270]

Rising franchise values indicate that those outside professional baseball consider team ownership to be a sound investment. As economist Andrew Zimbalist has stated:

> The value of a [sports] franchise will approximate the discounted value of future estimated profits, where profits are conceived broadly to include all forms of return. If these values are high and rising, there must be (an expectation of) a significant and growing return. *The value of companies in an unprofitable industry simply does not rise over time.*[271]

In 1994, *Financial World* envisioned that by the turn of the century, "professional sports team values are going to rise to unthinkable levels. The main reason [being] the consolidation of media and entertainment companies and the voracious appetite these companies will have for sports programming."[272] This prediction has already become reality, as evidenced by the recent sales of the Dodgers to Rupert Murdoch's Fox Group for $350 million and the Angels to Disney (for an undisclosed price).[273] The 1999 $320 million sale of the Cleveland Indians, the 1998 $250 million sale of the Texas Rangers, and the 1993 $173 million sale of the Orioles further suggest that healthy MLB franchises can sell for over $200 million, as compared to the $40.7 million average franchise sale price during the 1980's.[274] Even the troubled Florida Marlins, which paid a $95 million expansion fee in 1990 to join the National League for the 1993 season, sold for $150 million in 1998.[275]

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269. *See id.*
270. *See id.*
271. ZIMBALIST, *supra* note 2, at 62 (emphasis added)..
272. Ozanian et al., *supra* note 263.
273. *See* Bonham, *supra* note 259. Murdoch's "appetite" for sports programming is particularly large, as his various cable stations carry the local broadcasts of twenty-two of the thirty MLB teams. *See Go Figure*, SPORTS ILLUSTRATED, Mar. 30, 1998, at 24.
274. *See* ZIMBALIST, *supra* note 2, at 68; *see also* Barnett D. Wolf, *Jacobs Agrees to Sell Tribe for $320 Million*, THE COLUMBUS DISPATCH, Nov. 5, 1999, at 01A.
275. *See* Blum, *supra* note 261, at 1.

The increase in expansion fees also indicates that owning a baseball team is a profitable endeavor. In 1977, the Seattle Mariners and Toronto Blue Jays paid $6.5 million and $7 million, respectively, to enter the American League.[276] In 1990, the Colorado Rockies and Florida Marlins each paid $95 million to join the National League in 1993.[277] By 1995, the cost to the Arizona Diamondbacks and the Tampa Bay Devil Rays for joining the National and American Leagues, respectively, for the 1998 season was $130 million.[278] Expansion fees have risen because the demand for franchises remains high. The Diamondbacks and Devil Rays were selected from a pool of 18 investors representing 11 different cities, each willing to pay more than $100 million for a team.[279] The owners' recent claims of huge financial losses notwithstanding, the high prices paid by outsiders seeking a piece of the professional baseball pie indicate that, for the most part, Major League Baseball is in fine economic shape.[280]

Still, disturbing economic trends have arisen in Major League Baseball since the early 1990's. After national broadcast revenues leveled off in the mid-1990's, publicly funded stadiums and local media contracts emerged as the chief sources of income for several large-market teams. This has caused problems for league-wide competitive balance because unlike national broadcast revenues, teams do not equally share stadium and local broadcast revenues.[281]

Since the Toronto Blue Jays ushered in the most recent flurry of stadium-building with the construction of SkyDome in 1989, eight other teams have moved into new ballparks. Their subsequent experiences demonstrate the positive effects a new stadium can have on a franchise:

- Toronto Blue Jays (SkyDome, 1989): Reached the

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276. *See* ZIMBALIST, *supra* note 2, at 141.
277. *See id.*
278. *See* Fizel, *supra* note 221, at 71.
279. *See id.*
280. *See* ZIMBALIST, *supra* note 2, at 63. However, the 1996 sale of the Pittsburgh Pirates for $85 million highlights one of baseball's biggest concerns: the growing inability of certain "small-market" cities to support a Major League Baseball franchise. *See Pirates Still Await a Handshake,* BASEBALL WEEKLY, Jan. 10, 1996, at 36; *see also* discussion *infra* at 55.
281. *See id.* at 73.

playoffs in 1989 and 1991. Won consecutive World Series titles in 1992 and 1993. Made Roger Clemens the highest-paid pitcher of all-time (temporarily) in 1997. Fifth-highest total revenue, 1990-97.[282]

◦ Chicago White Sox (Comiskey Park, 1991): Reached the playoffs in 1993. Were in first place in the American League Central Division at the end of the strike-shortened 1994 season. On pace to have had one of the five highest payrolls in 1997 before disappointing team performance prompted owner Jerry Reinsdorf to trade several high-salaried players in mid-season. Seventh-highest total revenue, 1990-97.

◦ Baltimore Orioles (Camden Yards, 1992): Reached the playoffs in 1996 and 1997. Had the second-highest payroll in 1997 and the highest in 1998, despite playing in the nation's twenty-second-largest media market.[283] Total attendance for 1998 was 3.68 million, second only to the Colorado Rockies.[284] Second-highest total revenue, 1990-97.

◦ Cleveland Indians (Jacobs Field, 1994): Projected wild-card team in strike-shortened 1994 season and have reached the playoffs every year since. Lost the World Series in 1995 and 1997. Prior to opening Jacobs Field, had not made the playoffs since 1954. Sold out entire season before Opening Day each year from 1996 through 1999. One of five-highest team payrolls in 1997 and 1998. Third-highest total revenue, 1994-97.

◦ Texas Rangers (The Ballpark at Arlington, 1994): Reached the playoffs in 1995, in 1998, and again in 1999 for the first time since moving from Washington D.C. after the 1971 season. Franchise value increased over 200% between 1989 and 1998 sales. 1998 per-game attendance was 8,000 more than the MLB average. Seventh-highest total revenue, 1994-97.

◦ Colorado Rockies (Coors Field, 1995): Achieved highest-ever winning percentage by an expansion team in its first five years (.486). Reached the playoffs in 1995, its third year of

282. All estimates of total revenues are taken from *Team-by-Team Total Revenue*, (visited Feb. 3, 1999) <http://espn.go.com/mlb/features/01076707.html>.

283. *See* ZIMBALIST, *supra* note 2, at 202.

284. All attendance figures are taken from *Yearly Attendance Chart* (visited Feb. 3, 1999) <http://espn.go.com/mlb/features/ 01076017.html>.

existence. Attracted over 46,800 fans per game in 1998, the highest average attendance in baseball. Fourth-highest total revenue, 1995-97.

• Atlanta Braves (Turner Field, 1997): Reached the playoffs every year since 1991, and won the 1995 World Series. Top five in payroll every year since 1996. Recently signed their top four starting pitchers to long-term contracts totaling over $100 million. Widely considered baseball's model franchise.[285] Fourth-highest total revenue, 1997.

• Arizona Diamondbacks (BankOne Ballpark, 1998) and Tampa Bay Devil Rays (Tropicana Field, 1998): After paying $130 million each in expansion fees to enter the league in 1998, both teams have established themselves as major players in the free-agent market, signing some of the top free agents available over the past two years.[286] In 1999, the Diamondbacks won 100 games and reached the playoffs sooner than any franchise in baseball history.

Obtaining a modern, revenue-generating stadium clearly has a positive financial and competitive impact upon a franchise. As a result, almost every owner has demanded one from his team's city, using the threat of relocation as a bargaining chip. The downside, however, is the widening economic chasm between those teams with new stadiums and those without. Teams lacking these new lucrative revenue sources are often incapable of matching wealthier teams' offers to free agents and cannot compete equally for available playing talent.

Another revenue source that has become more significant is the sale of local television rights. Over the last 15 years, teams have made more of their games available solely on cable television, which charges viewers a fee for its availability.[287] As baseball has become more popular and more games have moved from free to cable television, the money paid for teams' cable rights has grown. Not surprisingly, teams in large media markets such as New York, Los Angeles, and Chicago command far greater fees for

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285. *See, e.g.*, Michael Bamberger, *Atlanta Braves: Another Blockbuster from Turner Pitchers*, SPORTS ILLUSTRATED, Mar. 23, 1998, at 90.

286. *See* Chuck Johnson, *D'backs Daal Finally Has Some Support*, USA TODAY, Aug. 18, 1999, at 10C.

287. *See* HELYAR, *supra* note 48, at 372.

their cable rights than teams in smaller media markets, such as Seattle, Minnesota, and Pittsburgh.[288] In 1994, for example, the New York Yankees received approximately $47 million for their local broadcast rights, while the Minnesota Twins earned only $4.5 million.[289]

While total broadcast revenues have been rising slightly, the increase is due solely to unshared local broadcast rights. National television revenue fell from a high of $15 million per team in 1993 (the last year of the CBS contract) to a low of $6.5 million during the two-year Baseball Network experiment before stabilizing under the current Fox deal at approximately $12 million per team.[290] Local broadcast revenues account for half of MLB's total broadcast revenues, but are distributed unequally.[291] The overall result has been that large-market teams with new stadiums and lucrative local broadcast contracts have generated significantly greater revenues during the last few years, while small-market teams dependent largely upon shared revenue sources have seen their revenue streams level off. MLB, in short, is becoming increasingly divided between the "haves" and the "have-nots."

2. Competitive Balance

While efficient management can allow small-market, low-revenue franchises to continue operating profitably, the revenue disparities between the wealthy and poorer clubs can adversely effect another of MLB's interests: on-field competitive balance. While competitive balance does not require that all teams have an equal likelihood of reaching the playoffs each season, each team should win its fair share of games and pennants in the long run. Major League Baseball's popularity, like that of all professional sports leagues, is at its peak when teams consistently stage close

288. *See* James Richard Hill, *Will Rising Salaries Destroy Baseball?*, *in* STEE-RIKE FOUR!, *supra* note 43, at 55.

289. *See id.*

290. *See* Chalpin, *supra* note 211 and accompanying text.

291. *See* ZIMBALIST, *supra* note 2 at 48. The value of these unshared local broadcast rights ranges from $70 million (Yankees) to $5 million (Kansas City Royals). *See* Sean McAdam, *Looking for Answers* (visited Feb. 6, 1999) <http://espn.go.com/ mlb/state/ solutions.html>.

pennant races.[292] Such competition boosts network television ratings, which are highest for important games between teams with the largest fan bases—typically, those teams in the biggest media markets. High ratings generate more advertising revenue for the networks, which in turn raises the value of subsequent television contracts.[293] Therefore, MLB's ideal vision of competitive balance is for all teams to have roughly equal winning percentages and post-season appearances over the long run, with the teams in large media markets reaching the playoffs somewhat more often.

Maintaining fan interest requires that supporters of every team have a justifiable expectation that their team will compete for a playoff spot within a reasonable period of time. Major League Baseball will suffer financially when a small number of teams dominate the league over an extended period because fans of teams consistently finishing out of contention will lose interest. The league experienced this problem when the New York Yankees reached the World Series almost every year from 1949 through 1964.[294] While the Yankees thrived, overall American League attendance declined as other teams' fans grew weary of rooting for their clubs to finish in second place.[295] MLB's resulting financial troubles prompted a number of weaker American League franchises to relocate, including the St. Louis Browns (to Baltimore), Washington Senators (to Minnesota), and

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292. *See id.* at 159. For example, baseball ratings were down 14% in 1991 due in part to the fact that there was only one close divisional race. *See id.*

293. A prime example of this phenomenon is the difference between the 1980-83 and 1984-89 national television contracts. In the first four years of the 1980's, the National League franchises playing in the two most populous National League cities - the Los Angeles Dodgers and Philadelphia Phillies - combined for three World Series appearances. *See* SCULLY, *supra* note 1, at 96. During the same period, the large-market New York Yankees and Chicago White Sox combined for three playoff appearances. *See id.* The 1981 World Series between the Dodgers and Yankees - MLB's two largest media markets - attracted 49 percent of American households with televisions in use (a 30.0 rating), a startling number considering the fans' alienation during the 1981 strike. *See* ZIMBALIST, *supra* note 2, at 159. As a result, MLB's annual national broadcast revenues rose from $47.5 million from 1980-83 to $187.5 million from 1984-89. *See id.* at 48.

294. The sole exceptions were 1954 and 1959. *See Regular Season League & Division Winners* (visited Oct. 26, 1999) <http://www.infoplease.com/ipsa/A0758897.html>.

295. *See* ZIMBALIST, *supra* note 2, at 16.

Philadelphia Athletics (to Kansas City, and then to Oakland).[296]

Contrary to the owners' claims in *Messersmith* that free agency would destroy competitive balance,[297] free agency actually *increased* competitive balance. Between 1903 and 1964, a New York team won 39 of the 61 World Series played.[298] Beginning in 1926, the Yankees had 39 consecutive winning seasons and finished first 26 times.[299] Between 1903 and 1975, four teams —the Yankees, Dodgers, Giants, and Cardinals—combined to win 60 percent of the pennants.[300] In contrast, the St. Louis Browns/Baltimore Orioles franchise won only one American League pennant prior to 1966.[301] From 1903 to 1976, teams' annual winning percentages averaged between .360 and .640, and 30.1% of teams either won or lost more than 60% of their games each season.[302]

Competitive balance among MLB teams improved significantly after 1976. During the first fifteen years of free agency, 12 different teams won the World Series and 16 different teams won pennants.[303] Out of 26 teams, only the Mariners, Indians, and Rangers failed to win a division title between 1977 and 1991.[304] The 1990 Atlanta Braves and Minnesota Twins finished last in their respective divisions; the next season, they went from last place to first place for the first time in baseball history and competed in a thrilling seven-game World Series.[305] Free agency helped narrow the range of average annual winning percentages to .430-.570, and only 12.4% of teams won or lost 60% of their games

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296. *See* STAUDOHAR, *supra* note 122, at 187.
297. *See, e.g.*, HELYAR, *supra* note 48, at 172-73.
298. *See* ZIMBALIST, *supra* note 2, at 95.
299. *See id.*
300. *See* LOWENFISH, *supra* note 3, at 17.
301. *See* SCULLY, *supra* note 1, at 86.
302. *See id.* at 90; *see also* Rob Neyer, *It's All About Competition* visited Feb. 5, 1999., <http://espn.go.com/mlb/state/statsclass. html>, at 1-2.
303. *See* ZIMBALIST, *supra* note 2, at 95.
304. *See id.*
305. *See* Chuck Johnson, *Mariners' Johnson Nabs 20th; Giants Go Worst to First*, USA TODAY, Sept. 29, 1997, at 07C. In addition to the Twins and Braves, the San Francisco Giants accomplished the feat in 1997 and the Philadelphia Phillies in 1993. *See id.*

each season between 1980 and 1998.[306]

The prolonged competitive imbalance prior to free agency was caused by major leaguers' lack of mobility and unsigned amateurs' excessive freedom to sign with the team of their choosing. Without free agency, teams could not sign better players to improve their chances for the following season. Strong franchises like the Yankees would buy quality players from weaker clubs and reserve them until they were of no further use. Poorer teams with less talent had few means of improving themselves, short of developing new players in their minor league system. The weakness of that approach, however, was that the teams offering the most money usually signed the best amateur players, as there was no amateur draft until 1965.[307] The reserve system thus created a damaging cycle: wealthy teams would obtain the best major-league players and win pennants, which would yield the money and prestige to attract the best amateur players, who would typically develop into the most talented major leaguers. Over the long run, the only hope of weak teams like the Browns and Senators was that some of their amateur players would exceed their potential and become good enough to challenge the wealthier, stronger teams above them in the standings.

The implementation of free agency and the amateur draft allowed the natural effects of talent compression to level the playing field. Today's major leaguers are a smaller fraction of a larger, more talented pool than ever before. The difference between the best and worst players has diminished, reducing the likelihood of sustained dominance by any one team and increasing competitive balance. It is more difficult than ever to become a major-league baseball player; in 1990, .00026% of the United States population played major league baseball, a 35% smaller share than in 1903.[308] Additionally, African-Americans, Latinos, and foreigners, largely excluded from MLB until mid-century, have continued to enter professional baseball in large numbers.[309] Today's major leaguers are

306. *See* SCULLY, *supra* note 1, at 90; Neyer, *supra* note 302, at 1-2.

307. *See* ZIMBALIST, *supra* note 2, at 100.

308. *See id.* at 97.

309. *See* Andrew Zimbalist, *Baseball in the Twenty-First Century*, *in* STEE-RIKE FOUR!, *supra* note 43, at 177.

also better-prepared professionals than their predecessors as a result of improved nutrition, medical treatment, and coaching in sophisticated youth league, high school, and college baseball programs.[310]

The changing nature of teams' revenue sources also helped improve competitive balance. Americans' passion for televised sports drove up MLB's annual national broadcast revenues from $16.6 million in 1970 to $365 million in 1993.[311] Until the early 1990's, these shared national broadcast revenues were growing faster than individual team revenues. Teams thus became richer at an equal pace, permitting more teams to compete for quality free agents and reducing the large-market teams' financial advantage over small-market clubs. Free agency prevented successful teams from hoarding the best players and allowed less-talented teams to sign such players, add them to a roster alongside quality younger players selected in prior amateur drafts, and eventually field a contending team.

A serious competitive balance problem looms for the immediate future, however. The widening gap in team payroll between the high-revenue and low-revenue teams[312] has recently resulted in a heightened correlation between team payroll and on-field success. In 1990, the ten best teams averaged $17.7 million in payroll, while the ten worst teams averaged $16.1 million.[313] In 1999, the ten winningest teams averaged $65.9 million in payroll, while the ten worst teams averaged only $34.4 million.[314] Viewed from a different perspective, the teams in the top third of payroll in

310. *See id.*

311. *See* ZIMBALIST, *supra* note 2, at 49.

312. The difference in 1997 between the Yankees' $63.2 million payroll and the Pittsburgh Pirates' $11.6 million payroll (both excluding player benefits) was $51.6 million, a 40% increase in one year. *See* Ronald Blum, *Yankees' Big Pay Proves Costly: $4,431,180 Luxury Tax Most Among Five Teams*, PITTSBURGH POST-GAZETTE, Dec. 26, 1997, at C1. The 1998 Baltimore Orioles' Opening Day payroll was $69 million, while the Expos fell to $9.2 million, a 63% greater difference than 1996. *See* EXTRA BASES, *supra* note 208, at 105. By comparison, 1990 team payrolls ranged from a high of $21.8 million (Oakland A's) to a low of $8.0 million (Orioles). *See* David Schoenfield, *The Truth Behind the Numbers* (visited Feb. 3, 1999) <http://espn.go.com/mlb/features/01072170. html>.

313. *See* Schoenfield, *supra* note 312.

314. *See Dodgers, O's Buck Payroll Trend* (visited Nov. 9, 1999) <http://www.espn.go.com/ mlb/news/1999/1109/161275.html>.

1990 had an average record of 83 wins and 79 losses, while the teams in the bottom third had an average record of 78-84.[315] By contrast, the teams in the top third of payroll had an average record of 93-69 in 1999, while the middle third had an average record of 78-84 and bottom third had an average record of only 71-91.[316]

An analysis of recent playoff teams yields similar results. All eight 1999 playoff teams, ranked among the top ten in regular season payrolls.[317] All eight 1998 playoff teams ranked among the top twelve.[318] Only three teams below the median 1998 team payroll of $46.2 million had winning records, and none made the playoffs.[319] In 1997, the clubs with the five highest payrolls all made the playoffs, leaving only three playoff spots for the other twenty-three teams.[320] No team with a winning record in 1997 had a payroll lower than $33 million.[321] In 1996, the two teams with the highest payrolls—the Yankees and Orioles—played for the 1996 American League pennant and the right to play the Braves in the World Series, whose 1996 payroll was also one of the five highest.[322] Overall, only four teams with payrolls under $40 million made the playoffs between 1996 and 1999, and three of those teams did so in 1996.[323] To summarize, as San Diego Padres owner John Moores recently remarked when asked about the current state of baseball, "Spending a lot doesn't mean that you're going to win. But *not* spending a lot means you aren't going to win."[324]

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315. *See* Schoenfield, *supra* note 312.

316. *See Dodgers*, *supra* note 314.

317. *See id.*

318. *See* Mike Vaccaro, *No Competition*, NEWARK STAR-LEDGER, Dec. 21, 1998, at 45.

319. *See id.*

320. *See* Tom Verducci, *A Farewell to Skinny Arms*, SPORTS ILLUSTRATED, Mar. 23, 1998, at 67, 68.

321. *See* Tim Crothers, *Pittsburgh Pirates: Earnest & Young*, SPORTS ILLUSTRATED, Mar. 23, 1998, at 130, 131.

322. *See* Fizel, *supra* note 221, at 71; *see also Dodgers*, *supra* note 314.

323. *See Team Payrolls in the '90s* (visited Feb. 3, 1999) <http://espn.go.com/mlb/features/ 01072323.html>. By comparison, the 1998 Montreal Expos' total payroll of $8.3 million was less than the 1998 individual salaries of five different players. *See* Joe Capozzi, *Baseball Boon? Maybe Not* (visited Feb. 7, 1999) <http://www.fastball.com/marlins/news/ marlins1.html>.

324. Sean McAdam, *The Rich Get Richer and...*, (visited Feb. 4, 1999) <http://espn.go.com/mlb/state/daythree.html>.

The immediate cause of this talent disparity is the shift from shared to unshared revenues as the major source of teams' income. After the CBS / ESPN television deal expired in 1993, shared national television revenues declined significantly.[325] Large-market teams turned to new stadiums and sales of local television rights to replace the lost national television revenue. Because franchises in small media markets without new ballparks and with relatively low television revenue do not have access to such lucrative revenue sources, they can no longer afford baseball's rising salaries.[326] Teams such as the Minnesota Twins, Montreal Expos, and Kansas City Royals cannot make competitive offers to free agents and must hope that their younger, lower-priced players develop quickly. However, even if such players do perform well, low-revenue teams often trade them before they become arbitration-eligible. Otherwise, an arbitrator may force a small-market team like Montreal to pay their young stars the same salary that a star player receives on a high-revenue team like the Yankees. As Pittsburgh Pirates' general manager Cam Bonifay noted before the 1998 season, "There's a fine line between optimism and realism. For our strategy to work we need perfect timing. Our young players must develop into winners before they become too expensive. Frankly, we really don't know if our plan is going to work."[327]

The continuing inability of several small-market, low-revenue franchises to field competitive teams should concern the league because there is no clear method by which these teams can sufficiently improve to compete for a championship with the high-revenue teams. Free agency is no longer a viable option because high-revenue teams have driven salaries beyond the reach of low-revenue teams' budgets. The minor leagues produce quality young players, but the threat of salary arbitration forces low-revenue teams

325. *See supra* Part II.D.

326. Although broadcast revenues still account for approximately 50% of total MLB revenues, *See* Jeffrey A. Rosenthal, *The Football Answer to the Baseball Problem: Can Revenue Sharing Work?*, 5 SETON HALL J. OF SPORT L., 419, 424 (1995), the value of unshared local broadcast rights ranges from $70 million (Yankees) to $5 million (Kansas City Royals). *See* McAdam, *supra* note 291.

327. Crothers, *supra* note 321, at 131 (quoting Cam Bonifay).

to trade their young stars just before these players reach the most productive stages of their careers, effectively rendering certain clubs nothing more than glorified minor-league teams. While small-market teams can seek new revenue sources, state and local governments have become increasingly wary of building new stadiums.[328] Fewer teams will make a serious effort to compete as the price of success rises, which will inevitably alienate the poorer teams' fans. As then-Oakland Athletics' general manager Sandy Alderson stated in 1997, "Why should I spend $30 million and finish fourth when I can spend $15 million and get the same result?"[329] Unless MLB finds a way to level the playing field, it faces a return to the competitive imbalance of the 1950's and the declining attendance and ratings that will surely follow.[330]

3. Fan Interest

Besides maintaining league-wide profitability and on-field competitive balance, it is crucial for MLB to promote fan interest in the game. While baseball was the undisputed "National Pastime" for much of the twentieth century, its popularity has waned somewhat as professional football and basketball have emerged as attractive sports entertainment alternatives. According to a 1995 survey of American and Canadian sports fans commissioned by the National Hockey League, only 14 percent named baseball their favorite sport.[331] Baseball ranked a distant third behind football and

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328. In November 1997, for example, the Minnesota Legislature voted 84-47 against a $250 million bond issue that would have helped fund construction of the Minnesota Twins' proposed $356 million outdoor stadium. *See* Bill Koenig, *Voter Approval for Stadiums Getting Tougher*, USA TODAY BASEBALL WEEKLY, Jan. 21-27, 1998, at 17.

329. McAdam, *supra* note 324, at 5 (quoting Sandy Alderson).

330. The danger of the competitive balance problem was demonstrated by the low ratings of the 1998 World Series. After the Yankees won an American League-record 114 games during the regular season, their World Series sweep of the Padres was the lowest-rated World Series in television history. *See* Capozzi, *supra* note 323. The games received a 14.1 Nielsen rating—14% lower than the previous low (the 1989 Oakland-San Francisco World Series that was delayed twelve days by a severe earthquake). *See id.*

331. *See Marketing the National Hockey League*, Harvard Business School, Case No. 9-596-059, December 28, 1995, at 19.

basketball at 28 and 21 percent, respectively.[332]

As an entertainment industry, MLB's ultimate success depends upon maintaining the trust, confidence, and goodwill of its fan base.[333] Because of its recent labor problems and mid-season work stoppages, MLB can no longer be content to sell the game of baseball on its intrinsic excitement as a sporting event. The league must try to aggressively win back fans by restoring public confidence in the integrity of professional baseball as a sport, as entertainment, and as an American institution. The following section examines Major League Baseball from the perspective of its fans and analyzes the factors that affect their emotional and financial investment in professional baseball.

D. Fan Interests

1. Low Ticket Prices / Team Accessibility

Major League Baseball fans' first priority is for games to be readily accessible, both through reasonable ticket prices and the broadcast and print media. Because MLB plays at least twice as many games per season as any other professional sport, in stadiums with seating capacities ranging from 30,000 to almost 60,000, attending a major league baseball game remains a bargain compared to other major-league sports. In New York City, for example, the average Yankees ticket cost $14.58 in 1996, as compared to $42.14 for the NBA Knicks, $34.58 for the NHL Rangers, and $35.59 for the NFL Giants.[334] The 1999 Fan Cost Index for an average baseball game was $121.36, ranging from a high of $148.56 (Yankees) to a low of $89.97 (Cincinnati Reds).[335] By comparison, the average 1999 Fan Cost Index was

332. *See id.*

333. *See* Daniel R. Marburger, *Why Can't Baseball Resolve Its Differences in the Off-Season?*, *in* STEE-RIKE FOUR!, *supra* note 43, at 37, 50.

334. *See 1996 Baseball Game Costs* (visited Feb. 3, 1999) <http://espn.go.com/editors/talk/features/fancostmlb.html>.

335. *See* Ronald Blum, *NBA Ticket Prices up 13.7%*, THE ARIZONA REPUBLIC, Nov. 12, 1999, at C4. The Fan Cost Index consists of four average-priced tickets, two small beers, four small sodas, four hot dogs, parking for one car, two game programs, and two twill baseball caps. *See id.*

$226.61 for the NBA, $254.48 for the NHL, and $258.50 for the NFL.[336] The cheapest NBA game typically costs more than the most expensive MLB game.[337]

While fans and the media regularly cite free agency and high salaries as the source of rising ticket prices, the average cost of admission has not increased appreciably since 1920. According to a 1987 study by economist Gerald Scully, the average price of a major league ticket was $6.70 in 1986, up from $1.00 in 1920.[338] After adjusting for inflation, however, real ticket prices increased only thirty-two cents in that time period (from $1.66 to $1.98 in 1967 dollars).[339] In fact, average ticket prices during the 1980's were cheaper in real dollars than at any other time since the Great Depression. Fans paid the most money to see a game in the late 1930's and early 1940's ($2.88 in 1967 dollars), and paid almost as much in the decade preceding free agency ($2.60 in 1965; $2.73 in 1970).[340] Fans have actually witnessed a decrease in ticket prices during the free agency era, as they have leveled off to approximately $2.00 in 1967 dollars.[341] The average 1999 MLB ticket cost $14.91, far lower than the 1999 average ticket in the NBA ($48.37), NHL ($45.70), and NFL ($45.63).[342] In addition, as of 1997, 17 percent of all baseball tickets cost less than $6.00.[343]

At the same time, attendance at baseball games has risen dramatically. In the 1950's and 1960's, the annual average attendance for a MLB team hovered between 1.0 and 1.2 million.[344] In 1976, the last year before full-scale free agency, MLB teams averaged 1.31 million in attendance.[345] Average per-club attendance then increased almost every subsequent season until the mid-1990's, peaking at 2.5

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336. *See id.*
337. *See, e.g.*, Edvin Beitiks, *Word to the Wise*, SAN FRAN. EXAMINER, Nov. 3, 1997, at C2.
338. *See* SCULLY, *supra* note 1, at 105.
339. *See id.*
340. *See id.*
341. *See id.*; *See also* ZIMBALIST, *supra* note 2, at 52.
342. *See NBA Ticket Prices Up 13.7%, supra* note 335.
343. *See* Jon Morgan, *O's Already Near Top for Prices*, BALTIMORE SUN, Mar. 28, 1997, at A1.
344. *See* ZIMBALIST, *supra* note 2, at 52.
345. *See id.*

million in 1993.[346] Between 1977 and 1994, the United States population grew by 16 percent, but MLB attendance increased by 84 percent overall, or by an average of 55 percent per team.[347]

High-salaried free agents neither drove away fans nor raised ticket prices because, contrary to popular belief, there is no link between player salaries and ticket prices.[348] Under the pre-1976 reserve system, owners paid players below their marginal value because there was no free market for their services.[349] The owners had no corresponding obligation, however, to keep ticket prices low.[350] Teams charged fans whatever the market would bear for the privilege of watching the world's top baseball players, with the profits going to the owners. The more successful clubs charged higher ticket prices, which yielded greater profits for those owners.

Free agency redistributed revenues from owners to players, but did not increase the total amount of ticket money paid by fans. Although the added profits from ticket price increases now go to the players, rather than the owners, the amount of money that fans will pay to watch a baseball game has remained relatively stable.[351] Between 1976 and 1994, for example, the average player's salary on the Los Angeles Dodgers rose from $50,000 to $1.2 million.[352] During the same period, the average price of Dodgers tickets increased negligibly, from $9.17 to $9.20 in 1994 dollars.[353]

The emergence of cable television as a broadcast outlet for MLB games has been a mixed blessing for fans. On the one hand, there are more opportunities than ever to watch baseball. In addition to teams' local free or cable broadcasts of their games, ESPN and Fox offer fans three or more games per week, as well as ESPN's nightly half-hour show during

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346. *See* HELYAR, *supra* note 48, at 588.
347. *See* Whitney, *supra* note 215, at 129.
348. *See id.* at 124.
349. *See id.*
350. *See* Whitney at 125.
351. *See id.* at 125. Accordingly, it appears that no system controlling player movement and salaries will affect ticket prices, whether it be the reserve system, free agency, salary cap, luxury tax, or revenue sharing.
352. *See* Whitney, *supra* note 215, at 124.
353. *See id.*

the season devoted exclusively to baseball. Moreover, a home satellite dish can provide access to almost any game in the country. The downside of televised baseball today is that fans rarely have the opportunity to watch baseball games for free. Most teams have increased the number of games they sell to cable stations, which can pay teams much more than free stations as a result of the monthly fees cable companies charge their customers.[354] As a result, many fans have found that following their favorite team on television has become too expensive, leaving radio broadcasts and the print media as their only consistent sources of baseball games and news.

2. Competitive Balance

Fans also want their teams to be competitive each season. While every team cannot be good every year, fans will often remain interested if there is a reasonable expectation of improvement for future seasons. For example, the 1997 Pittsburgh Pirates were a team comprised almost exclusively of young, unproven players who overachieved to finish second in the National League Central Division.[355] Although still a relatively mediocre team entering the following season, season-ticket sales were 15% higher for 1998 than 1997, indicating that Pirates fans were encouraged that the team might improve with more experience.[356]

Conversely, attendance will decrease if fans perceive that management is not committed to putting the best possible team on the field. For example, Florida Marlins ticket sales fell so drastically after the team reduced payroll by trading away the core of their 1997 World Series championship club that the ticket sales department resorted to cold-calling random Miami-area fans in an effort to sell tickets for the 1998 season.[357]

Attendance will also decline if competitive imbalance reduces the baseball season's uncertainty of outcome. Fans

354. *See* ZIMBALIST, *supra* note 2, at 156-57.
355. *See* Crothers, *supra* note 321, at 131.
356. *See id.*
357. *See* Rick Reilly, *Fishing for Marlin Fans*, SPORTS ILLUSTRATED, Mar. 9, 1998, at 108.

of teams not expected to contend for a championship often remain interested because baseball, like all sports, is a game in which the underdog will sometimes emerge victorious. However, a large disparity in playing talent between two teams lowers the chances of the underdog prevailing, which in turn reduces the intrinsic interest of the contest as a competitive endeavor. Put another way, rooting for a team in a sporting event is an emotional gamble based on hope. Fewer fans will accept the risk if an unfavorable outcome is virtually guaranteed.

The prime example of the negative effect that competitive imbalance can have on attendance was the success of the New York teams during the 1950's and 1960's. As the Yankees won the overwhelming majority of pennants between 1949 and 1964, attendance declined in almost every American League city.[358] The talent gap between the Yankees and the rest of the league was so great that each season's outcome was practically a foregone conclusion. Fans of perennial losers like the St. Louis Browns and Washington Senators had little reason to invest time and emotion in their teams when there was simply no chance of overtaking the Yankees anytime in the foreseeable future. The National League also endured a decline in fan interest, as the Brooklyn/Los Angeles Dodgers and New York/San Francisco Giants combined for six consecutive pennants between 1951 and 1956, and nine total pennants from 1951 to 1963.[359] Overall, twenty-two million fans attended major league games in 1965, only one million more than in 1948, despite significant population growth and the addition of four teams in 1962.[360] Although historian and film-maker Ken Burns deemed the 1950's and 1960's baseball's "golden era" in his 1994 documentary *Baseball*, the reality was that most teams' fans had little motivation to remain interested in what amounted to a meaningless regular season.[361]

In terms of attendance and competitive balance, the post-*Messersmith* years have been baseball's true "golden era."

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358. *See* Fizel, *supra* note 221, at 61; *see also* LOWENFISH, *supra* note 3, at 199.

359. *See Regular Season League & Division Winners: National League* (visited Oct. 29, 1999) <http://www.infoplease.com/ ipsa/A0758898.html>.

360. *See* LOWENFISH, *supra* note 3, at 199.

361. *See* Whitney, *supra* note 215, at 129.

Free agency improved competitive balance and gave hope to fans of even the worst teams that they could soon compete for postseason play.[362] Fans immediately warmed to the new system, as Major League Baseball set overall attendance records in each of the first four seasons of free agency.[363] With free agency, a last-place team could sign the talent it needed to facilitate a rapid return to respectability, rather than linger in mediocrity for years at a stretch. It is not a coincidence that no team in MLB history went from last to first in successive seasons until the post-*Messersmith* 1990-91 Braves and Twins: the Braves were led by 1991 National League Most Valuable Player Terry Pendleton and the Twins by star pitcher Jack Morris, both of whom signed as free agents prior to the 1991 season.[364] Free-agent signings generate off-season excitement and new hope for fans, which yield higher ticket sales.[365] Even if the free agents do not perform up to expectations, management's efforts to improve create interest in the team that typically results in an attendance increase.

Claims that free agency has alienated fans by encouraging less player loyalty appear to be exaggerated. First, since the inception of free agency, it has been equally common for players to re-sign with their previous team as to sign with another club.[366] In fact, free agency initially resulted in a slightly *lower* rate of player movement. Under the old reserve system from 1951 through 1977, an average of 4.7 players per club changed teams each year through

362. *See supra* Part III.C.2.

363. *See* LOWENFISH, *supra* note 3, at 21.

364. *See* Mike Penner, *Twins, Braves Show Angels the Highway to Heaven*, LOS ANGELES TIMES, Oct. 30, 1991, at C1.

365. Despite their traditionalist reputation, baseball fans apparently embrace change. For example, even though player movement has risen 37% over the past three seasons, attendance has also risen each year. *See* Brady and Antonen, *supra* note 223, at A1. Furthermore, the inaugural regular-season games between the National and American Leagues in 1997 attracted 20 percent more fans than intraleague games. *See SportsTicker: Baseball 1997*, DOW JONES NEWS SERVICE, Dec. 23, 1997. Even the Milwaukee Brewers jump to the National League for the 1998 season sparked a 25% increase in season-ticket sales over 1997, even though the Brewers' roster did not change significantly from 1997. *See* Tim Crothers, *Milwaukee Brewers: Lost in America*, SPORTS ILLUSTRATED, Mar. 23, 1998, at 124, 125.

366. *See* STAUDOHAR, *supra* note 122, at 37.

trades, cash sales, waivers, and other means.[367] From 1978 through 1992, 4.6 players per year changed teams.[368] During this same period, attendance increased by over 7,000 fans per game.[369] Further, while the end of the reserve system has made it more likely that top players will change teams, this development is a zero-sum game; the fans of the team acquiring the superstar will be happier because of free agency and the fans of the club losing him will be critical of the system. The reality is that fans value winning players over loyal players.[370] As Browns and Senators fans learned in the 1950's, there is little joy in watching the same players each year when those players are not very good.

Unfortunately, free agency has also contributed to the growing competitive imbalance between high-revenue and low-revenue clubs that threatens to cause an attendance decline similar to that of the 1950's. Teams unable or unwilling to sign free agents, or which trade away their top players before they become free agents, are beginning to alienate their fans. As was the case during the era of New York dominance, fans are losing interest in teams which simply have no chance of rising above mediocrity. The Cincinnati Reds, for example, had one of the five highest payrolls in 1995 and reached the National League Championship Series, where they lost to the Braves.[371] Team management subsequently decided to cut payroll, permitting their top free agents to leave and trading other high-salaried talent. By 1998, the Reds had one of the five lowest payrolls ($24 million) and were one of the most inexperienced and least-talented teams in the National League.[372] Not surprisingly, attendance fell from 2.45 million

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367. *See id.*

368. *See id.*

369. *See* David Schoenfield, *Success, But at What Price?* (visited Feb. 2, 1999) <http://espn.go.com/mlb/features/01079734. html>.

370. For example, Hall-of-Famer Reggie Jackson played for four different teams during his 21-year career, only five years of which were spent with the New York Yankees. *See Reggie Joins Yankees Greats, has '44' Retired*, THE ARIZONA REPUBLIC, Aug. 15, 1993, at D2. Because he led the Yankees to the playoffs in four of those five years, he was so popular that the Yankees eventually retired his number. *See id.*

371. *See* Tim Crothers, *Cincinnati Reds: Schott in the Foot*, SPORTS ILLUSTRATED, Mar. 23, 1998, at 134.

372. *See id.*

in 1993 to 1.79 million in 1998.[373] Other teams that have recently undertaken similar payroll reductions with corresponding declines in winning percentage and attendance include the Minnesota Twins, Oakland Athletics, Florida Marlins, Kansas City Royals, and Montreal Expos. MLB should be concerned that such behavior will result in a disastrous cycle. Fans will not pay to watch low-revenue teams consistently lose, but management will not spend more on players without more gate revenue. The teams will get worse and alienate fans, yielding even less revenue to spend on better players.

3. Uninterrupted Play

Attendance declined in the mid-1990's because of the players' and owners' failure to resolve their labor disputes in the off-season. Fans obviously will not care about low ticket prices and competitive balance when mid-season strikes keep their teams off the field. Fans typically become interested in sports as entertainment and as a hobby. However, MLB cannot fulfill its basic purpose as a recreational diversion when players and owners shut down the industry to gain leverage in labor negotiations. Attendance will fall when the public loses faith in the integrity of the game, as demonstrated by the aftermath of the "Black Sox" scandal. Fans lost interest in baseball after Chicago White Sox players accepted money from gamblers to intentionally lose the 1919 World Series.[374] Attendance increased only after the owners hired Judge Kenesaw Mountain Landis to be baseball's first commissioner, who promptly banned the offending White Sox players from professional baseball for life.[375] As the following chart demonstrates, fans were similarly alienated by the 1994-95 strike and did not immediately return to the ballparks, despite reduced ticket prices and other incentives:

373. *See Yearly Attendance, supra* note 284.
374. *See generally* ELIOT ASINOF, EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES (1963).
375. *See id.*

MLB Attendance, 1993-98[376]

	Total Attendance	Average Team Attendance	Per-Game Attendance	Pct. Change
1993	70.3 million	2.51 million	30,987	—
1994	47.6 million	1.7 million	31,612	+ 2.0
1995	51 million	1.82 million	25,260	- 20.1
1996	61 million	2.18 million	26,889	+ 6.4
1997	64.2 million	2.29 million	28,288	+ 5.2
1998	70.59 million	2.35 million	29,376	+ 3.8

Per-game attendance dropped over 20 percent between 1994 and 1995, resulting in the first reduction in average player salaries since the collusion period.[377] Attendance increased a small amount each year from 1996 to 1998, but not to the levels attained during the record years of 1993 and 1994. Accordingly, salaries have also risen slightly in each of the previous three years. Such trends demonstrate that by refusing to compromise over how to divide baseball's vast revenues from attendance and other sources, the players and owners will inevitably find that such revenues will decline.

IV. THE FUTURE OF MAJOR LEAGUE BASEBALL

A. *The Present Alternatives*

1. The 1997 Basic Agreement

The 1997 Basic Agreement will not solve Major League Baseball's economic and labor problems. Although intended to alleviate some of the financial hardships faced by small-market, low-revenue franchises, the gap between rich and poor teams has actually widened under the current Basic Agreement. The present luxury tax does little to eliminate disparities in revenue and on-field performance. As long as

376. *See* Impoco, et al., *supra* note 157; *see also Interleague Games Prove Popular*, DES MOINES REGISTER, June 17, 1997, at 2; *see also SportsTicker: Baseball 1997*, *supra* note 365; *see also* Schoenfield, *supra* note 369, at 2.
377. *See* Marburger, *supra* note 43, at 33.

there are at least six teams with excessively high payrolls, the tax threshold will remain high and the top five teams will pay taxes on relatively small amounts of money. In 1997, the tax generated $12 million, $10 million of which was used to cover the shortfall in the owners' revenue-sharing plan.[378] The other $2 million was given to the five American League teams with the lowest net local revenue in 1996.[379] Even though the top payrolls increased in 1998, the luxury tax raised only $6.5 million because six teams' payrolls were significantly higher than all others.[380] Furthermore, all 1998 tax proceeds went to the Industry Growth Fund (and not to other teams), as provided for in the 1997 Basic Agreement.[381]

The luxury tax has also failed to moderate salary escalation. The gap between the largest and smallest payrolls continues to widen, in part because the luxury tax is too low to deter high-revenue teams from paying salaries that make the best players too expensive for all but a handful of teams. There is no longer any reason to field a moderately priced team of average talent. It is financially sound either to pay a lot of money to an entire team of talented players that is likely to reach the playoffs, or to keep payroll down and make a small profit from lower revenues. Such behavior results in a league where only the fans of the high-payroll teams remain interested each season because the low-payroll teams have little chance of competing. Clearly, the luxury tax in its current form has not fulfilled its purpose and should be discarded in the next Basic Agreement.

The 1997 Basic Agreement's revenue-sharing plan will likewise do little to reduce financial disparities among teams. The plan redistributes a percentage of net local revenues (*e.g.*, gate receipts and local broadcast fees) from the wealthier clubs to the poorer ones.[382] The Expos have thus far received the largest subsidy and the Yankees have made the largest contribution ($13 million for both).[383] While such

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378. *See* Ronald Blum, *Yankees' Big Pay Proves Costly*, PITTSBURGH POST-GAZETTE. Dec. 26, 1997, at C1.

379. *See id.*

380. *See Orioles Top Tax List*, *supra* note 193, at 2.

381. *See* 1997 BASIC AGREEMENT, Article XXIII(H).

382. *See* 1997 BASIC AGREEMENT, Article XXV(B).

383. *See* Vaccaro, *supra* note 318, at 45.

wealth transfers will help make small-market teams more profitable, they are far too meager to allow them to compete for free agents against teams like the Yankees and Orioles, whose 1998 payrolls exceeded $70 million.[384] The current revenue-sharing plan creates a free-rider problem: the recipients use the money to improve their franchise's bottom lines, rather than upgrade their rosters to generate higher attendance and other variable revenues.[385]

The 1997 Basic Agreement also did not improve the salary arbitration system. The poorer teams continue to trade away their best fourth and fifth-year players, rather than pay arbitration awards reflecting the wealthier teams' pay scales. Montreal's trade of pitcher Pedro Martinez to the Boston Red Sox before the 1998 season was a perfect example of this behavior.[386] Martinez won the 1997 National League Cy Young Award and would have commanded a salary in the $8-10 million range in arbitration as a top pitcher with five years of MLB service.[387] The Expos chose not to pay and traded Martinez to Boston for several minor league prospects.[388] Montreal acted wisely under the circumstances, because they could not have paid Martinez the salary he deserved while remaining profitable. Had Montreal nevertheless paid Martinez anything near his worth for 1998, the Expos would have only received a draft pick as compensation when Martinez likely signed elsewhere as a free agent after the season.[389] The present system of salary arbitration and free agency forces low-revenue teams to give up top players just as they reach their prime, leaving such

384. *See id.* As San Diego Padres owner John Moores stated after receiving $2.8 million from MLB's central fund to offset 1996 losses, "You can't break even with revenue sharing. It's meant to stop the hemorrhaging. That's all." Barry M. Bloom, *Padres Bare Finances, Cite Losses in Bid for New Baseball-Only Park*, SAN DIEGO UNION-TRIBUNE, July 1, 1997, at A1.

385. In 1998, for example, the Yankees' $13-million revenue sharing contribution was over $5 million more than the Expos' team payroll. *See* Vaccaro, *supra* note 318, at 41. In expressing his dissatisfaction with the current revenue sharing plan, Yankees owner George Steinbrenner stated "[I]f that [money] goes into player development, fine. If that goes into owners' pockets, that's wrong." *Id.*

386. *See Boston to Take Martinez*, THE CINCINNATI POST, Nov. 18, 1997, at 5D.

387. *See id.*

388. *See id.* The prospects included pitchers Carl Pavano and Peter Munro. *See id.*

389. *See* 1997 BASIC AGREEMENT Article XX(B)(4).

teams with little hope of competing for a championship.

Finally, the Curt Flood Act of 1998 does nothing to resolve baseball's antitrust issues, as the Act only removes the exemption as to labor matters between the players and owners. With the partial antitrust exemption, owners can still block teams from changing cities without their approval. Unlike the NFL, NHL, and NBA, where several teams have moved to keep pace with population shifts,[390] MLB owners typically do not allow small-market teams to move to larger, more profitable markets. The partial exemption allows teams to maintain monopoly power over professional baseball in their regions, granting large-market teams tremendous economic advantages over their small-market rivals. The Yankees and Mets, for example, are the only MLB clubs in the twenty-million-person New York market. Conversely, the Milwaukee Brewers' potential fan base is only 1.6 million.[391] But for the exemption, the Brewers could move to New York or New Jersey and increase their market size. The exemption allows MLB teams to operate in a type of "reserve system," where individual owners lack the freedom to relocate to the markets willing to pay the most for their franchises. As long as the partial antitrust exemption remains, MLB will thus have much greater difficulty reducing the extreme financial disparities that exist between large and small-market clubs.

2. The Pre-1999 NBA Salary Cap

The solutions adopted by other professional sports leagues are inappropriate for Major League Baseball. Prior to the changes implemented by the 1999 Collective Bargaining Agreement, the NBA's soft salary cap yielded financial and competitive imbalances larger than those in baseball. The cap allowed NBA players' total earnings to rise, but widened the gap between rich and poor teams and players. Team payrolls rose dramatically after the cap took effect for the 1983-84 season.[392] The 1997-98 cap was $26.9 million, but

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390. Nineteen teams have changed cities since the MLB Rangers moved from Washington, D.C. to Arlington, TX for the 1972 season—seven from both the NFL and NHL, and five from the NBA. *See* STAUDOHAR, *supra* note 122, at 187.

391. *See* Quirk, *supra* note 186, at 105.

392. *See* STAUDOHAR, *supra* note 122, at 108.

the "Larry Bird" exception for free-agent re-signings allowed the payrolls of twenty-four of the twenty-nine teams to exceed the cap limit.[393] The Chicago Bulls had the highest payroll at $61.7 million, and the Los Angeles Clippers had the lowest at $24.0 million.[394] By contrast, the high and low NBA payrolls were only $35 million and $15 million for the 1993-94 season and $9 million and $3 million for 1985-86.[395] The range of individual player salaries showed similar disparities. The average NBA salary was $2.24 million for 1997-98 (almost twice that of MLB), but 66.2% of players made less than the average.[396] The bulk of the money under the NBA's salary cap system went to star free agents. The majority of players earned below-average salaries in order to fit under the salary cap.

The soft cap also hurt the NBA's competitive balance. In the fifteen seasons under the pre-1999 cap, only five teams won a championship, and four of the five teams won championships in consecutive seasons at least once.[397] Each of those five teams plays in a city that ranks among the ten largest media markets in America.[398] High-revenue teams with good players could remain at the top of the standings by circumventing the cap and outspending all other teams to re-sign their own free agents. There was little doubt the Bulls would re-sign Michael Jordan in 1996 and 1997, for instance, because no other team was permitted to pay him the $30 million salary he desired. The soft cap also motivated teams to trade away talented players to make room under the cap to sign top free agents during the subsequent off-season, a strategy that produced some of the most inept teams in the history of professional sports.[399] As

393. *See NBA Team-By-Team Salaries*, *supra* note 189, at C10.

394. *See id.*

395. *See* Quirk, *supra* note 186, at 99.

396. *See NBA Team-By-Team Salries*, *supra* note 189, at C10.

397. The five teams were the Boston Celtics (1984, 1986), Los Angeles Lakers (1985, 1987-88), Detroit Pistons (1989-90), Chicago Bulls (1991-93, 1996-98), and Houston Rockets (1994-95). *See The NBA Finals* (visited Oct. 29, 1999) <http://www. infoplease.com/ipsa/A0003843.html>.

398. *See Marketing the NHL*, *supra* note 331, at 16.

399. The Denver Nuggets, Toronto Raptors, and Los Angeles Clippers followed this strategy during the 1997-98 season, finishing with winning percentages of .134, .195, and .207, respectively. *See NBA Final Standings*, USA TODAY, Apr. 20, 1998, at C5.

a result, there was an extremely high correlation between payroll and winning percentage in the NBA. During the 1997-98 season, for example, seven of the eight best records belonged to teams that ranked in the top ten in player payroll; the six worst teams were among the seven lowest payrolls.[400] In addition, the deviation between the best and worst teams in the NBA has been unusually high relative to other major professional sports.[401] While the NBA has prospered since the mid-1980's, its success may be attributable to its high national television revenue and marketable stars like Magic Johnson and Michael Jordan, not to its salary cap.[402]

3. The NFL Salary Cap

A hard salary cap is better-suited to the NFL than MLB because of the differences in revenue sources between the leagues. The majority of NFL revenues are shared: national television money is divided equally, and gate receipts are split 60/40 between the home and visiting teams.[403] While teams do receive relatively small fees for the local television rights to preseason games and local radio rights for regular-season games, all NFL regular and post-season games are televised on national cable stations or local affiliates of

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400. *See id.*; *see also NBA Team-By-Team Salaries, supra* note 189, at C10.

401. The 1997-98 NBA winning percentages ranged from .756 to .134. *See NBA Final Standings, supra* note 399, at C5. By comparison, the NHL's 1997-98 range was .690 - .236, and MLB's 1997 range was .623 - .401. *See NHL Final Standings*, USA TODAY, Apr. 20, 1998, at C7; *see also Sports Illustrated: Baseball Preview*, March 23 (visited Mar. 23, 1998) <http://CNNSI.com/ baseball/mlb/ features/1998/magpreview>. Although the NFL's 1997 range of .813 - .188 was also quite large, the brevity of the NFL's season (sixteen games) reduces its statistical significance. *See Final NFL Standings* (visited Dec. 22, 1997) <http://espnet.sportszone.com/nfl/standings/index. html>.

402. NBA owners acknowledged the soft salary cap's shortcomings by reopening the NBA's collective bargaining agreement three years early. *See* Scott Soshnick, *NBA Board of Governors - Owners Reopen Labor Contract*, DAYTON DAILY NEWS, Mar. 24, 1998, at D2. NBA officials claimed that one-third of the league's teams lost money for the 1997-98 season. *See id.* Union officials were equally unhappy with the NBA's cap because a minority of players were earning the majority of the available payroll. *See id.* NBA players and owners sought to address these issues in the 1999 Collective Bargaining Agreement, agreeing on a less-flexible salary cap, with salary maximums based on service time and a pay scale for rookies. *See Here's the Deal, supra* note 177, at 57.

403. *See* STAUDOHAR, *supra* note 122, at 83.

national networks.[404] Baseball teams, by contrast, derive much of their revenues from the sale of unshared local broadcast rights.[405]

Because of the revenue disparities that result from differences in market size, a hard cap would force some baseball teams to support payrolls that were much higher or lower than what their revenues warranted. A hard-cap system typically includes both a payroll floor and ceiling, which are set at levels close enough together to ensure that teams with payrolls near the floor can remain competitive with teams near the ceiling. However, the present revenue disparities in baseball are so great that there are likely no floor and ceiling levels acceptable to both the players and owners. Even if the floor was set as low as $40 million (over $6 million less than the 1998 median payroll), several low-revenue teams could still not afford to pay their players. If the ceiling was set at $40 million, the large-revenue owners would receive a windfall by retaining a much larger percentage of revenues, at the expense of player salaries.

Even if revenues are eventually shared among all MLB franchises, the union will never agree to a hard cap because of the inequitable manner in which the hard cap's burdens will be distributed. Revenue sharing alone would initially hurt only the wealthiest players and owners: the top salaries would fall because the large-revenue teams that could formerly pay such salaries would have less revenue from which to do so. However, all players and owners would share in the financial benefits that would accompany the increased competitive balance resulting from revenue sharing. If a hard cap was implemented along with revenue sharing, the owners could keep all revenues exceeding the cap level, at the expense of player salaries. Because the union would never agree to such a transfer of wealth from the players to the owners,[406] a hard cap will remain a practical impossibility.

Furthermore, a hard cap would bring too much competitive balance to baseball. A hard cap eliminates the

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404. *See id.*
405. *See supra* Part III.C.1.
406. *See, e.g., Fehr: Forget About Salary Cap* (visited Jan. 22, 1999) <http://espn.go.com/mlb/news/1999/990121/01058587. html>.

advantages that high-revenue, large-market teams have in signing players. To the extent that a team's success depends upon its salary expenditures, team winning percentages will be relatively equal over the long run. The NFL's ratings remain unaffected by such parity because regular-season games are typically only broadcast on the affiliate stations in the teams' strongest markets. The NFL's national broadcast rights will remain valuable as long as viewers watch their local team's games on network affiliates. Much of MLB's value to the national networks, however, stems from the playoffs and World Series. Regular-season national telecasts are typically low-rated because of the high number of regular-season games available to viewers on local stations. The pure competitive balance that would result from a hard cap would prevent large-market teams from reaching the post-season more often than small-market teams, consequently lowering ratings and decreasing the value of MLB's national broadcast rights.

Finally, a hard cap in baseball would restrict player movement, and thus reduce fan interest.[407] A hard cap restricts free agency because teams cannot sign more players once club payroll reaches the cap maximum. Trades also become more difficult because a team looking to trade a player has to find another team that both wants the player and has the cap space to accommodate him. Traditionally, NFL teams have improved themselves through the amateur draft, and trades have been relatively rare. Regardless of a team's ability to sign free agents under the hard cap, the influx of new players through the draft generates off-season excitement for football fans. Baseball teams, by contrast, rely mainly on free agency and trades to improve themselves, as amateur draft picks often typically do not develop into major league players. Teams also typically base their marketing campaigns on their off-season free-agent signings and trades, which generate fan interest and sell tickets. Considering the damage done to the industry by the 1994-95 strike, MLB should avoid implementing any changes that could further hamper teams' efforts to strengthen their fan

407. As discussed *supra* note 364, attendance increases during periods of high player movement.

base.[408]

B. Long-Term Solutions

1. Revenue Sharing

Nearly two decades of unprecedented financial success and competitive balance in Major League Baseball ended in the mid-1990's. The current disparities in team payroll and talent level were caused by a drastic shift in baseball's revenue base from national to local sources. At the current rate, the financial and competitive imbalances between franchises may cause some teams to fold. The first, and most important, action that MLB should take is to share 100% of all national and local broadcast revenues equally among the thirty teams. The entire industry should benefit from having teams in large media markets such as New York, Los Angeles, and Chicago. These large-market teams generate the most local broadcast revenue because, unlike gate attendance, the value of a team's local broadcast rights is determined primarily by population and is not dependent on short-term on-field performance. For example, the Yankees signed their current 10-year, $500 million contract with the Madison Square Garden Network ("MSG") in 1989, having missed the playoffs each year since 1981 and in the middle of a four-year stretch during which they were one of the worst teams in the American League.[409] Conversely, teams in small media markets will never generate large local television revenues, regardless of how competitive they are; the rights to broadcast games to 1.6 million Milwaukee

408. Furthermore, a hard cap provides clubs with incentives to replace older, more expensive players with cheaper, younger ones. A prime example of this phenomenon was veteran New York Giants quarterback Phil Simms, who the Giants cut in 1994 to clear cap room for younger players. *See Tipping The Cap*, SPORTS ILLUSTRATED, Aug. 1, 1994, at 9. Simms was one of the Giants' most popular players and, based on his performance in prior seasons, likely had another productive year or two remaining in his career.
In baseball, older players can be productive into their forties and are often fan favorites. Recent examples include pitcher Nolan Ryan, designated hitter Dave Winfield, and pitcher Dennis Eckersley.

409. *See Yankees to Desert Free TV $500M Deal Puts Games Only on Cable After '90*, NEWSDAY, Dec. 10, 1988, at 03.

viewers will never be as valuable as the rights to the twenty-million-viewer New York-Metropolitan area.

The large-market teams utilize this revenue imbalance to their advantage by outbidding small-market teams for star players. The large-market teams have more on-field success, which in turn increases their variable revenues from ticket sales and stadium concessions. Sharing fixed local broadcasting revenues would break this cycle and help reduce the revenue gaps between large and small-market teams.[410]

The players and owners should also exploit the national market for local broadcasts. Because of the American population's increasing mobility and the ease of obtaining sports information through cable and home satellite television and the Internet, fans of any given team are scattered throughout the country. However, the Sports Broadcasting Act allows professional sports leagues to limit viewers' choices of broadcasts without violating federal antitrust laws.[411] MLB does not allow a Yankees fan in Boston, for example, to subscribe to MSG to watch Yankees games. Accordingly, this fan will either pay to watch Red Sox games on cable on New England Sports Network ("NESN"), the cable television carrier of Red Sox games, or not purchase any extra games at all.[412]

MLB will generate new revenues by allowing fans to freely

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410. Some teams generate artificially low local broadcasting revenue because their owners also own the network that televises the team's games. The Atlanta Braves, for example, only receive a few million dollars in broadcast fees from Superstation WTBS because team owner Ted Turner also owns the station. *See* ZIMBALIST, *supra* note 2, at 65. To account for such relationships in the proposed revenue-sharing plan, MLB should use a formula based upon the number of potential viewers to determine the broadcast revenues these teams must share under the plan.

411. *See* 15 U.S.C. §§ 1291-95 (1998). In relevant part, the Sports Broadcasting Act states:

> The antitrust laws . . . shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sport of . . . baseball, . . . by which any league of clubs . . . sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games [of baseball] . . . conducted by such clubs.

15 U.S.C. § 1291 (1998).

412. *See* Andrew Neff, *Switch of Sox' Flagship Fails to Bolster NESN; Few New Subscribers Get Cable For More Games*, BANGOR DAILY NEWS, May 9, 1996.

choose their favorite team's cable package. The hypothetical Boston-area Yankees fan will, at worst, switch from NESN to MSG. Many fans, however, will subscribe to multiple packages or purchase baseball on cable for the first time. The revenue from a team's nationwide sales of its games could then be split 80/20, with the larger share divided equally among the other MLB teams. All teams would profit, with the most popular teams in particular reaping the financial benefits of their goodwill among baseball fans.

Equalizing broadcast revenues will reduce MLB's competitive balance disparities. Ever since free agency created an open labor market, television revenues have dictated player salaries. Small-market teams were equal players in the free-agent market prior to the 1990's, when shared national television revenues still comprised the majority of MLB's broadcast revenue base. Catfish Hunter, for example, accepted the third-best available offer when he signed with the Yankees in 1975; the two highest bidders were small-markets San Diego and Kansas City.[413] In 1989, Minnesota became the first team to pay a player $3 million per year; the following year, Oakland made Jose Canseco the first $4-million player.[414] Similarly, revenue sharing permitted the NFL's Green Bay Packers (population: 100,000) to sign future Hall-of-Fame defensive lineman Reggie White in 1993, even before the league implemented a salary cap.[415] Equal distribution of broadcast revenues might not lower free-agent salaries in absolute terms, but would stabilize them at a level within most teams' budgets. High salaries alone will not harm baseball, as long as teams generate sufficient revenue to pay such salaries and still make a profit.

Revenue sharing will allow small-market teams to take greater risks in their efforts to improve. Under the present system, a large-market high-revenue franchise can only remain unprofitable by grossly overpaying several unproductive free agents or through extremely poor management and marketing. Most low-revenue teams,

413. *See* HELYAR, *supra* note 48, at 154.
414. *See* LOWENFISH, *supra* note 3, at 273.
415. *See* STAUDOHAR, *supra* note 122, at 89.

however, do not generate sufficient revenue to sign even one top free agent and still remain profitable. If a team like the Expos signed a premier free agent, the team could face financial disaster if the player's marginal revenue failed to cover his salary. Sharing broadcast fees would allow small-market teams to have reasonable free-agent budgets and place a premium on fiscal responsibility and sound management.

Revenue sharing will also help solve an emerging problem for the players, who currently must choose between earning a top salary and competing for a championship. With the exception of some of the highest-revenue teams such as the Yankees and Braves, most teams can afford to carry only a few, if any, high-priced players. The top players want the highest salaries, but are finding that few teams can afford to pay them and still field a competitive team around them.[416] Increasingly, the premier free agents sign lucrative long-term contracts, only to demand a trade when they become frustrated by their team's mediocre on-field performance. Although some players are dealt to larger-revenue teams (for example, Chuck Knoblauch from the Twins to the Yankees in 1998[417]; Roger Clemens from the Blue Jays to the Yankees in 1999[418]), such teams only have so many spots on their rosters. These trades also concentrate the best players on a few teams, further impairing competitive balance.

Revenue sharing will encourage teams to have roughly similar payrolls, so that each team can afford only a few high-salaried players. Because salaries and players will be more equally distributed, more teams will be competitive and be able to challenge for a World Series championship. Total salaries should actually rise over the long run, however, as improved competitive balance generates more revenue that can be spent on payroll.

Although there are some in baseball who decry revenue

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416. As outfielder Ken Griffey, Jr. remarked while considering a $15-million per year contract offer from the Mariners, "I don't want to have the Mariners in a situation where they might sign one or two of us and say they can't do anymore." *See Mariners Make $60-$70 Million Pitches to Griffey, Rodriguez* (visited Dec. 10, 1998) <http://espn.sportszone.com/mlb/news/1998/981210/00987421.html>.

417. *See* Rod Beaton, *Analyzing Yankees-Twins Trade*, USA TODAY, Feb. 9, 1998, at 06C.

418. *See* Mel Antonen, *Trade Analysis*, USA TODAY, Feb. 19, 1999, at 02C.

sharing as "socialism,"[419] these criticisms are short-sighted. For example, Dodgers manager Davey Johnson responded to criticism of pitcher Kevin Brown's 1999 $105-million contract with the Dodgers by stating, "Parity is not the American way. . . . The American way is to dominate somebody else."[420] However, major-league teams typically compete only on the field, not economically, because each team needs the others to survive. .[421] Although large-market teams provide the fan base that allows baseball to sign lucrative television contracts, such teams supply the same percentage of game product as the other teams. Revenue is actually generated by the combined efforts of all teams, because it takes two competitive teams to stage a baseball game, and several others to comprise the league structure that gives each game significance.[422] Furthermore, a team's on-field success is most meaningful and entertaining—and thus most profitable—when it is achieved *despite* strong competition; a string of World Series championships would be nearly worthless if such domination was due to the other franchises' inability to field reasonably competitive teams.

MLB's true economic competition includes the other major professional sports leagues and all other entertainment options, from movies to miniature golf. All of these entities, including baseball teams, compete for the consumer's entertainment dollar. Because most regions of the country have only one MLB team, the consumer must

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419. Peter Bavasi, former president of the Toronto Blue Jays and Cleveland Indians, recounts the following anecdote regarding large-market owners' attitudes toward revenue sharing:

> "I've been at meetings where the owner of a small market team will stand up and tell the other owners that, '[i]f the big-market teams don't share revenues, you will have only yourselves to blame.' Then one of the big market teams will stand up and begin his address, 'Comrade' and everybody will laugh."

Rosenthal, *supra* note 326, at 421 n.5 (citing BALDO, *Secrets of the Front Office*, FINANCIAL WORLD, July 9, 1991, at 28).

420. *See New Deals, Old Deals and Anger at Winter Meetings,* (visited Dec. 14, 1998) <http://espn.sportszone.com.mlb/news/ 1998/981213/ 00993415.html>.

421. As Anaheim Angels President Tony Tavares recently remarked, "[Yankees owner] George [Steinbrenner] can say 'I don't care about my brethren, I'll spend what I have to spend.' But he has to care. Who's he going to play - the Atlanta Braves 81 times?" *AL Notes: Anaheim Angels,* USA TODAY BASEBALL WEEKLY, Jan. 21-27, 1998, at 12.

422. *See* Rosenthal, *supra* note 326, at 429.

choose between baseball and everything else, not between different baseball teams. MLB should thus try to make baseball as appealing as possible to consumers to maximize the overall amount of money entering the industry. Although revenue sharing will initially divert money from wealthier teams to poorer teams, it should be viewed as an investment to improve competitive balance and increase fan interest, thereby allowing the league to better compete in the entertainment market and generate greater revenue streams for all teams.

Revenue sharing should not be extended to gate receipts and other stadium revenues, which vary with the quality of management, marketing, and the team.[423] By allowing teams to retain all revenues generated at their ballpark, MLB will maintain the economic incentives for teams to field the best possible players and promote the game of baseball. Talented teams with efficient operations and quality management will still be the most profitable. Furthermore, the large-market teams will typically have high stadium revenues and be able to outspend other clubs by a small margin. To the extent that payroll is tied to winning percentage, therefore, the large-market teams will win slightly more games in the long run, thus raising national television ratings and the value of future contracts for baseball's broadcasting rights.

2. Salary Structure

MLB would also benefit from major changes in its salary structure. If full-scale revenue sharing is implemented, small-market franchises must be discouraged from retaining all of their shared revenues as profit. The owners should thus agree to raise the minimum salary to a level similar to the NBA's $287,500 per year, with cost-of-living increases in successive years.[424] There should also be a minimum team payroll threshold, set at approximately $25-30 million, with

423. As explained *supra* Part III.D.1., the decision to share revenues will not affect ticket prices because owners will continue to sell tickets at whatever cost the market will bear for the privilege of watching professional baseball played at the highest level.

424. *See* Tom Weir, *Too Young to Play? Analysis Finds Players Who Join NBA Early Reap Big Benefits*, USA TODAY, June 30, 1999, at 01C.

annual adjustments determined by the amount of revenue generated by the industry during the previous year. In return, the players should (like the NBA players) accept a wage scale, for players not yet eligible for free agency, similar to the following:

MLB Service (Years)[425]	Salary Range
1-2	$300,000 - 750,000
2-3	$400,000 - 1.5 million
3-4	$500,000 - 2.0 million
4-5	$600,000 - 3.0 million
5-6	$750,000 - 5.0 million

The salary arbitration system, as presently constituted, has failed because it drives up salaries too quickly for unproven players, sours player-owner relations, and discourages owners from properly promoting their players, for fear of having their players' popularity used against them in an arbitration hearing. Owners could instead pay players within a range of salaries that would expand as players matured and proved their value relative to their peers. Arbitration could still be utilized to avoid repeated player-owner disputes as to which salary in the range is appropriate, but arbitrators could be restricted to only taking into account the salaries of other players in the same service class. Additionally, owners could use performance bonuses to raise players' total salaries above the scale, giving younger players further incentives to play well and spreading the risk of poor performance to the players.

This system would demand sacrifices by both players and owners, but would help both sides in the long run. The wage scale and revenue sharing would allow low-revenue teams to retain their best young players, and the higher minimum salary and payroll floor would ensure they spend enough of their shared revenue on playing talent. The large-market teams would still have an advantage in the free-agent market because they typically generate higher variable revenues, but

425. This wage scale would encompass approximately 70 percent of all major-league players. *See Average Salary Rises*, *supra* note 196, at D5.

such an advantage is acceptable because the large-market teams should be slightly better to promote higher national television ratings. Free-agent salaries would moderate, because large-market teams would not risk paying players more than their expected generated marginal revenue without the safety net of high local broadcast revenues. Nevertheless, the MLBPA would likely still approve the plan because the lower-salaried majority benefit most and can wield the most voting power in the union, as demonstrated by the recent NBA Collective Bargaining Agreement.

3. Payroll Tax

The players would also make revenue sharing more palatable for the owners by raising the payroll tax. Under the 1997 Basic Agreement, the players contributed 2.5% of their total 1996 and 1997 payrolls to the Industry Growth Fund, an amount totaling $50 million.[426] The players should double the payroll tax, which would generate $50-60 million annually to further Major League Baseball's growth in North America and around the world. The MLBPA and its players have significant means to pay the tax; licensing fees from baseball card manufacturers, for example, generate approximately $70 million annually.[427] The payroll tax increase would help all parties involved. The league's image would improve as a result of greater promotion, while fans would acquire a more favorable impression of MLB and feel more connected with the game and the players. Owner revenues would rise with better promotion, which would give them more money to spend on player salaries.

4. International Draft

Another aspect of the revised salary system would be a change in the draft rules. MLB should implement an international draft to evenly distribute the foreign talent entering professional baseball. As of Opening Day 1998,

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426. *See* 1997 BASIC AGREEMENT, Article XXIV; *see also Pay Display*, *supra* note 120.

427. *See* STAUDOHAR, *supra* note 122, at 29. MLBPA members in good standing each received $90,000 in licensing money for 1998. *See* Dan Shaughnessy, *Mahay Making Some Hay*, BOSTON GLOBE, Feb. 23, 1998, at D1.

23% of major-league players were foreign-born, up from 12.1% in 1993.[428] Because foreign players are free agents under the present rules unless they first come to the United States, high-revenue teams can outbid the other clubs for the top foreigner players.[429] Acting Commissioner Selig recently acknowledged the need for a draft and admitted the situation is "out-of-control."[430] An international draft would reward teams that effectively scouted and promoted baseball in foreign countries, and improve competitive balance by fairly allocating the most talented foreigners among the thirty MLB teams.

5. Pay Scale for Drafted Players

MLB should also implement a wage scale for players selected in the amateur draft, in order to reduce owners' costs and prevent holdouts. Scouting major-league-caliber talent is much more difficult in professional baseball than in football and basketball. Whereas almost all NBA and NFL first-round draft picks initially play for the teams that drafted them, one-third of all players selected in the first round of MLB's amateur draft never play in the major leagues.[431] Increasingly, however, top picks are holding out for multi-million-dollar contracts worth more than many veteran players' annual salaries.[432]

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428. *See* Peter Gammons, *International Pastime*, BOSTON GLOBE, Mar. 27, 1998, at F2; *see also* Juan Forero, *Cultivating a Field of Dreams*, NEWARK STAR-LEDGER, July 5, 1998, § 5, at 1.

429. Within the last three years, for example, the Yankees signed foreign pitchers Hideki Irabu (Japan) and Orlando Hernandez (Cuba) to multi-year, multi-million dollar contracts. *See* Mel Antonen, *Hernandez Reports to Yankees' Camp*, USA TODAY, Mar. 20, 1998, at 16C.

430. *See* Gammons, *supra* note 428, at F2.

431. *See* ZIMBALIST, *supra* note 2, at 245.

432. The saga of Cardinals' outfielder J.D. Drew highlights the problems with the current system. Drew was initially selected by the Philadelphia Phillies as the second pick of the 1997 amateur draft. *See Drew Gets $7 Million Deal From Cards* (visited July 3, 1998) <http://espn.go.com/mlb/news/980703/00760189.html>. Although the Phillies offered him a $3.1 million, four-year contract (plus a $3 million team option), Drew refused to sign for less than $11.5 million over five years. *See id.* The two sides could not reach an agreement, so Drew opted to play on an independent minor league team for the 1997 season. *See id.*

Because the Phillies were unable to sign Drew, he was permitted to enter the 1998 amateur draft, where he was selected by the St. Louis Cardinals with the fifth overall pick. *See id.* Unlike the Phillies, the Cardinals were willing to meet Drew's contract demands, and the two sides agreed on a

A wage scale would reduce the risk of low-revenue teams losing money on high-risk player investments and permit them to spend more money on proven talent. Drafted players would have no incentive to hold out for more money because MLB would forbid teams from paying it. The MLBPA should have few objections because the amateurs are not yet union members and the draft wage scale would free up more money for major-league salaries.

6. Expansion

MLB would generate greater revenue and increased fan interest by exercising the expansion option in the 1997 Basic Agreement and adding two more franchises by 2002.[433] The market for professional baseball is not yet saturated, as evidenced by the fact that eighteen investors from eleven different cities each bid over $100 million in 1992 for the right to develop their own major-league team.[434] Revenue sharing would allow even more cities to support baseball because smaller markets could compete with the larger markets for free agents.[435] Furthermore, the playing talent exists to stock two more teams. A 50% smaller share of the United States population plays in the major leagues today than in the early 1900's, and the potential talent pool has grown to encompass the entire world.[436] Expansion would widen the talent gap between the best and worst players and likely yield assaults on some of baseball's most famous records. Although Mark McGwire and Sammy Sosa are now the game's most prolific single-season home run hitters after their historic 1998 and 1999 performances, the top three single-season marks in batting average, runs batted in, doubles, runs scored, earned run average, and pitching wins

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guaranteed $7 million, four-year contract. *See id.*

433. *See* 1997 BASIC AGREEMENT, Article XV(G).

434. *See* Fizel, *supra* note 221, at 71.

435. Two prime examples of small cities that are able to support successful franchises with the help of the NFL's revenue-sharing plan are Green Bay and Jacksonville. *See Final NFL Standings; National Football Conference* (visited Nov. 3, 1999) <http://www. infoplease.com/ipsa/A0771167. html>; *American Football Conference* (visited Nov. 3, 1999) <http://www.infoplease.com/ipsa/A0771163. html>.

436. *See* Zimbalist, *supra* note 309, at 177.

were all achieved in 154-game seasons prior to 1938.[437] As proven by the unprecedented media attention afforded McGwire and Sosa, today's players would generate tremendous attention by challenging these records, which would in turn increase attendance and broadcast ratings.

The following cities are among the most attractive options for MLB expansion:

◦ Washington, DC/Northern Virginia: The seventh-largest media market in the United States.[438] Currently supports teams from the NFL, NBA, NHL, and Major League Soccer. Former home of MLB's Washington Senators. The overwhelming success of Camden Yards in Baltimore suggests that the Baltimore/Washington area could support two well-run MLB franchises.

◦ New Jersey: Currently supports teams from the NFL, NBA, NHL, and Major League Soccer. The area supported three MLB teams (Yankees, Dodgers, and Giants) until 1957. MLB could divide the Metropolitan New York area in the same manner as the NHL, *i.e.*, one team for New York City and Southern Connecticut (the Yankees and NHL Rangers), one team for Long Island (the Mets and NHL Islanders), and one team for New Jersey (MLB expansion team and NHL Devils).

◦ Charlotte: Currently supports teams from the NFL, NBA, and NHL. A growing sports city; the other three major professional sports leagues have expanded here within the last ten years. MLB presently has no franchise in the vast geographical region between Baltimore and Atlanta.

◦ Nashville: Currently supports the NHL Predators and the NFL Titans. Has proven itself willing to spend money on stadiums. Another Southeastern city to break up the Atlanta Braves' regional monopoly.

◦ Mexico City: MLB would generate international interest and goodwill by becoming the first American professional sports league to expand into Mexico. A team could attract millions of potential sports fans in one of the world's largest cities by marketing baseball's growing pool of talented Latino players.

437. *See id.* at 178.
438. *See id.* at 184.

7. Antitrust Exemption

The players and owners should lobby Congress to remove baseball's antitrust exemption in its *entirety*, so that any small-market franchise still unable to remain profitable after several years of revenue sharing can move to a more lucrative market without the other owners' approval. Some cities simply may no longer be able to support major-league baseball. For example, even though the Pittsburgh Pirates won three straight division titles in the early 1990's, they could not generate sufficient revenue to re-sign any of their best free agents in 1992 and 1993. In 1995, the franchise sold for only $85 million, $10 million less than the expansion Colorado Rockies and Florida Marlins paid in 1990 to join the National League for the 1993 season.[439]

Major population shifts have occurred since the last MLB team moved in 1971.[440] The NFL, NBA, and NHL have all adjusted accordingly by permitting numerous franchise moves.[441] If teams like the Pirates continue to struggle under the revenue-sharing plan outlined above, MLB should allow them to relocate.

Under the current rules, any sale and relocation must be approved by three-quarters of the owners in the team's league (*e.g.*, 75% of National League owners must agree to a National League team's proposed relocation), as well as a simple majority of the other league's owners.[442] Without the antitrust exemption, baseball's owners could not so easily prevent franchises from moving. The exemption allows large-market teams to monopolize the best regions and locks other teams into markets too small to support them.[443] It prohibits natural market forces from ensuring that teams are efficiently distributed around the country. Ending the exemption would likely convince large-market owners to accept widespread revenue sharing, or else face the threat of other teams moving into their previously monopolized large

439. *See* Hadley and Gustafson, *supra* note 250, at 118.

440. The Washington Senators became the Texas Rangers following the 1971 season. *See* STAUDOHAR, *supra* note 122, at 187.

441. See *supra* note 390 and accompanying text.

442. *See* Bill Koenig, *Domed to Failure,* USA TODAY BASEBALL WEEKLY, Jan. 21-27, 1998, at 16, 17.

443. *See* Whitney, *supra* note 215, at 129.

markets.

8. U.S. - Japan World Series

Sporting events like the World Cup and the Olympics have long demonstrated the tremendous patriotic fan interest generated by international competition. Unlike basketball and hockey, the top professional baseball players are unlikely to ever play for an Olympic "Dream Team" because the baseball season's most profitable months coincide with the Summer Olympics. MLB could instead stage a true "World Series" between the major-league champions and the top team in the Japanese professional league, probably the world's best professional baseball league outside North America. The two teams would play a seven-game series, with three or four games in a warm-weather United States ballpark (*e.g.*, Dodger Stadium) and the rest in Japan. The winner would receive 60% of the profits and the loser 40%. MLB's portion would be allocated 40% to owners, 40% to the MLBPA, and 20% to the participating MLB team. The series would take place in November (a relatively uneventful month in American sports) and likely yield high ratings because, as the Olympics have demonstrated, American viewers will watch sports they otherwise ignore when national pride is at stake. A U.S. - Japan series would raise baseball's profile both in this country and around the world, directly and indirectly generating more revenue for Major League Baseball.

9. Off-Season Fan Festival

As an entertainment industry, MLB relies on continued fan support to generate revenue and subsidize the players' and owners' lifestyles. In an effort to widen and strengthen its fan base, MLB should organize an interactive baseball-themed festival to travel to several major cities, similar to the FanFest it sponsors at the annual All-Star Game and the individual festivals run by many teams. This event could be tailored to appeal to fans on several levels. It should coincide with spring training in order to generate interest in the upcoming season. The festival should showcase the new Hall-of-Fame inductees, who are selected in late February and early March. It should also include interactive games and exhibits aimed at cultivating a love of baseball among younger fans, who have become increasingly enamored with football, basketball, hockey, and soccer. Most of all, however, the festival should concentrate on reconnecting with fans alienated by the recent work stoppages. MLB would initially lose money on this undertaking, but it would be a wise investment in the industry's future.

10. Off-Season Labor Negotiations

In-season work stoppages dampen fan interest in baseball, as proven by the attendance decline following the 1994-95 strike. Neither the players nor owners, however, have any incentive to resolve their differences in the off-season. Strikes and lockouts are useless during the off-season because the owners do not face revenue losses and the players are only paid during the season. At present, halting regular-season play is the only effective way for the two sides to weaken each other's bargaining position.

The players and owners should agree to shift the financial burden of a work stoppage to the off-season.[444] Over the course of each subsequent Basic Agreement, the two sides should annually contribute a fixed percentage of their revenues to a central fund. When the Basic Agreement expires, the players and owners should have one additional week to negotiate. If a new agreement can not be reached, 1/7th of the fund would go to charity for each day beyond the deadline that the parties have not reached an agreement, depleting the entire fund after one week. If the amount set aside is large enough, both sides will have immediate financial incentives to settle their labor disputes in the off-season and thus restore fans' faith in the integrity of the regular season.

CONCLUSION

Despite Major League Baseball's best efforts at self-

444. Commissioner Peter Ueberroth first suggested this plan during negotiations for the 1985 Basic Agreement, but it was lost among labor issues of more immediate significance. *See* Marburger, *supra* note 43, at 49.

destruction, the home run hitting of Mark McGwire and Sammy Sosa in 1998 proved once again that baseball can captivate the country in a way that no other sport can. Its endurance over the years is largely due to the emotional bonds its fans have formed with the players and their teams. To many, Opening Day signals the return of spring, the All-Star Game the height of summer, and the World Series the beginning of the cold descent into autumn and winter. The players and owners risk destroying this connection, however, each time they allow a labor dispute to disrupt the season. Major League Baseball is one of America's most profitable sports leagues, but its revenues depend on the continued goodwill of its fans. Both the players and owners must therefore keep the game on the field and make meaningful concessions in collective bargaining to ensure that Major League Baseball continues to be a successful professional sports league in the next century.