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Arbitration and Salary Inflation in Major League Baseball

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COMMENT

ARBITRATION AND SALARY INFLATION IN MAJOR LEAGUE BASEBALL

Baseball enjoys a unique place in our American heritage. . . . [It] is avidly followed by millions of fans, looked upon with fervor and pride and provides a special source of inspiration especially for the young. . . . it would be unfortunate indeed if a fine sport and profession, which brings surcease from the ordinary to most inhabitants of this land, were to suffer in the least because of undue concentration by any one or any group of commercial and profit considerations. The game is on higher grounds; it behooves everyone to keep it there.[1]

I. INTRODUCTION

Major league baseball has undergone significant changes since its inception over a century ago.[2] While the game itself remains basically the same, the system governing management and player relations is hardly the same as it was even twenty years ago.[3] In years past, team owners exercised absolute authority over terms of players' employment including player mobility and salary levels.[4] Under this system, players essentially had no voice in salary determinations and players were contractually restricted from signing with another team.[5] Players were forced either to accept the terms as offered by management or to quit the game altogether.[6]

The past twenty years brought drastic changes to this system within which management and players interact. In relatively recent years, players won two

1. Flood v. Kuhn, 309 F. Supp. 793, 797 (S.D.N.Y. 1970).

2. *See generally* Note, *Baseball Free Agency and Salary Arbitration*, 3 OHIO ST. J. DISP. RESOL. 243, 243-47 (1987).

3. *Id.*

4. *See, e.g., id.* at 248 (minor league player, Earl Toolson, of the New York Yankees organization objected to being assigned to different locations within the Yankee farm system at the whim of management. A federal court upheld the management's power to do so. Toolson v. New York Yankees, 346 U.S. 356 (1953)).

5. Dworkin, *Salary Arbitration In Baseball: An Impartial Assessment After Ten Years*, ARB. J., Mar. 1986, at 63, 63.

6. Note, *supra* note 2, at 246.

significant victories which greatly enhanced their bargaining position.[7] Players attained greater mobility through free agency and secured a voice in the amount of their earnings through salary arbitration.[8] In sharp contrast to years past, major league baseball players currently enjoy a system which allows them to effectively market their talents. Although the long range effects of the changes are yet to be seen, two results seem apparent: the enhancement of overall league competitiveness ending the true dynasties, and the rise of individual salary levels to astronomical levels.[9] For example, "[i]n 1989, one of every six major league players made $1 million or more in salary."[10] The price for a coveted ballplayer increased significantly over the past two decades. Average salaries increased from $44,676 in 1975 to $500,000 in 1990 and the average salary for 1992 is expected to exceed $1,000,000.[11]

Players in particular praise the existing system as a tremendous improvement over the once heavy-handed manner by which management controlled a player's career.[12] The emergence of a system that gives players an equal bargaining position is admittedly an improvement over the previous management-dominated structure. The question remains whether the enormous salary increases have resulted solely from a more equal bargaining position, by which players can effectively market their talents, or whether the system itself and its structure tends to artificially inflate player salaries. While the current system of salary arbitration and free agency provides fairness to players, it also, arguably, artificially inflates player salaries at four points. Player salaries are inflated due to: (1) spirited free agency bidding, (2) arbitration's last best offer selection process, (3) reliance on "comparable" salaries in arbitration, and (4) limitations placed on the arbitrator in making salary determinations.[13] If the previous system was flawed because management's absolute authority kept player salaries artificially low, the current system is similarly flawed if free agency and the salary arbitration process itself tends to artificially inflate player salaries.

In addition to management and player interests in these matters, the American public has a significant interest in the game's structure. Public interest is reflected in principles of the National Labor Relations Act[14] and also in Congressional hearings on the subject of professional sports.[15] Judge Cooper in *Flood v.*

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7. *See* Dworkin, *supra* note 5, at 67.

8. *See id.*

9. Note, *supra* note 2, at 251.

10. P. KING, THE SEASON AFTER: ARE SPORTS DYNASTIES DEAD? 164 (1989).

11. *Id.*; Comment, *Nearly a Century In Reserve: Organized Baseball: Collective Bargaining and the Antitrust Exemption Enter the 80's*, 8 PEPPERDINE L. REV. 313, 353 (1981) (citing J. WEISTART & C. LOWELL, THE LAW OF SPORTS 837 (1979)); Kurkjian, *Rolling a Seven*, SPORTS ILLUSTRATED, Mar. 16, 1992, at 21.

12. Dworkin, *supra* note 5, at 69.

13. *See* Note, *supra* note 2, at 253-62.

14. 29 U.S.C. §§ 151-68 (1988).

15. Comment, *supra* note 11, at 353.

Kuhn,[16] even took judicial notice that "baseball is everybody's business".[17] If players and management are unwilling or unable to halt the progression of enormous salary levels, the interest of the general public warrants an examination of the current system to determine if alterations could assist in some sort of control. This Comment focuses on the roles free agency and particularly salary arbitration play in the drastic rise of major league baseball player salaries.

II. THE OWNER CONTROLLED STRUCTURE

The emergence of free agency and salary arbitration follows an era where management governed players in a "heavy-handed" manner.[18] Prior to the advent of free agency and salary arbitration player salaries were significantly lower than salaries earned today. Compare, for example, the landmark salary in 1923 of $50,000 awarded to Babe Ruth with Ryne Sandberg's 1992 salary of $7,100,000.[19] Note that Ruth's $50,000 salary would be worth $390,405 in today's dollars.[20] In addition to lower salaries, salary levels in years past increased at a more moderate rate. For instance, the top player salary was $50,000 in 1923, which rose to $100,000 in 1947, $125,000 in 1959 and $578,200 in 1975.[21] By contrast, ever since Houston Astro paid pitcher Nolan Ryan the top salary of $1,300,000 in 1980, "owners have played a risky game of leapfrog with the No. 1 salary."[22] Only two years passed before Ryan's annual pay was nearly doubled by Yankee outfielder Dave Winfield at $2,200,000.[23] This was followed by a $3,000,000 top salary in 1989, $4,700,000 in 1990, $5,800,000 in 1991 and $7,100,000 in 1992.[24]

Prior to the mid 1970's major league baseball operated under a reserve system where players earned comparatively low salaries and had virtually no mobility, even if a player wished to market his talents elsewhere.[25] Devised in 1879, the reserve system was an effort to combat player movement.[26] It began as an informal agreement between major league club owners that each could produce a list of players "off-limits" to the rest of the league.[27] These top players were deemed reserved to one team only, and the other owners agreed not

16. 309 F. Supp. 793.
17. *Id.* (citing *Flood*, 309 F. Supp. at 797).
18. Comment, *supra* note 11, at 244.
19. Kurkjian, *supra* note 11, at 18-19.
20. *Id.* at 19.
21. *Id.* at 18.
22. *Id.*
23. *Id.* at 18-19.
24. *Id.*
25. Note, *supra* note 2, at 246-47.
26. *Id.* at 245 (citing Boswell & McKeown, *Baseball—From Trial by Law to Trial by Auction*, 4 J. CONTEMP. L. 171, 173 (1978)).
27. *Id.*

to contract with them or attempt to lure them away.[28] A few years later, the system was formalized and a reserve clause was written into every major league baseball player contract.[29]

The reserve clause gave a team exclusive rights to a player's services for the contract year plus one succeeding year.[30] In actuality, it bound a player to one team for his entire baseball career.[31] As interpreted for several years, renewal of a player's contract included renewal of the clause, thus enabling management to perpetually renew a player's contract.[32] Owners were free to keep a player as long as he remained valuable by successively renewing the contract according to management made terms.[33] If a dispute arose, the player could not contract elsewhere due to the reserve clause.[34] "From the point of view of the club, the reserve clause is absolutely" necessary, to justify its player development costs.[35] Without such a clause, a skillful player developed at the expense of one club could at any time be lured away by a higher paying team.[36]

Players likened the reserve system to slavery and made several antitrust challenges to the reserve system in federal court and ultimately in the United States Supreme Court.[37] Owners prevailed in each case, as major league baseball was held exempt from antitrust laws because baseball itself was not a business engaging in interstate commerce.[38] The Court viewed baseball as purely a state affair and not part of interstate commerce, despite interstate travel required for the games.[39] Even after other professional sports such as football and boxing were held subject to antitrust laws, the Supreme Court held baseball was a state affair and suggested that Congress, not the courts remedy the situation.[40]

III. FREE AGENCY

After unsuccessful antitrust suits, players turned to a nonjudicial mechanism by which to challenge the reserve clause.[41] In the landmark arbitration decision of *In re Twelve Clubs Comprising National League of Professional Baseball Clubs and Twelve Clubs Comprising American League of Professional Baseball Clubs,*

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28. *Id.*
29. *Id.*
30. *Id.* at 246.
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.* at 247 (citing Brief on behalf of Defendants-In-Error at 71-72, Federal Baseball Club v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922)).
36. *Id.*
37. *Id.* at 246-47.
38. *Id.* at 248.
39. *Id.* (citing *Toolson*, 346 U.S. at 356; *Federal Baseball*, 259 U.S. at 208-09).
40. *Id.* at 249 (citing *Flood*, 407 U.S. at 284).
41. Note, *supra* note 2, at 249.

Los Angeles and Montreal Clubs and Major League Baseball Players Association,[42] (commonly known as the *Messersmith-McNally* case) players attacked the reserve clause through the arbitration provision of the collective bargaining agreement (hereinafter the "Basic Agreement").[43] Players filed a grievance challenging the perpetual system of owner control.[44] They argued that while the club had the right to renew a player's contract for one year, the contract terminates at the end of the renewal year, freeing the player to contract with other teams.[45] The arbitrator agreed and found nothing in the Uniform Player Contract that explicitly expressed a mutual agreement to successive contract renewals beyond the first renewal term.[46] Rather, a player could become a free agent by giving notice one year before the contract expired.[47] The *Messersmith-McNally* decision gave players leverage in negotiating the 1976 Basic Agreement whereby players secured greater mobility through free agency.[48] Under the 1976 Basic Agreement, a player could become a free agent if he had six or more years of major league baseball service.[49]

Free agency was feared due to predictions that top players would gravitate to one team, leaving competition within the league unbalanced.[50] In fact, free agency has strengthened the competitiveness of major league baseball.[51] For example, from 1969 to 1978, three teams repeated as World Series winners, reigning in all but three years, while in years 1979 to 1988, only one team has won the World Series twice, with the remaining eight years showing a different victor.[52]

Weaker teams have greater use of the free agent market than their well-established competitors.[53] Clubs want to get the best talent, but pay the lowest price possible.[54] A club's offer is based on their estimate of a free agent's contribution to the club's revenues.[55] This contribution will be greater to a

42. 66 Lab. Arb. 101 (BNA) (Dec. 23, 1975) (Seitz, Arb.).

43. *Id.* at 102.

44. *See id.*

45. *See id.* at 112-14.

46. *Id.* at 114.

47. Note, *supra* note 2, at 250 (citing Macnow, *Messersmith, McNally: They Had No Idea . . .*, THE SPORTING NEWS, Feb. 9, 1987, at 33).

48. Wong, *Survey of Grievance Arbitration Cases in Major League Baseball*, ARB. J., Mar. 1986, at 42, 45.

49. DWORKIN, supra note 5, at 68.

50. Note, *supra* note 2, at 251 (citing Boswell & McKeown, *supra* note 26, at 181).

51. *Id.*

52. P. KING, *supra* note 10, at 159.

53. *See* Supplemental Materials for Professor H. Lowe's Sports Law class, University of Missouri-Columbia 8 (April 10, 1990) [hereinafter Sports Law Materials].

54. *Id.* at 10.

55. *Id.*

weaker team which encourages them to bid larger amounts.[56] Through the free agent market, weaker teams have lured top players from established teams by offering premium salaries.[57] The result is a spreading of available talent over the entire league, creating a more competitive balance.[58]

IV. SALARY ARBITRATION

Under the old reserve clause system, owners enjoyed absolute authority in determining the amount of player salaries.[59] Management would make an offer which a player was "free" to accept or reject.[60] If dissatisfied with the offer, the only way a player could attempt to pressure a club to offer more money was to stay away from spring training.[61] If valuable enough, an owner might increase its salary offer.[62] If not, a player was forced either to accept the offer or to retire, since he was contractually prohibited from negotiating with other teams.[63]

The 1973 Basic Agreement included an arbitration provision making salary arbitration available to players with between two and six years of major league baseball experience.[64] Salary arbitration is intended to be "an impartial process designed to equalize salaries among players with similar stature and experience,"[65] and "[a]s such, player salaries are to be strictly related to player performance."[66] Arbitration of player salaries operates under a "last best offer" method.[67] When a salary dispute is taken to arbitration, team management and the player each submit one salary figure.[68] The arbitrator is given little flexibility in making salary awards and ultimately must choose either the figure submitted by management or the player's proposed figure.[69] By hearing, each side is given one hour and a half to argue its proposed salary figure.[70] The arbitrator is limited to the following criteria in making the decision:

56. *See id.* Economists Roger Noll and Benjamin Okner of the Brookings Institute testified before a Senate Antitrust Subcommittee in 1971 that, "all things being equal, a good player is worth more to a talent-poor team than to a talent rich-one." Boswell & McKeown, *supra* note 26, at 181.

57. Note, *supra* note 2, at 251 (citing Boswell & McKeown, *supra* note 26, at 181).

58. *Id.*

59. *Id.* at 247.

60. *Id.* at 254.

61. *Id.*

62. *Id.*

63. McCormick, *Labor Relations In Professional Sports—Lessons in Collective Bargaining*, 14 EMPLOYEE REL. L.J. 501, 503 (1989) (citing L. SOBEL, PROFESSIONAL SPORTS AND THE LAW 91 (1977)).

64. Dworkin, *supra* note 5, at 64.

65. Sports Law Materials, *supra* note 53, at 8.

66. *Id.*

67. Note, *supra* note 2, at 254.

68. *Id.*

69. *Id.*

70. *Id.*

1) The quality of the player's contribution to his club during the past season,
2) Length and consistence of the player's career performance,
3) The player's past compensation,
4) Comparative player salaries,
5) Existence of physical or mental defects affecting performance, and
6) The club's recent performance.[71]

The last "best offer procedure rests on motivation by fear, rather than a process where each side maintains extreme positions from which an arbitrator arrives at some fair result."[72] In theory, both management and the player "will develop even more reasonable positions because of the fear that the arbitrator will select the other party's offer."[73] If one proposal is too extreme, the other will win almost by default.[74]

IV. SALARY INFLATION

A. *Free Agency*

Free agency plays a significant role in the dramatic rise in player salaries.[75] Free agency is arguably the first point at which player salaries are artificially inflated. The effect of the free agency system on player salaries was termed "The Law of Increasing Desperation" by former Baltimore Orioles General Manager Hank Peters and has been described as follows:

> Fear strikes the league when one team signs a quality free agent. Other teams realize while one team has increased its competitiveness, they have sat idle. Other teams then jump into the free agent market to keep pace. As a result, the price for remaining free agents escalates with competitive bidding according to supply and demand and not in relation to player talent and usefulness.[76]

Even the threat of free agency can produce higher salaries.[77] Teams afraid of losing their best players may sign lucrative long-term contracts to keep valued players who will soon be eligible for free agency.[78] The 1992 Ryne Sandberg

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71. *Id.* at 255 (citing Grebey, *Another Look at Baseball's Salary Arbitration*, ARB. J., Dec. 1983, at 24, 24-30).
72. Dworkin, *supra* note 5, at 65.
73. *Id.* (citing P. FEUILLE, FINAL-OFFER ARBITRATION 13 (1975)).
74. Note, *supra* note 2, at 255.
75. *Id.* at 258.
76. *Id.* at 255.
77. Dworkin, *supra* note 5, at 68.
78. *Id.*

contract illustrates this point precisely. Although Sandberg was not eligible for free agency until after the 1992 season, Sandberg imposed a signing deadline of March 1, 1992 on the Chicago Cubs.[79] If the deadline was not met, Sandberg promised to become a free agent in October of 1992.[80] The threat obviously worked. On March 2, 1992 Sandberg secured a four-year $28,400,000 contract extension.[81]

While Sandberg has been a superb player, it remains to be seen whether he continues to be a $7,000,000 player.[82] When his contract expires in 1997 he will be thirty-eight years old, and according to at least one projection, Sandberg may have already past his peak.[83] Obviously, Sandberg's salary will influence the bidding levels for upcoming free agents.[84] What can Oriole shortstop Cal Ripkin who is 31 years old, Minnesota's Kirby Pucket at 31, Pittsburgh Pirate's Barry Bonds at 27 and Texas Ranger's Rubin Sierra at 26, expect if they become free agents after this season?[85] Not only are they all younger than Sandberg, they are all equally important to their teams.[86]

Since spirited free agency bidding, stemming from a lack of true market forces, artificially inflates salary levels, some argue it is the owners' responsibility to keep their bids down.[87] Players, for instance, disclaim responsibility and blame club owners and the market for the enormous increase in player salaries.[88] According to Oakland Athletic's pitcher, Dave Stewart, the enormous salaries are not because of a players' greed, but rather because of the existing market:

> We're like a prize piece of crystal, a prize bull at an animal auction. The owners don't care how much they're paying; they want the best for their money. We're being bought. It's not our fault. If they are going to pay it I am not going to say, 'No thanks, I don't want it.'[89]

In 1985, in response to the ever-escalating free agent bids, "owners for the first time exercised what has been called alternatively, 'financial restraint,'[90]

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79. Kurkjian, *supra* note 11, at 18.

80. *Id.*

81. *Id.*

82. *Id.* at 18-19.

83. *Id.* at 19. The statistical model in the 1992 Elias Baseball Analyst has him hitting twelve home runs and batting .258 this year, down from 26 home runs and a .291 batting average in 1991. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *See, e.g.,* Comment, *supra* note 11, at 354.

88. Kurkjian, *supra* note 11, at 21.

89. *Id.*

90. Note, *supra* note 2, at 252 (citing Bodley, *Baseball's Next Step: Starting It Out,* USA Today, Sept. 22, 1987, at C1, col. 3 (quoting Major League Player Relations Committee Chief Barry Rona)).

'fiscal sanity,'[91] or 'collusion.'"[92] However labeled, an abrupt halt occurred in the spirited bidding for free agents.[93] Players reacted by filing a grievance in arbitration, claiming club owners acted in collusion to keep free agent salaries down.[94] A memo from the Director of Player Relations Commission to general managers lead to the arbitrator's finding that the owners had acted collusively in violation of Article XVIII(H) of the Basic Agreement.[95] The memo urged owners to demonstrate restraint in free agency bidding in light of years showing a low rate of return from the level of free agent salaries to pennant victories.[96]

In response to criticism of club owners' failure keep their bids low, it should be noted that the Basic Agreement currently provides an automatic treble damage award if intentional collusion is proved against five or more teams.[97] Of course, management cannot be forced to participate in free agency. If management is unable to exercise restraint for fear of collusion, perhaps the high prices will encourage management to watch their farm programs more closely.[98]

B. Last Best Offer

The last best offer selection process is the second point at which player salaries are artificially inflated. Under this process, management does not submit a figure based solely on player talent and usefulness. The salary figure submitted will be inflated to some extent to guard against the arbitrator's acceptance of the player's larger salary proposal.[99] In addition and contrary to the motivation by fear theory, it is unlikely that players have an equal incentive to keep their salary proposals within reason.[100] Players are basically in a no-lose situation.[101] Following arbitration, the player will receive either management's figure (the salary the player would have received outside arbitration, which as suggested has already been inflated due to the fear tactic), or the higher figure he submits.[102]

Even players who "lose" in arbitration actually receive large salary increases.[103] For example, of the 17 players who lost arbitration cases in 1983,

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91. *Id.* (citing Chass, *Its the Great Salary Slowdown: But It's Collusion Against Free Agency or a Return to Fiscal Sanity?*, THE SPORTING NEWS, Feb. 1987, at 32-33).

92. *See* Bodley, *supra* note 90, at C1, col. 3.

93. Note, *supra* note 2, at 252.

94. *Id.*

95. *Id.* (citing Major League Baseball Players Ass'n v. The Twenty Six Major League Baseball Clubs, Major League Baseball Ass'n Panel Grievance No. 86-2 (Sept. 21, 1987)).

96. *Id.* at 252 (citing *Excerpts From the Ruling*, N. Y. Times, Sept. 22, 1987, at A32, col. 1).

97. Robinchaux, *Major League Baseball Players, Owners Reach Accord, But the Damage Remains*, Wall St. J., Mar. 20, 1990, at A67, col. 5 (eastern ed.).

98. Note, *supra* note 2, at 253 (citing Goodwin, *Both Ballplayers and Owners Await Forthcoming Remedies*, N.Y. Times, Sept. 22, 1987, at A32, col. 4).

99. Dworkin, *supra* note 5, at 65.

100. *Id.* at 66-67.

101. Note, *supra* note 2, at 254.

102. *Id.*

103. Dworkin, *supra* note 5, at 66-67.

their average salary gain from the previous year was 54%.[104] "Similarly, the six losers in 1984 received salary increases of 46% and the seven losers in 1985 gained 39%."[105] As to the arbitration "winners," the average player nearly doubled his salary.[106] For instance, in 1984 the winners gained on average 160% and in 1983 the average gain was 174%.[107] Management is cognizant that the current arbitration process tend to favor players. As stated by Joe McDonald, General Manager of the Saint Louis Cardinals, "[o]ur attitude toward the arbitration process and its overall effects on our salary structure remains firm: it is absolutely devastating to us."[108]

While motivation by fear is designed to encourage convergence between player and management salary proposals, in fact, the proposals have been moving further apart.[109] Since the inception of salary arbitration, the average difference between management and player offers has been increasing. For instance, the average spread increased from $9750 in 1974 to $164,000 in 1988.[110]

C. Arbitrator's Criteria

The arbitrator is restricted to the above mentioned criteria in determining which salary proposal is more reasonable.[111] A third point of salary inflation results from the criteria utilized by the arbitrator. One such criteria is comparable baseball player salaries, which includes free agent salaries.[112] Forces at work which determine free agent salaries are very different than factors to be considered in an arbitration decision.[113] Teams seeking a free agent want to fill a certain specific need that cannot be filled with its existing players.[114] Factors *influencing the amount offered include the probability the player will perform at* a certain expected level and the player's ability to draw fans.[115] According to free agency's "Law of Increasing Desperation," salary levels escalate rapidly according to supply and demand and not in relation to player talent and usefulness.[116] The arbitration process, on the other hand, considers the player's past performance and it is an award based upon past excellence.[117] In fact,

104. *Id.*
105. *Id.*
106. *Id.* at 67.
107. *Id.*
108. *Id.* (citing Grebey, *supra* note 71, at 25).
109. *Id.*
110. *Id.*
111. *Id.* at 65.
112. Note, *supra* note 2, at 259.
113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.* at 251 (emphasis added).
117. *Id.* at 259.

management's view of a player's future worth is specifically excluded from consideration.[118]

In sum, "free agent salaries are lures, buoyed by competitive bidding and by the perceived urgency of the team's need."[119] In light of the perceived urgency, the opportunity for a large pay performance disparity is greater for free agents than in other salary settings.[120] Arbitration's use of free agent salaries as comparable salaries inaccurately raises the general level of all player salaries at a given talent level.[121] "Through arbitration and salary negotiations between players and management, these salaries become part of the game's structure."[122] Allowing speculative salaries to be integrated into the overall salary structure artificially inflates salary levels.[123]

Curiously, a club's financial position is a topic specifically excluded in the arbitration hearing.[124] A club's financial position is a necessary factor to determine the true economic worth of a player under real market forces. According to generally accepted market theories, the value of any product or service is the price that a willing purchaser will give.[125] Such a purchaser would certainly consider his own financial position in determining an amount to offer. Exclusion of a club's financial position is a further example that arbitration tends to inflate player salaries in that it operates under an unrealistic set of market conditions.

D. *Arbitrator's Limitations*

A final point of salary inflation results from the arbitrator's limitation in choosing either the management or player figure.[126] The arbitrator is not free to consider the evidence and then make a just award, but must choose which of two proposals is more reasonable. While a player's salary proposal may be chosen over the management proposal because it is viewed as more reasonable, the salary awarded may nevertheless be higher than the player's true economic worth as gauged by his past performance.

In actuality, relatively few salary disputes are submitted to arbitration.[127] Less than 50% of those eligible for arbitration actually file and more than 50% of those who do file settle prior to arbitration.[128] A low percentage of actual use does not, however, dismiss arbitration's effect on increasing salary levels.

118. *Id.* n.76.
119. *Id.*
120. *Id.*
121. *Id.* at 260.
122. *Id.*
123. *Id.* at 258-59.
124. *Id.* at 255 (citing Grebey, *supra* note 71, at 26).
125. *See* BLACK'S LAW DICTIONARY 597 (6th ed. 1990).
126. *See* Note, *supra* note 2, at 254.
127. Sports Law Materials, *supra* note 53, at 8.
128. *See* Note, *supra* note 2, at 255.

Average player salaries have increased with the availability of arbitration, despite this low percentage of actual use.[129] The mere threat or possibility of arbitration can be used as a tool in and of itself in obtaining higher salaries during management-player negotiations. Additionally, a club may offer a hefty figure to entice a player to settle short of arbitration.[130] These figures become part of the overall salary structure which along with free agent salaries are used as comparisons in salary arbitration.

V. CONCLUSION

Under the previous system, where management had complete control over player salaries and mobility, market pressures were virtually non-existent and salaries were kept artificially low.[131] Some have attributed the enormous rise in player salaries solely to an end of management control and to the advent of the players' equal bargaining position.[132] As stated by a representative of the Major League Baseball Players Association, "[t]he increase in salaries demonstrates the unconscionable exploitation of players in earlier years."[133] A more reasoned analysis might suggest the drastic increase in player salaries stems from the change from a system with no market forces, which produced artificially low salaries, to a more structured system which in addition to providing players an equal bargaining position also artificially inflates player salaries.

Control is needed to end the rapidly escalating level of player salaries.[134] Owners and managers are not pleased with the enormous salary levels and are concerned about the future of major league baseball.[135] As stated by Al Rosen, General of the San Francisco Giants:

> I've said for years that we're headed for Armageddon, [b]ut now we are past the gates. To the Four Horsemen of the Apocalypse—Famine, Pestilence, Death and War—we have added a Fifth: Unmitigated Greed.[136]

For instance, at the time Sandberg became baseball's first $7,000,000 man by signing a four-year $28,400,000 contract extension, he described the contract as

129. Dworkin, *supra* note 5, at 67.

130. *Id.*

131. *Id.* at 64.

132. *See, e.g.*, Note, *supra* note 2, at 258.

133. *Id.* (citing Miller, *Arbitration of Baseball Salaries: Impartial Adjudication in Place of Management Fiat*, ARB. J., DEC. 1983, AT 31, 33).

134. Comment, *supra* note 11, at 354.

135. Kurkjian, *supra* note 11, at 18.

136. *Id.*

"pretty comfortable."[137] According to Rosen, "It [Greed] is going to do us all in. I can't see baseball surviving this."[138]

While Sandberg was able to command a $7,100,000 annual salary from the Chicago Cubs, other teams are not as wealthy.[139] Will the Pittsburgh Pirates, who lost an estimated $7,000,000 last season have the financial wherewithal to keep leftfielder Barry Bonds if he becomes a free agent after the 1992 season?[140] Can the Minnesota Twins afford to lose Kirby Pucket, a .320 lifetime hitter and the most popular player in the club's history,[141] if he enters the free agent market after this season? On the other hand, can the Twins afford to keep him?[142] As stated by Twins' General Manager Andy MacPhail, "[the Sandberg deal] doesn't change our balance sheet. . . . We still have to do what's in our best interest."[143] As to the players' opinion on the ever-escalating salaries, Gene Orza, the Major League Players Association's associate general counsel stated, "[p]layers are paid based on revenues. . . . Revenues go up, salaries go up."[144] Even outside observers predict "trouble for baseball."[145] As stated by Lawrence Kudlow, chief economist for the New York investment firm of Bear, Stearns and Company:

> In the 1980's nobody thought you could pay too much for real estate, but by the end of the '80s that bubble had burst. . . Any business that continues to permit high cost increases year in and year out becomes a suspect business. Look at GM, at Ford.[146]

Currently, teams are losing money and one owner says half the teams might lose money in 1992.[147] The MLPA disputes that prediction saying, "a profit-loss statement is not a true indication of a franchise's financial health."[148] The Oakland Athletics, the American League champions in 1988, 1989 and 1990 lost $5,000,000 to $6,000,000 last season.[149] The A's have eleven players eligible for free agency after the 1992 season.[150] They include Dave Stewart, power hitting first baseman Mark McGwire and ace relief pitcher Dennis Eckersley.[151]

137. *Id.*
138. *Id.*
139. *Id.* at 19-20.
140. *Id.* at 19.
141. *Id.* at 20.
142. *Id.*
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.*

Oakland General Manager Sandy Alderson says the team is "overextended."[152] "If we have to risk losing a player to a team offering more, that's too bad."[153] Ironically, it seems that the Oakland A's are suffering from their success.[154] The 1991 National League pennant winners, the Atlanta Braves are also suffering too.[155] Their payroll has jumped from $20,000,000 in 1991 to $35,000,000 in 1992 as they went from the worst club in their division to the best.[156]

Alderson is glad to see contracts such as Sandberg's because they will accelerate a change in the current system.[157] "Baseball may need some sort of shock, perhaps a team's failing to meet its payroll or a franchise folding."[158] Says Al Rosen, General Manager of the San Francisco Giants, "I don't know if teams have to fold . . . but I believe in the next one to three years, outstanding players aren't going to have a market for their services, because clubs won't be able to bid."[159] If both management and players would consider the uncertainty of the future and join to confront the problem perhaps a solution could be attained.[160] One suggestion is a system "along the lines of National Basketball's system of salary caps and a guarantee players will receive a set percentage of revenue."[161]

Changes are looming on the horizon. Both management and players anticipate a reopening of the Basic Agreement after this season.[162] Discussions will most certainly get around to arbitration, "which owners consider the bane of their existence and players consider their divine right."[163] One suggestion is to replace the last best offer method with a more conventional arbitration process whereby the arbitrator would set the salary level himself. This change is warranted because under the current last best offer system, players do not have an equal incentive to lower their proposals due to their no-lose situation.[164] Under such an arbitration process, players would still have a voice in salary determinations since each party has an opportunity to demonstrate the reasonableness of his figure in the arbitration hearing. Management could then

152. *Id.*
153. *Id.*
154. *Id.*
155. *Id.*
156. *Id.*
157. *Id.*
158. *Id.*
159. *Id.* It is predicted that revenue growth from television contracts is coming to a screeching halt and so will growth in player salaries. *Id.* at 21.
160. *See id.* at 21.
161. *Id.*
162. *See id.* at 20-21.
163. *Id.* at 21.
164. *See, e.g.*, Dworkin, *supra* note 5, at 66-67.

submit a proposal reflective of player worth to the club that is not inflated from a fear of automatic adoption of the player's figure. Furthermore, free agent salaries should be excluded from comparable salaries utilized in arbitration. Free agent salaries are determined by supply and demand and a perceived sense of urgency and therefore, are not a reliable indicator of appropriate salaries for a given level of skill.

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