Baseball's Third Strike: The Triumph of Collective Bargaining in Professional Baseball

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Since the inception of professional baseball, team owners have imposed limits on the freedom of players to negotiate contract terms. In this article Professor McCormick traces the history of attempts by professional baseball players to obtain contractual freedoms through the use of the antitrust and labor relations laws, attempts that culminated with the players' strike of 1981. Although players in other team sports successfully have utilized antitrust laws to increase player bargaining power, Professor McCormick argues that labor law has provided baseball players the only effective means to gain increased contractual freedoms. Professor McCormick concludes that player-owner disputes over the reserve system in baseball today fall within the labor exemption to the antitrust laws and, therefore, that players and owners will resolve future conflicts solely within the structure of labor relations law.

I. INTRODUCTION

For countless followers of professional baseball, as well as team owners, players, and numerous dependent businesses, the 1981 baseball season will be remembered more for the off-the-field strife than for the games themselves. Players engaged in a seven week work stoppage, which brought play to a halt in the middle of the championship season. After charges of bad faith bargaining,[1] an action in federal district court seeking to postpone the strike,[2] testimony before the National Labor Relations Board,[3] the involvement of the Federal Mediation and Conciliation Service,[4] and

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1. *See infra* note 16.
2. *See infra* note 17.
3. N.Y. Times, July 8, 1981, at A19, col. 1; *id.*, July 6, 1981, at C6, col. 3.
4. The Federal Mediation and Conciliation Service, created hy the Labor-Management Relations Act of 1947, makes available "government facilities for conciliation, mediation and

the Secretary of Labor,[5] management and labor ultimately negotiated a resolution to their dispute. The agreement was the product of collective bargaining and the economic sanctions which accompany that system.

The 1981 strike was an outgrowth of the historic conflict between the reserve system[6] and the players' desire for full freedom of contract. This conflict is virtually as old as professional baseball itself. Although the 1981 strike was unprecedented in its duration and timing, it was merely a new manifestation of the struggle between players, their unions, and team owners to resolve the conflict. For more than a century professional baseball players were subject to the reserve system; employment terms that, in effect, prevented players from seeking employment with other teams even after the expiration of their contracts. Throughout the history of baseball players had sought freedom from the reserve system and the resulting incapacity to contract freely. Players attempted to organize or play for teams in new leagues that arose in competition with established leagues.[7] Players brought numerous law suits, contending that the reserve system was an unlawful restraint on trade.[8] In addition, players and others who were concerned about the perceived imbalance of power in the employment relationship in professional baseball called for congressional action to outlaw or modify the reserve system.[9] These efforts failed to alter the system significantly.

During the 1970's players in all other major professional sports succeeded in effectuating major modifications in their reserve systems, primarily through successful antitrust challenges.[10] The Supreme Court, however, had ruled in 1922 that the professional

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voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours and working conditions." 29 U.S.C. § 171(b) (1976). "The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute . . . . " *Id.*

For information on the involvement of the Federal Mediation and Conciliation Service in the baseball negotiations of 1981, see N.Y. Times, July 17, 1981, at A15, col. 5; *id.*, July 10, 1981, § A at 15, col. 4.

5. N.Y. Times, July 18, 1981, at 17, col. 3; *id.*, July 17, 1981, at A15, col. 5.

6. For an explanation of reserve system restraints, see *infra* notes 26-34 and accompanying text.

7. *See infra* notes 43-83 and accompanying text.

8. *See infra* notes 84-111 and accompanying text.

9. *See infra* notes 191-98 and accompanying text.

10. *See infra* note 215 and accompanying text.

baseball industry was exempt from the antitrust laws.[11] In 1972 the Court reaffirmed this exemption in the celebrated Curt Flood case,[12] leaving baseball alone among the professional sports beyond the reach of the antitrust laws. As a result of this case, the law could not impose sanctions upon the owners for collectively fixing the terms and conditions of employment for players. Despite the owners' success in maintaining monopoly power, baseball players, like players in other sports, succeeded in making major inroads upon the reserve system in the 1970's. Unlike athletes in the other sports, however, baseball players gained concessions through the development of the Professional Baseball Players' Association. In 1976 an arbitrator's award gave impetus to the emerging organization and overcame a century of baseball history—effectively disestablishing the reserve system. As a result of this decision and the development of the Players' Association into a representative labor union, management and labor in baseball have engaged in protracted and bitter negotiations over the reserve system, culminating in the 1981 strike.

The specific issue that gave rise to the 1981 players' strike was the amount of compensation paid to a team that "loses" a free agent player.[13] Team owners took the position that when a player's contract with one team terminated and the player signed to play for another team, his new team should compensate the former team for its loss by awarding the former team a major leagne player.[14] The Players' Association was willing to accept the premise

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11. Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922); *see infra* notes 84-92 and accompanying text.

12. Flood v. Kuhn, 407 U.S. 258 (1972). *See infra* notes 103-08 and accompanying text.

13. A free agent player in professional team sports is a player who has completed the term of his contractual obligation with one club and, therefore, is available for hire by other clubs pursuant to league rules. These league rules may continue to limit a player's freedom to choose a new team. For example, a team may possess a right of first refusal on any offer that the player receives from another club. Moreover, if a free agent signs with another club, the former club may be entitled to compensation from the acquiring team. Finally, a draft, which allocates among teams the right to negotiate with available free agent players, may limit the selection of a free agent. *See* J. WEISTART & C. LOWELL, THE LAW OF SPORTS 523 (1979).

14. Free agent compensation or indemnity systems have been a regular part of intraleague rules in sports leagues in which players may sign with teams other than their original teams. League bylaws usually provided that if the player's original team and the team acquiring the player's services could not agree on the type or amount of compensation the former team should receive, the determination would be made by the league commissioner, who was empowered by league rules to award either future draft rights or a current player. In essence, the compensation is a forced trade. *See* J. WEISTART & C. LOWELL, *supra*

that the teams losing a player should be afforded some form of compensation. It argued, however, that the owners' formula would discourage team owners from offering more lucrative contracts to players who had completed their contractual obligations with other teams.[15] Team owners would fear losing a valuable member of their roster in return. The Players' Association further charged that the owners had failed to bargain in good faith in this dispute.[16] The National Labor Relations Board first sought injunctive relief upon the claim,[17] and then commenced unfair labor practice proceedings against the owners.[18]

Although negotiations took place, the two sides seemed to grow further apart. When owners purchased strike insurance,[19] players claimed that the owners' tactics and intransigence showed their intention to "bust" the union.[20] After weeks of stalemate, the

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note 13, at 502-03. These schemes have produced much litigation. For a further discussion of free agent compensation plans in various team sports, see Mackey v. National Football League, 407 F. Supp. 1000 (D. Minn. 1975), *modified*, 543 F.2d 606 (8th Cir. 1976); Robertson v. National Basketball Ass'n, 389 F. Supp. 867 (S.D.N.Y. 1975); Kapp v. National Football League, 390 F. Supp. 73 (N.D. Cal. 1974).

15. Players in all sports that utilize free agent compensation systems have contended that the system operates as a restraint on player mobility. Some courts have agreed. *See, e.g.*, Mackey v. National Football League, 407 F. Supp. 1000 (D. Minn. 1975). Prospective employers face the prospect of relinquishing valuable present or future players if later they wish to sign an available free agent. Several economists have noted that, as a result, owners become less willing to hire available free agents than they would be if the "forced trade" system were not in effect. *See, e.g.*, H. DEMMERT, THE ECONOMICS OF PROFESSIONAL TEAM SPORTS 38 (1973); J. QUIRK & M. EL HODIRI, *The Economic Theory of a Professional Sports League*, in GOVERNMENT AND THE SPORTS BUSINESS 34 (R. Noll ed. 1974).

16. The Players' Association alleged that the owners had claimed an inability to withstand the players' free agency demands financially, but that the owners had refused at the same time to open their books to substantiate this claim. NAT'L L.J., May 20, 1981, at 13. This charge, if established, could have constituted a violation of § 8(a)(5) of the National Labor Relations Act, 29 U.S.C. § 158(a)(5) (1976). NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956). The allegation presented the first impression issue of whether conduct away from the bargaining table by persons not directly involved in negotiations could constitute a *Truitt* type of violation.

17. *Judge Puts Off Baseball Decision*, N.Y. Times, June 5, 1981, at A19, col. 2; *Baseball Strike Off as Players, Owners Extend Deadline*, N.Y. Times, May 29, 1981, at A17, col. 1; *Labor Board Starts Legal Moves Aimed at Postponing Strike*, N.Y. Times, May 28, 1981, at B11, col. 5. On June 10, 1981, U.S. District Judge Henry F. Werker denied the injunction, saying "there is no reasonable cause to believe that an unfair labor practice has been committed." *Baseball Poised for Strike as Judge Denies Injunction*, N.Y. Times, June 11, 1981, at D21, col. 4.

18. *Baseball Impasse: Many Sides to Story*, N.Y. Times, May 25, 1981, at C4, col. 1.

19. The owners were insured against potential losses up to $50 million. Under the policy the owners received $100,000 per game after a 153 game deductible amount. *Id.*

20. New York Yankees player Reggie Jackson stated at the time: "I think the owners realize they can't break the union—at least, I hope they realize that." Anderson, *The Baseball Strike Situation*, N.Y. Times, June 11, 1981, at D21, col. 4. A Baltimore player repre-

parties moved negotiations from New York to Washington at the behest of the Secretary of Labor,[21] who pressured the parties to reach a settlement and salvage the season. Numerous formulae for resolving the dispute were proposed and rejected.[22] Ultimately, the parties reached a compromise, creating a complex free agent compensation scheme[23] and resolving other contract issues.[24] Thus, the events of the 1981 strike had the elements of a full scale labor dispute with sophisticated and resolute principals who engaged in protracted negotiations, endured an enormously costly work stoppage,[25] and finally reached a complicated agreement that was satisfactory, for the present, to all of the parties to the negotiations. This strike, like most strikes, had effects beyond the costs incurred by the parties engaged in the collective bargaining process. The

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sentative said: "The owners apparently thought it was their last chance to break the union." Kaplan, *Let the Games Begin*, SPORTS ILLUSTRATED, Aug. 10, 1981, at 14, 18.

21. *Talks Resume in Washington*, N.Y. Times, July 21, 1981, at C11, col. 5.

22. Originally the owners had wanted to rank half of all major league players by position. Depending upon where the player stood on the ranking list, the team siguing the free agent could protect either 15 or 18 players. The team losing the player would have the right to select any unprotected player. The Players' Association was willing initially to rank only five percent of all players. *The Issue, id.*, May 25, 1981, at C4, col. 2. In July the Association proposed sending the free agent compensation question to binding arbitration; the owners rejected the proposal. *Chronology of the Baseball Strike, id.*, Aug. 1, 1981, at 18, col. 4.

23. Under the agreement teams may protect 24 players each if they sign a ranking free agent and 26 if they do not. All other players go into a "compensation pool." "Type A" ranking free agents are those who fall within the top 20% of all players at each playing position based on statistics of the players' two most recent seasons. "Type B" ranking free agents are the players rated in the 20-30% category in their positions. A team that loses a Type A player may select an unprotected player from the pool. A team that loses a Type B player receives a draft choice from the signing team. A team losing an unranked player receives no compensation. *Baseball Strike Issues*, N.Y. Times, Aug. 1, 1981, at 18, col. 1; Kaplan, *supra* note 20, at 14, 18. For a further discussion of the several proposals, see Kaplan, *No Games Today*, SPORTS ILLUSTRATED, June 22, 1981, at 17.

24. Under the agreement players received credit toward free agent status for the strike period. The contract extended the duration of the basic agreement for one year, to December 31, 1984. Kaplan, *supra* note 20, at 17-18.

25. The strike cost the players an estimated $28 million in salaries. The clubs' losses for the 713 unplayed games were approximately $116 million. The owners' insurance policy paid $44 million, leaving a net loss of $72 million. Kaplan, *supra* note 20, at 17; *Strike Over, Baseball Resumes Aug. 9*, N.Y. Times, Aug. 1, 1981, at 1, col. 1. Dave Winfield of the Yankees lost approximately $338,500 in salary. *Strike Losses Heavy and Widespread*, N.Y. Times, Aug. 1, 1981, at 17, col. 3. The major league cities also suffered considerable losses. The Philadelphia Chamber of Commerce reported losses of $75,000 to $100,000 for each home game that the Phillies failed to play. Each game missed at Boston's Fenway Park cost the city $18,000 in taxes and $650,000 that fans ordinarily would have spent in and around the stadium. The Mayor of Cincinnati said: "Our local estimate is that for each game not played the community loses $900,000 in money not spent." *Id.* New York City's comptroller estimated that the strike cost the city at least $8,400,000 in lost business and wages. *City's Loss Put at $8.4 Million*, N.Y. Times, Aug. 1, 1981, at 19, col. 2.

willingness of both owners and players to incur those pressures attests to the difficulty of resolving the ancient conflict at issue.

The free agent compensation controversy is only one aspect of the genuine issue that has separated players from owners. For more than a century, baseball's reserve system has bound professional baseball players. The reserve system in the past included several components that limited both the ability of owners to negotiate for players and the right of players to contract freely. Team owners by agreement circumscribed their own capacity to trade in players through the draft,[26] the no-tampering rule,[27] and blacklisting sanctions.[28] The assignment clause,[29] the compensation rule,[30]

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26. Under the draft owners allocate availahle players among teams, usually in reverse order of the team's previous year's performance record. Once a team drafts a player, the drafting team holds the exclusive right to contract with that player. Leavell & Millard, *Trade Regulation and Professional Sports*, 26 MERCER L. REV. 603, 610-11 (1975); Pierce, *Organized Professional Team Sports and The Antitrust Laws*, 43 CORNELL L.Q. 566, 603 (1958); Note, *The Battle of the Superstars: Player Restraints in Professional Team Sports*, 32 U. FLA. L. REV. 669, 670 (1980) [hereinafter cited as Note, *Player Restraints*].

27. Professional sports leagues commonly have prohibited member clubs from "tampering" with players on other teams. League bylaws typically prohibit a team from negotiating or making an offer to a player who is under contract with another team. The penalties for violating the rule may include loss of a draft choice and a fine. The justification usually advanced for the rule is that if an athlete is negotiating with another team, he might have a disincentive to play aggressively for his present team. Courts and commentators have disagreed over the validity of this justification. *See* Kapp v. National Football League, 390 F. Supp. 73, 82 (N.D. Cal. 1974); H. DEMMERT, *supra* note 15, at 92.

The Bylaws of the National Basketball Association provide:

> (g) Any person who, directly or indirectly, entices, induces, persuades or attempts to entice, induce, or persuade any player, coach, trainer, general manager or any other person who is under contract to any other member of the Association to enter into negotiations for or relating to his services or negotiates or contracts for such services shall, on being charged with such tampering, be given an opportunity to answer such charges after due notice and the Commissioner shall have the power to decide whether or not the charges have been sustained; in the event his decision is that the charges have been sustained, then the Commissioner shall have the power to suspend such person for a definite or indefinite period, or to impose a fine not exceeding $5,000, or infiict both such suspension and fine upon any such person.

For a further discussion of the no-tampering rules, see J. WEISTART & C. LOWELL, *supra* note 13, at 506; Rottenberg, *The Baseball Players' Labor Market*, 64 J. POL. ECON. 242, 245 (1956).

28. Under a blacklisting agreement teams agree not to negotiate with players who are under contract with another team. *See* Rottenberg, *supra* note 27, at 245.

29. An assigument provision permits a team to assign a player's contract to another team without the player's consent. J. WEISTART & C. LOWELL, *supra* note 13, at 292.

30. The compensation rule provides that any club which hires a player who has fulfilled his contractual obligation to his former club must compensate the former employer in the form of cash, a player, or a draft choice. Goldstein, *Out of Bounds Under the Sherman Act? Player Restraints in Professional Team Sports*, 4 PEPPERDINE L. REV. 285, 291 (1977).

and the reserve clause[31] have been parts of the uniform player contracts that owners have required all players to sign. Professor Sobel describes the consequences of the restraints of the reserve system:

> The total effect of these contract provisions and league rules was this. Once a player signed his first professional baseball employment contract, he became the property of his team. His contract could be renewed by the team, year after year, without his consent and at salaries he never agreed to accept. His only options were to play or to retire from professional baseball, because no other team would even consider hiring him as long as he was under contract. Further, he could be traded from team to team, with or without his consent. If he was traded, he was as bound to the new team as he had been to the former team, because the new team had the right to reserve him perpetually.[32]

Since the implementation of the first reserve system over a century ago, players, courts,[33] and commentators[34] have criticized the servitude associated with the system.

The justification for the reserve system advanced most often is the maintenance of team competition. Team owners and commentators postulate that the opportunity for players to move freely from team to team would destroy competition and exciting play among teams within a league.[35] According to this theory, the own-

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31. A reserve clause is a contractual provision that binds a player in perpetuity to the club holding his contract. Allison, *Professional Sports and the Antitrust Laws: Status of the Reserve System*, 25 BAYLOR L. REV. 1, 18 (1973); Note, *Baseball's Antitrust Exemption and the Reserve System: Reappraisal of an Anachronism*, 12 WM. & MARY L. REV. 859, 860-62 (1971).

32. L. SOBEL, PROFESSIONAL SPORTS & THE LAW 91 (1977).

33. *See, e.g.*, Gardella v. Chandler, 172 F.2d 402 (2d Cir. 1949). For a discussion of *Gardella*, see *infra* text accompanying note 96. In Smith v. Pro-Football, 420 F. Supp. 738, 744-45 (D.D.C. 1976), the court characterized the National Football League player draft as "a group boycott in its classic and most pernicious form." The court found the draft to be a naked restraint on trade with no purpose except stifling of competition. *Id.*

34. A January 31, 1899, editorial in the *Cleveland Plain Dealer* called baseball "the most grasping and most absolutely selfish and soulless monopoly in existence." HOUSE SUBCOMM. ON STUDY OF MONOPOLY POWER, H.R. DOC. NO. 2002, 82d Cong., 2d Sess. 38 (1952) [hereinafter cited as HOUSE REPORT ON ORGANIZED BASEBALL]. Representative Gallagher of Illinois introduced a resolution calling for a federal investigation of organized baseball as a "predaceous [sic] and mendacious trust." *Id.* at 49.

35. *See* J. WEISTART & C. LOWELL, *supra* note 13, at 596; Morris, *In the Wake of the Flood*, 38 LAW & CONTEMP. PROB. 86, 87-90 (1973); Note, *The Legality of the Rozelle Rule and Related Practices in the National Football League*, 4 FORD. URBAN L.J. 582, 587-89 (1976); Note, *The Super Bowl and the Sherman Act: Professional Team Sports and the Antitrust Laws*, 81 HARV. L. REV. 418, 424-26 (1967) [hereinafter cited as Note, *The Super Bowl and the Sherman Act*]; Comment, *Player Control Mechanisms in Professional Team Sports*, 34 U. PITT. L. REV. 645, 666-70 (1973).

The assumptions about the stabilizing influence of player restraints have been debated. The district court in Mackey v. National Football League, 407 F. Supp. 1000, 1008 (D.

ers' ability and willingness to pay, and, to a lesser extent, the location of the team, would determine team quality in the absence of an effective reserve system. Certain teams would dominate play and alter the competitive balance, with the result that followers easily could predict the outcome of many games. Fan interest would wane and the industry itself ultimately would fail.[36] Because of the imperative that teams be competitive, many have argued that traditional employee contractual freedom cannot exist within the sports industry.[37]

This Article analyzes the history of player-owner relations in professional baseball. Part II of the Article describes attempts by players since the inception of organized baseball to alter the reserve system—the same issue that gave rise to the 1981 strike. Part III of the Article discusses the development of collective bargaining in professional baseball and the rise of the Players' Association. Part IV of the Article analyzes the utility of antitrust laws to challenge player restraints and examines various congressional proposals to bring baseball under the rubric of the antitrust laws. After describing the application of the labor exemption to the negotiated reserve system, the Article concludes that collective bargaining and not antitrust law must shape the contours of baseball's reserve system in the future.

Minn. 1975) said, "the existence of the Rozelle Rule and the other restrictive devices on players have not had any material effect on competitive balance in the National Football League." Professor Noll comments,

> A central issue in the debate about the extent to which restrictive practices are necessary in sports centers on the issue of competitive balance. . . . In any systematic analysis of the competitive balance of leagues . . . there is absolutely no evidence that competitive balance is accomplished by the mechanism for dealing with players.

American Enter. Inst. for Pub. Policy Research, Pro Sports: Should Government Intervene? (February 22, 1977). *See* H. DEMMERT, *supra* note 15, at 31-39; J. WEISTART & C. LOWELL, *supra* note 13, at 623-24.

36. *See* Note, *The Super Bowl and the Sherman Act*, *supra* note 35, at 421; Note, *Flood in the Land of Antitrust: Another Look at Professional Athletics, the Antitrust Laws, and the Labor Exemption*, 7 IND. L. REV. 541, 572-73 (1974) [hereinafter cited as Note, *Flood in the Land of Antitrust*]; Comment, *Monopsony in Manpower: Organized Baseball Meets the Antitrust Laws*, 62 YALE L.J. 576, 585 (1953).

"[M]ost commentators, including those otherwise unsympathetic to the player restraints, have recognized that the success of a league's sports venture depends upon the unpredictability of the outcome of on-the-field competition between clubs." J. WEISTART & C. LOWELL, *supra* note 13, at 595; *see* authorities cited *id.*

37. Krasnow & Levy, *Unionization and Professional Sports*, 51 GEO. L.J. 749, 751 & n.8 (1963); Note, *The Balance of Power in Professional Sports*, 22 ME. L. REV. 459, 471 (1970).

II. THE CONFLICT IN PERSPECTIVE

> There was a time when the League stood for integrity and fair dealing. Today it stands for dollars and cents. Once it looked to the elevation of the game and an honest exhibition of the sport; today its eyes are on the turnstile. Men have come into the business for no other motive than to exploit it for every dollar in sight.
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> Manifesto of the Brotherhood of Professional Baseball Players, 1889.[38]

Throughout its history professional baseball has endured bitter struggles over the tension between contractual freedom and the need for team competition. Conflict between players and management marked the first decades of modern professional baseball with particular severity. Initially, owners restrained the movement of players between teams to stabilize the industry.[39] These measures, however, also brought increased profits and abuses of power by owners. These effects, in turn, engendered frustration in players and resulted in the creation of new leagues and "contract jumping"[40] by players who wished to take advantage of competition for their services between the leagues.[41] Moreover, legal redress was unavailable to owners for enforcement of the players' contracts.[42] Thus, these early internecine battles for players resulted in instability and financial failure for leagues as well as teams.

A. *The Early Battles*

Historians usually trace the beginning of modern baseball to the adoption on February 2, 1876, of a formal constitution by the National League of Professional Baseball Clubs.[43] The founders of what is presently the National League also instituted the first standard form contract, which the founders designed to prevent play-

38. Koppett, *Yesterday*, SPORTS ILLUSTRATED, June 1, 1981, at 90.

39. *See infra* note 44.

40. The term "contract jumping," also known as "revolving," describes the movement of a player from one team to another either inter- or intraleague during the term of player's contract or after its expiration but without the consent of the player's original club. Club owners have long sought to curb the practice of contract jumping, primarily by means of the reserve system mechanism. For information about the practice and its impact on the development of the reserve system, see HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 16, 19, 21-35.

41. Players have been the chief benefactors of competition between leagues for players' services. *Id.* at 35.

42. *See infra* note 65.

43. 2 NEW YORK TIMES ENCYCLOPEDIA OF SPORTS at vii-viii (1979) [hereinafter cited as TIMES ENCYCLOPEDIA].

ers from contract jumping.[44] Team owners, nonetheless, engaged in fierce bidding for talented players, which resulted in the financial failure of eight of the original fifteen league teams by the end of the 1879 season.[45] This practice had been rampant in the earlier league and had resulted in gross competitive imbalance. Thus, in 1879 team owners in the National League secretly agreed to adopt the first reserve system.[46] Under this agreement each team put all of its players on a "reserve" list. Owners pledged to refrain from hiring or attempting to hire a player on the reserve list of any other club.[47]

The 1879 agreement among National League clubs was very effective, and the prosperity that owners enjoyed[48] attracted competition. In 1881 wealthy brewery owners and other backers began a new baseball league, the American Association.[49] The new league,

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44. *See* H. TURKIN & S. THOMPSON, THE OFFICIAL ENCYCLOPEDIA OF BASEBALL 12 (7th rev. ed. 1974). Contract jumping and the concomitant competitive imbalance plagued the predecessor league. In 1875 the Boston team won 71 games and lost only eight games for a winning percentage of .899, a percentage unequaled in the history of the game. In 1869 the Cincinnati Redstockings played 57 games without a defeat. Moreover, because of the unbridled competition for players services, player salaries accounted for two-thirds of the average clubs expenses. No club reported profits, and between 1871 and 1875, 16 of the 25 teams in the league failed. *See* Comment, *supra* note 36, at 586.

45. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 21; Comment, *supra* note 36, at 586.

46. J. ROSENBURG, THE STORY OF BASEBALL 24 (1972); L. SOBEL, *supra* note 32, at 84-89; H. TURKIN & S. THOMPSON, *supra* note 44, at 15.

47. On September 29, 1879, the owners met and then announced:

> The financial results of the past season prove that salaries must come down. We believe that players in insisting on exorbitant prices are injuring their own interests by forcing out of existence clubs which cannot be run and pay large salaries except at a large personal loss. The season financially has been a little better than 1878; but the expenses of many of the clubs have far exceeded their receipts, attributable wholly to the large salaries. In view of these facts, measures have been taken by this league to remedy the evil to some extent in 1880.

HOUSE REPORT ON ORGANIZED BASEBALL, *supra*, note 34, at 22. The new agreement included a rule that permitted each team to reserve sole rights to negotiate witb five players. *Id.* In 1883 the rule was expanded to encompass the entire team. *Id.* at 24.

48. In 1881 a majority of teams showed a profit for the first time since the league's organization. Receipts and earnings skyrocketed. Gross receipts at Philadelphia rose from $39,583 in 1884 to $99,000 in 1887. *Id.* at 24-25.

49. National League team owners derisively labeled the new league the "beer and whiskey league" because of tbe occupation of its founders. *See* H. TURKIN & S. THOMPSON, *supra* note 44, at 39.

The platform of the league stated:

> "Honest competition, no syndicate baseball, no reserve rule, to respect all contracts and popular prices."
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> . . . .
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> All of the gentlemen present . . . strongly intimated that it was war to the finish with the National organization.

which was not a party to the secret reserve agreement, created a bidding war by hiring away many players from teams in the National League.[50] Profits plummeted, and teams in both leagues struggled for financial survival.

Owners in both leagues quickly recognized the impact that wage competition had on their profits. After the 1882 season, the two leagues signed a compact that was known as the National Agreement.[51] This agreement permitted each team to reserve a stipulated number of players in a manner similar to the first reserve agreement.[52] The compact prohibited teams from hiring or attempting to hire players on the reserve list of another team. The leagues prospered again,[53] and this prosperity again attracted competition. In 1884 a new league, the Union Association, was organized "specifically to fight the 'outrageous' reserve rule."[54] Although the Union Association hired many good players from the existing leagues, popular interest in baseball was not sufficient to support three leagues with thirty-four clubs. Consequently, the new league failed after one season of play.[55]

Baseball's prosperity prompted the formation of employee organizations as well as the creation of new leagues.[56] In the fall of

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By abolishing the reserve ule [sic] the new league thinks it will get a hold on the best baseball talent in the country . . . .

A New Baseball League, N.Y. Times, Sept. 18, 1889, *reprinted in* TIMES ENCYCLOPEDIA, *supra* note 43, at 4.

50. J. ROSENBURG, *supra* note 46, at 26.

51. *Id.*

52. The compact initially permitted team owners to place five players on the reserve list. This number later increased to fourteen players, which was nearly the entire complement of players for a team. *Professional Sports: Has Antitrust Killed the Goose that Laid the Golden Egg?*, 45 ANTITRUST L.J. 290, 292 (1976) (remarks by Mr. Koppett at the program on the application of antitrust laws to professional sports, annual meeting of the ABA section on antitrust law) [hereinafter cited as *Professional Sports*].

53. Attendance figures rose dramatically during the 1883 season. *See* H. TURKIN & S. THOMPSON, *supra* note 44, at 16; Koppett, *Reserve Clause Breeds Bitterness*, N.Y. Times, Jan. 25, 1970, § 5, at 2, col. 2, *reprinted in* TIMES ENCYCLOPEDIA, *supra* note 43, at 157-58. The National Agreement resulted in a more equitable distribution of talented players and eliminated the costly bidding wars for players. From 1881 through 1890 the number of team failures sharply declined. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 24-25; Comment, *supra* note 36, at 586.

54. H. TURKIN & S. THOMPSON, *supra* note 44, at 16.

55. *See* Koppett, *supra* note 53.

56. The monopoly power of the leagues after the National Agreement led to many abuses. For example, in 1885 the leagues voted to limit salaries to $2,000 and to eliminate salary advances. *See* HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 31; J. ROSENBURG, *supra* note 46, at 28. These measures led to hardship for many players because of the seasonal nature of employment. Moreover, the salary ceiling was approximately one-half of the salary that star players of the day had been earning. *See* Koppett, *supra* note 53. In

1885 players from the New York Giants organized the first union of professional athletes, the Brotherhood of Professional Base Ball Players.[57] Other clubs followed and created chapters of the union. The primary goal and impetus for formation of the organization was the abolition of the reserve system.[58] By the end of the 1887 season, the fledgling organization had one hundred members and demanded an end to minimum player salaries and the reserve system, as well as recognition as the players' bargaining representative. The owners refused and retaliated with a player classification plan. Under this plan owners unilaterally set players' salaries up to a maximum salary of $2,500.[59] Owners forced the players to assent to the classification plan under threat of blacklisting. Leaders of the Brotherhood of Professional Baseball Players responded by creating yet another new league—the Players' League.[60] On November 4, 1889, the Players' League issued a "Declaration of Independence"[61] and began a truculent campaign against the established leagues with some initial success.[62] The New York franchise of the National League, the Metropolitan Exhibition Company, lost several players to the Players' League and filed suit to enjoin its players from joining the new league. The court in *Metropolitan Exhibition Co. v. Ewing*[63] held that the reserve clause bound a player to a team vis-à-vis other teams in the National and American Leagues, but did not prevent a player's employment in a new league. The drafter of the reserve clause, A. G. Mills, who was president of the National League when the National Agreement was adopted, later concurred with the *Ewing* court's conclusion.

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addition, team owners imposed fines and suspensions for minor violations. One owner fined a player for failing to tip his hat. *See* J. ROSENBURG, *supra* note 46, at 28.

57. J. ROSENBURG, *supra* note 46, at 28.

58. Salary limitations, the reserve rule, and other perceived ahuses "brought the smoldering resentment of the players into the open." HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 32. John Montgomery Ward, an early leader of the Brotherhood of Professional Baseball Players, wrote in an open letter to the president of the National League that the reserve rule was "a fugitive slave law." *Id. See* L. SOBEL, *supra* note 32, at 267.

59. J. ROSENBURG, *supra* note 46, at 31.

60. *Id.* at 31-32. The union considered the possibility of striking on July 4, 1889. The players, however, feared a loss of public support and attempted instead to negotiate with the owners. The team owners refused to negotiate with the union. Koppett, *supra* note 38, at 90.

61. H. TURKIN & S. THOMPSON, *supra* note 44, at 41.

62. The Players' League established teams in seven of the eight National League cities and scheduled games for the same dates and times as National League games. Moreover, nearly two-thirds of the National League's approximately one hundred players signed with teams in the Players' League. Koppett, *supra* note 38, at 90.

63. 42 F. 198 (C.C.S.D.N.Y. 1890).

> The "reserve rule," as I formulated it for the use of the clubs of our alliance, placed its obligation upon *clubs*, and prohibiting them from employing or negotiating with players reserved to other clubs; the penalties prescribed for the violation of such reserve rule were placed upon the *clubs* and the Association of which they were members, and not upon the players, who were not parties to the compact.[64]

Subsequent courts similarly were unwilling to prevent players from abrogating their contracts. In the majority of cases courts denied petitioning clubs equitable relief on grounds that the underlying contract lacked mutuality or definiteness or that the contract was an impermissible restraint on trade.[65] Since courts were reluctant to enforce the reserve provisions of players' contracts, team owners entered into agreements among themselves to restrain their players. For example, team owners reached a no-tampering agreement, which they enforced by threats of fines and forfeitures of games.[66] Moreover, owners agreed to blacklist players who did contract with other teams.[67]

The 1891 season was a financial disaster for all three leagues.[68] Although the Players' League drew more attendance than either the National League or American Association,[69] it nonetheless did not survive. Disagreements arose between the National League and the American Association when teams from each league attempted to sign players from the defunct Players' League. In 1891 the American Association withdrew from the National Agreement and began to recruit players from the National League.[70] Four of the American Association's most profitable franchises, however, moved to the National League. This move increased the size of the Na-

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64. L. SOBEL, *supra* note 32, at 88 (quoting HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 34).

65. *See* Comment, *supra* note 36, at 588-90. State courts in New York and Pennsylvania refused to restrain players from leaving their reserving clubs to join the Players' League on the grounds that the reserve clause was indefinite, lacking in mutuality, and unconscionable. American League Baseball Club of Chicago v. Chase, 86 Misc. 441, 149 N.Y.S. 6 (Sup. Ct. 1914) (lack of mutuality and common-law restraint on trade); Metropolitan Exhibition Co. v. Ward, 24 Abb. N. Cas. 393, 9 N.Y.S. 779 (Sup. Ct. 1890); Philadelphia Ball Club, Ltd. v. Hallman, 8 Pa. C. 57 (C.P. 1890). In Metropolitan Exhibition Co. v. Ewing, 42 F. 198 (C.C.S.D.N.Y. 1890) a federal court denied injunctive relief to the club on the ground that the reserve clause was only a "contract to make a contract if the parties can agree." *Id.* at 204.

66. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 35; Comment, *supra* note 36, at 591. For an explanation of no-tampering agreements, see *supra* note 27.

67. Comment, *supra* note 36, at 591-92.

68. *See* HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 35.

69. The Players' League drew 980,887 fans, while the National League drew only 813,678. *Id.*

70. *Id.*

tional League to twelve teams and resulted in the failure of the American Association.[71] For the next nine years the National League operated without a rival league.[72] This monopoly position again resulted in abuses. Owners unilaterally decreased players' salaries as much as forty percent and on occasion withheld players' salaries for relatively minor infractions.[73]

The National League's next challenge came from the American League, which was organized in 1900. The American League recruited many National League players because of the willingness of American League team owners to pay salaries in excess of the National League limit of $2,500.[74] In 1903 team owners in the two leagues concluded that cooperation was necessary for their prosperity and established the National Baseball Agreement. The agreement provided for a player draft and stated:

> Contracts with players must be respected under the penalties specified. The right and title of a major league club to its players shall be absolute, and can only be terminated by release or failure to reserve under the terms of the agreement by the club to which a player has been under contract.[75]

This agreement brought stability and prosperity to the teams once again.

In 1913 the Federal League was organized with teams in Brooklyn, Pittsburgh, Buffalo, Baltimore, St. Louis, Kansas City, Indianapolis, and Chicago.[76] After the two established leagues re-

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71. *See* J. ROSENBURG, *supra* note 46, at 33-34.

72. Interestingly, the National League in 1892 instituted a split season to spark greater fan interest. The winner of the first half of the season played the winner of the second half to determine competitors in the World Series. This procedure was remarkably similar to the playoff system that the leagues adopted after the 1981 strike. *See* H. TURKIN & S. THOMPSON, *supra* note 44, at 501-02.

73. J. ROSENBURG, *supra* note 46, at 38. Amos Rusie, after leading the National League in strikeouts for six successive seasons and winning 24 games for New York in 1895, had his salary reduced from $3,500 to $3,400. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 36. In 1894 a group of promoters announced their intention to revive the American Association. Two managers and a player in the National League were among these promoters. The three men were given six weeks to abandon their plan or face permanent expulsion from organized baseball. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 37 (citing N.Y. Times, Nov. 19, 1894, at 9, col. 7).

74. Cy Young, Jimmie Collins, Clark Griffith, and Napolean Lajoie were among the players who moved from the National League to the American League at this time. H. TURKIN & S. THOMPSON, *supra* note 44, at 18. The National League franchise in Philadelphia went to court and successfully prevented Lajoie from playing for Connie Mack's rival Philadelphia Athletics. Philadelphia Ball Club, Ltd. v. Lajoie, 202 Pa. 210, 51 A. 973 (1902).

75. *National Baseball Agreement*, N.Y. Times, Aug. 30, 1903, at 15, col. 3, *reprinted in* TIMES ENCYCLOPEDIA, *supra* note 43, at 4.

76. Unlike the Union Association and the Players' League, which arose as a result of reform platforms, businessmen formed the Federal League solely as a capital investment.

fused to permit the Federal League to become a party to the National Agreement, the Federal League responded by recruiting players from the National League and the American League.[77] The two established leagues retaliated by blacklisting any player who moved to the new league. Attendance was low for the Federal League teams.[78] Moreover, the three leagues suffered from the increased number of teams as well as a general economic depression and the advent of World War I.[79] In December 1915 the Federal League owners reached an agreement with owners in the National League and the American League that effectively ended the new league's existence.[80] Under this agreement owners in the National League and the American League paid the Federal League owners to dissolve the new league.[81] The agreement permitted some Federal League team owners to purchase existing franchises in the National League and the American League.[82] The agreement also gave

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See H. TURKIN & S. THOMPSON, *supra* note 44, at 41.

77. Of the 264 players who played in the Federal League during the 1914 and 1915 seasons, only 43 were not under contract to any club in the American or National Leagues at the time they signed with the Federal League. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 55; L. SOBEL, *supra* note 32, at 2.

On January 18, 1914, *The New York Times* declared: "The high-water mark in the frenzied finance of baseball was reached with the Federal League's big offer to 'Ty' Cobb of $15,000 a year for five years. Cobb last year was the highest salaried outfielder in the game, receiving $12,000 from Detroit." *Baseball Salaries Reach Top Mark,* N.Y. Times, Jan. 18, 1914, § 4, at 1, col. 1, *reprinted in* TIMES ENCYCLOPEDIA, *supra* note 43, at 17. In a revealing display of journalistic license the article continued:

> The recent activity of the outlaw league in threatening to invade the territory of the major league clubs has given an artificial impetus to the salaries of baseball players. Experienced baseball men say that the high salaries which are now being offered are ahsurd, in contrast to the profits made in baseball, and that when the reaction comes, the result will be the loss of a great deal of money by club owners. . . . During the Brotherhood trouble and during the American League raid, the value of baseball players jumped considerably, and the price has been going up ever since.

Id.

78. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 56.

79. *Id.*; L. SOBEL, *supra* note 32, at 3. Losses from Federal League operations reached $2,500,000 by the end of 1915. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 56.

80. L. SOBEL, *supra* note 32, at 4. An article in *The New York Times* stated: "The most disastrous war that the baseball game has ever experienced came to a close here tonight when a treaty of peace between the Federal League and both parties to the national baseball agreement, known as Organized Baseball, was sigued." *Long Baseball War is Settled,* N.Y. Times, Dec. 23, 1915, at 10, col. 1, *reprinted in* TIMES ENCYCLOPEDIA, *supra* note 43, at 19.

81. The major leagues agreed to pay Federal League backers $600,000 in return for dissolution of the Federal League. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 56.

82. The agreement permitted the Chicago Federals to purchase the Chicago Cubs and the St. Louis Federals to buy out the St. Louis Browns. HOUSE REPORT ON ORGANIZED BASE-

all blacklisted players amnesty and permitted the Federal League teams to assign their contracts with players to teams in the established leagues.[83]

B. *Baseball's Exemption from the Antitrust Laws:* Federal Baseball *and its Progeny*

The Federal League agreement denied the Baltimore Federal League club the opportunity to purchase the St. Louis Cardinals.[84] Subsequently, the leagues excluded the Baltimore franchise from the settlement agreement altogether.[85] In response, the Baltimore club filed suit under the Sherman Act[86] alleging that both the reserve clause in the player contracts and blacklisting maneuvers, which the owners used to enforce the clause, constituted unlawful restraints on trade. These mechanisms, the club claimed, had prevented the Federal League from hiring quality players and, therefore, diminished the attractiveness of its games. As a result, attendance declined, and the league ultimately failed. The trial court found that the National League and the American League had engaged in unlawful monopolistic practices and awarded $240,000 in damages to the Baltimore club.[87] On appeal, the District of Columbia Circuit reversed,[88] and the United States Supreme Court affirmed the reversal.[89] Justice Holmes, writing for the Court, concluded that, although teams crossed state lines to play for money, baseball games "are purely state affairs."[90] Moreover, the sport is not "trade or commerce" for purposes of the Sherman Act.[91] Therefore, the Sherman Act did not apply to the restrictive practices of the leagues.[92] The Supreme Court's decision in *Federal Baseball* removed all legal obstacles to the continued maintenance

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BALL, *supra* note 34, at 56-57.

83. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 57.

84. The reasons why National League club owners refused to consent to the sale are unclear. Baltimore's 1910 population exceeded the respective populations of Washington, Detroit, Cincinnati, and Cleveland. Moreover, St. Louis was having difficulty supporting two teams. *Id.*

85. *Id.*; L. SOBEL, *supra* note 32, at 4.

86. 15 U.S.C. §§ 1-2 (1976).

87. National League of Professional Baseball Clubs v. Federal Baseball Club of Baltimore, Inc., 269 F. 681, 682 (D.C. Cir. 1921), *aff'd*, 259 U.S. 200 (1922).

88. 269 F. at 682.

89. Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922).

90. *Id.* at 208.

91. *Id.* at 209.

92. *Id.* at 208-09.

of the reserve system and sustained the system against all challenges for an additional fifty years.

Players, however, continued to resent the system. In 1946 several players from the Pittsburgh Pirates organized the American Baseball Guild. The players sought collective bargaining with the management of the Pittsburgh franchise. Upon a petition for an election among Pirate players, the National Labor Relations Board, consistent with the Supreme Court's conclusion in *Federal Baseball,* determined that baseball was not "commerce" within the meaning of the National Labor Relations Act.[93] Team owners, however, reacted to the effort by making several concessions to the players, including the adoption of a minimum salary, the establishment of a pension fund, and the shortening of the spring training period.[94]

During that same year the Mexican League began to recruit from the National League and the American League.[95] In a challenge to the reserve system by a player who was blacklisted for jumping his contract to play in the Mexican League, Judge Frank's concurring opinion in *Gardella v. Chandler*[96] recognized that the Supreme Court had broadened considerably the definition of "interstate" activities and "trade or commerce" for purposes of the Sherman Act during the intervening years since *Federal Base-*

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93. Although the case never was reported officially, *The New York Times* noted that the Board denied jurisdiction because baseball was not "commerce" within the meaning of the National Labor Relations Act (NLRA). *Pennsylvania Labor Board Orders Pirates' Election on Guild Aug. 20,* N.Y. Times, Aug. 8, 1946, at 25, col. 3; *see* L. SOBEL, *supra* note 32, at 271. *Cf.* Hoffman, *Is the NLRB Going to Play the Ball Game?,* 20 LAB. L.J. 239, 244 (1969). Subsequently, players rejected the American Baseball Guild in an election held under the auspices of the Pennsylvania Labor Relations Board. Krasnow & Levy, *supra* note 37, at 763.

94. H. TURKIN & S. THOMPSON, *supra* note 44, at 24; *see* L. SOBEL, *supra* note 32, at 272; Maher, *Players' Association: A United Front . . . To Face Owners,* L.A. Times, Feb. 12, 1973, § 3, at 6, col. 2. *The New York Times* reported:

> The most elaborate and complicated pension program ever undertaken by a professional sport was adopted yesterday when the National and American Leagues . . . agreed to a plan assuring veteran baseball players an income ranging from $50 to $100 per month on reaching fifty years of age.
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> . . . .
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> It was estimated yesterday that the ball clubs will carry approximately 80 percent of the burden of upkeep, thereby yielding another signal victory to the players who, when they started their movement for better working conditions last year, included a pension request among their demands.

Drebinger, *Pension Program for Players Voted by Major Leagues,* N.Y. Times, Feb. 2, 1947, § 5, at 1, col. 1.

95. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 77.

96. 172 F.2d 402 (2d Cir. 1949).

ball.[97] Thus, Justice Holmes' conclusion in *Federal Baseball* that the Sherman Act did not apply to professional baseball was no longer tenable.[98] Judge Frank voted to remand the case to the trial court and opined that plaintiff's allegations, if proven, demonstrated that baseball was "a monopoly which, in its effect on ballplayers like the plaintiff, possesses characteristics shockingly repugnant to moral principles that, at least since the War Between the States, have been basic in America."[99] *Gardella* ultimately was settled before the Supreme Court could reconsider the *Federal Baseball* holding. Encouraged by Judge Frank's opinion, other players nevertheless challenged on antitrust grounds various aspects of the reserve system.[100] The Supreme Court in *Toolson v. New York Yankees, Inc.*,[101] however, reaffirmed its holding in *Federal Baseball* and maintained baseball's exemption from the Sherman Act. For nearly twenty more years the reserve system continued to operate quietly.[102]

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97. *Id.* at 412 (Frank, J., concurring).

98. *Id.* at 408-09 (Frank J., concurring).

99. *Id.* at 409 (Frank, J., concurring).

100. *See* Corbett v. Chandler, 202 F.2d 428 (6th Cir.), *aff'd sub nom.* Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953); Kowalski v. Chandler, 202 F.2d 413 (6th Cir.), *aff'd sub nom.* Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953); Martin v. Chandler, 85 F. Supp. 131 (S.D.N.Y. 1949).

101. 346 U.S. 356 (1953). *Toolson* was a consolidation of cases in which players challenged the reserve system on antitrust grounds. Plaintiff baseball player was assigned by one team to another in the Yankee "farm" system. He refused to report to the new team and was placed on an ineligible list. As a result, he was barred from playing baseball. *See* Toolson v. New York Yankees, Inc., 101 F. Supp. 93 (S.D. Cal. 1951), *aff'd per curiam*, 200 F.2d 198 (9th Cir. 1952), *aff'd*, 346 U.S. 356 (1953). After its consideration of the case, the Supreme Court ruled:

> 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. Without re-examination of the underlying issues, the judgments below are affirmed on the authority of *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs.*

346 U.S. at 357. For a criticism of the *Toolson* holding, see L. SOBEL, *supra* note 32, at 26-29.

102. The quiet operation was interrupted in 1959 when Branch Rickey proposed to organize a third league, the Continental League. At the same time a congressional subcommittee was conducting hearings on Senator Kefauver's bill to remove the antitrust exemption from baseball. When Congress did not adopt the measure, the impetus behind the proposed league failed. "Again, Organized Baseball adapted to the nascent pressure by the expansion of the American League and then the National League for the first time since 1899 to include franchises in several of the cities for which Continental League teams were proposed." H. TURKIN & S. THOMPSON, *supra* note 44, at 26. *The New York Times* reported the proposal of the third league:

> After more than half a century as a two-league operation, big-time baseball this week was faced with the prospect of a third major league. . . . The third league, with founding teams in New York, Houston, Denver, Toronto, and . . . Minneapolis-St.

In 1969 the St. Louis Cardinals traded player Curt Flood against his wishes to the Philadelphia Phillies. Flood challenged the trade and argued that the reserve system and players' lack of contractual freedom constituted an unlawful restraint of trade. The Supreme Court in *Flood v. Kuhn*[103] reaffirmed baseball's immunity from antitrust restrictions. The *Flood* decision made baseball unique, not only in American industry generally, but also among professional sports. The Court in *Flood* acknowledged that the narrow definition of interstate commerce utilized by the *Federal Baseball* Court was no longer valid, and that baseball, as an industry, was "engaged in" interstate commerce.[104] Moreover, the Court noted that it previously had found boxing[105] and football[106] to be within the purview of the Sherman Act.[107] The Court, however, refused to overrule *Federal Baseball,* reasoning that Congress, although fully aware of the case, had failed, nonetheless, to remove the exemption from the antitrust laws in the fifty years since that decision.[108]

Court decisions in the 1970s struck down many player restraints on antitrust grounds, including the reserve systems in football,[109] basketball,[110] and hockey.[111] Nevertheless, the decision in *Flood* meant that the antitrust laws were not the method by which baseball players, unlike their counterparts in other major sports, could obtain greater contractual freedom. When the Court reaffirmed baseball's exemption from the antitrust laws in *Flood,* all

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Paul, expects to begin operating as an eight, ten or even a twelve-team circuit by 1961. *3rd League Hurls Curve at Majors,* N.Y. Times, Aug. 2, 1959, at E8, col. 5, *reprinted in* TIMES ENCYCLOPEDIA, *supra* note 43, at 123-24.

103. 407 U.S. 258 (1972).

104. *Id.* at 282.

105. United States v. International Boxing Club, 348 U.S. 236 (1955).

106. Radovich v. National Football League, 352 U.S. 445 (1957).

107. Flood v. Kuhn, 407 U.S. at 276-80, 282. Justice Douglas, sitting alone in Haywood v. National Basketball Ass'n, 401 U.S. 1204 (1971) (Douglas, Circuit Justice), held that basketball was subject to the antitrust laws. *See also* Robertson v. National Basketball Ass'n, 389 F. Supp. 867 (S.D.N.Y. 1975). Similarly, the court in Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462 (E.D. Pa. 1972), held that hockey was within the purview of the antitrust laws. *See* Peto v. Madison Square Garden Corp., 1958 Trade Cas. ¶ 69,106 (S.D.N.Y.).

108. 407 U.S. at 283-84.

109. *See, e.g.,* Smith v. Pro-Football, 420 F. Supp. 738 (D.D.C. 1976); Mackey v. National Football League, 407 F. Supp. 1000 (D. Minn. 1975).

110. *See, e.g.,* Robertson v. National Basketball Ass'n, 389 F. Supp. 867 (S.D.N.Y. 1975).

111. *See, e.g.,* Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462 (E.D. Pa. 1972).

the elements of the reserve system—the draft, the no-tampering rule, and the reserve clause—remained intact.

III. Collective Bargaining Comes of Age

A. *Early History of the Players' Association: Strike One*

The absence of redress under the antitrust laws for players subject to the restraints of the reserve system led many commentators to urge the use of concerted activity and collective bargaining as a countervailing force to the power of the owners:

> Since the professional athlete has been able to do little when faced with the monopolistic activities of the owners which have resulted in harsh contract provisions and sub-standard working conditions, it would appear that the logical course of action is to experiment with collective action as the possible answer to the professional athlete's problems.[112]

Other commentators viewed the imbalance of bargaining power between the owners and the individual player as an evil that "must be eliminated if the professional sports world is to avoid a total breakdown in labor-management relations."[113] These observers suggested that the players' associations affiliate with national labor organizations to gain expertise and wider influence.[114]

The difficulties, however, of organizing professional athletes appeared to make unionization impracticable, and most observers were doubtful of the success of a unionizing effort.[115] Employment in the industry, some commentators argued, depended entirely upon individual ability.[116] Athletes as a class tended to be individualistic and motivated by rewards other than monetary gain.[117] Other critics noted that "[b]all playing is a calling brief in duration, migratory and seasonal in character."[118] Organizing and collective bargaining, therefore, would be unusually difficult. Public opinion, according to some observers, opposed the unionization of

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112. Krasnow & Levy, *supra* note 37, at 759.

113. *See, e.g.,* Note, *supra* note 37, at 459.

114. *See, e.g.,* Krasnow & Levy, *supra* note 37, at 774-76; Note, *supra* note 37, at 479-80.

115. *See* Keith, *Developments in the Application of Antitrust Laws to Professional Team Sports,* 10 Hastings L.J. 119, 136 (1958); Topkis, *Monopoly in Professional Sports,* 58 Yale L.J. 691, 711-12 (1949); Note, *Baseball and the Law—Yesterday and Today,* 32 Va. L. Rev. 1164, 1175 (1946); Comment, *supra* note 36, at 635.

116. *See* Krasnow & Levy, *supra* note 37, at 759-60; Note, *supra* note 37, at 474; Comment, *supra* note 36, at 635.

117. *See* Krasnow & Levy, *supra* note 37, at 760.

118. Comment, *supra* note 36, at 635.

professional athletes.[119] Resort to a work stoppage not only would alienate the public but, because of the seasonal nature of the industry, also would hurt financially weak teams.[120] Indeed, players considered and rejected affiliation with a national union out of fear of damaging their public image or antagonizing owners.[121] Although organizations of players existed in professional team sports, none was a bona fide labor organization engaging in collective bargaining.[122] Skeptics cited the American Baseball Guild fiasco[123] as an example of the futility of organizational efforts.[124]

In response to the threat of unionization in 1946, team owners had implemented a representation plan.[125] Owners, however, limited representation to providing a means for communicating players' suggestions and complaints.[126] Players would "then await whatever action the club owners are willing to take."[127] The Major League Players' Association, which had formed in 1954, operated solely as this kind of conduit for information, without even a full time executive officer for more than a decade. During its early years the Players' Association was neither a union nor a collective bargaining agent.[128] Indeed, the Players' Association itself denied any intention to establish a union.[129] Commentators criticized the inadequacy of the representative system: "In short, the representative system in baseball is a form of company unionism in which the player representatives are afforded an opportunity to air their grievances on a league-wide basis. . . . Unfortunately, reliance on

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119. *See id.* at 635-36.

120. *See id.*

121. *See* Note, *supra* note 37, at 479; Comment, *supra* note 36, at 628.

122. L. SOBEL, *supra* note 32, at 267-72; Krasnow & Levy, *supra* note 37, at 762, 771.

123. *See* notes 96-97 and accompanying text.

124. *See* Krasnow & Levy, *supra* note 37, at 762; Note, *Arbitration of Grievance and Salary Disputes in Professional Baseball: Evolution of a System of Private Law*, 60 CORNELL L. REV. 1049, 1053 (1975).

125. *See* L. SOBEL, *supra* note 32, at 272; Maher, *Player's Ass'n: A United Front . . . To Face Owners*, L.A. Times, Feb. 12, 1973, § 3, at 8, col. 1.

126. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 176; *see* L. SOBEL, *supra* note 32, at 272-73.

127. HOUSE REPORT ON ORGANIZED BASEBALL, *supra* note 34, at 176.

128. Krasnow & Levy, *supra* note 37, at 771. The relationship between owners and players was characterized as "paternalistic." Shulman & Baum, *Collective Bargaining in Professional Athletics—The NFL Money Bowl*, 50 CHI. BAR REC. 173 (1969).

129. *Hearings before the House Subcommittee on Antitrust and Monopoly of the House Comm. on the Judiciary*, 89th Cong., 1st Sess. 104 (1964); Krasnow & Levy, *supra* note 37, at 771. Professional athletes, like many other professional, managerial, and technical employees, often prefer not to be identified as trade union members. *See* Berry & Gould, *A Long Deep Drive to Collective Bargaining: Of Players, Owners, Brawls & Strikes*, 31 CASE W. RES. L. REV. 685, 687 & n.2, 688 & n.3 (1981).

owner benevolence is a rather tenuous solution to the long-range problems in the area."[130]

The Players' Association gradually evolved from its earlier status as an information exchange group to a bona fide labor organization. In 1966 the Association named Marvin Miller, former chief economic advisor and assistant to the President of the United Steelworkers of America, as the executive director of the Association.[131] Early concerted union activity occurred in 1969 when players and managment could not reach agreement on the funding of the players' pension plan. Most players boycotted spring training camps.[132] Labor and management exchanged charges and threats of economic sanctions[133] before the commissioner of baseball intervened to settle the controversy.[134]

The Association's position as a representative organization received further impetus in December 1969 when the National Labor Relations Board indirectly approved the organization's collective bargaining status. The NLRB in *American League of Professional Baseball Clubs and Association of National Baseball League Umpires*[135] reversed the position it had taken in 1946 and held that professional baseball was an industry "in or affecting interstate commerce."[136] Remarkably, the NLRB decision occurred three years before the Supreme Court in *Flood* found that baseball was an industry that affected interstate commerce. This decision subjected the principals of professional baseball to the protections and requirements of the National Labor Relations Act (NLRA).[137] Among its mandates the NLRA requires labor and management to

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130. Krasnow & Levy, *supra* note 37, at 772.

131. L. SOBEL, *supra* note 32, at 273; Note, *supra* note 124, at 1053; Maher, *supra* note 125, at 8. Many commentators have recognized the appointment of Miller as a signal event in the development of the organization as a viable collective bargaining organization. *See Professional Sports, supra* note 52, at 306.

132. *Players Seek Owners' Compromise on Baseball Pension,* N.Y. Times, Feb. 7, 1969, at 41, col. 1.

133. J. WEISTART & C. LOWELL, *supra* note 13, at 780. The players charged that the owners caused the delay to test the resolve of the players. The owners said that, if necessary, they would play the exhibition season as well as the regular season with minor league players. *Id.*

134. *Id.*

135. 180 N.L.R.B. 190 (1969).

136. *Id.* at 191.

137. 29 U.S.C. §§ 151-69 (1976). The NLRA provides in pertinent part that employees have the "right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157 (1976).

bargain in good faith over terms and conditions of employment.[138] For professional baseball players the reserve system unquestionably was a mandatory subject of bargaining.[139] In 1972 the Players' Association confronted the owners in the first test of the organization's strength and the owners' resolve. Several months before the Supreme Court's decision in *Flood,* players undertook the first industry-wide strike, demanding an increase in pensions.[140] After a thirteen day work stoppage,[141] players and team owners reached an accord that raised the pension contribution of team owners by approximately $500,000.[142]

The Supreme Court's decision that year in *Flood,* however, left the reserve system wholly intact. The uniform player contract provided that if the player and the owner did not reach agreement prior to the commencement of a season, the team had the right unilaterally to renew the contract and to cut the player's salary by twenty percent.[143] The contract further provided that the player could not play for another team while under contract and that the team could enjoin the player's contract breach.[144] Major league rules continued to prohibit any league member from negotiating with a reserved player,[145] and the player agreed that his team

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138. *Id.* § 158(a)(5).

139. Jacobs and Winter observed: "We find it difficult to construct even a hypothetical argument that a contractual provision so intimately connected with determining the team for which an athlete will play and what salary and other benefits he may extract through bargaining is not a term and condition of employment." Jacobs & Winter, *Antitrust Principles and Collective Bargaining by Athletes: Of Superstars in Peonage,* 81 Yale L.J. 1, 10-11 (1971). *See* Flood v. Kuhn, 316 F. Supp. 271, 283 (S.D.N.Y. 1970), *aff'd,* 443 F.2d 264 (2d Cir. 1971), *aff'd,* 407 U.S. 258 (1972).

140. J. WEISTART & C. LOWELL, *supra* note 13, at 781.

141. The players contended that the owners' purpose was to pnnish the players by making them "eat dirt" and "bend down and kiss the shoes of the owners." *Players' Offer Is Rejected; Long Strike Seems Likely,* N.Y. Times, Apr. 4, 1972, at 49, col. 6. Players also alleged that the owners had terminated several players because of their union activity. *Baseball Owners Reject an Offer, id.,* Apr. 8, 1972, at 19, col. 5. Some commentators argued that the strike was to preserve the "dignity" of the players. J. WEISTART & C. LOWELL, *supra* note 13, at 781 n.39.

142. *Baseball Strike is Settled; Season to Open Tomorrow,* N.Y. Times, Apr. 14, 1972, at 1, col. 6.

143. Uniform Player's Contract, clause 10(a), *reprinted in* Flood v. Kuhn, 407 U.S. 258, 259-61 n.1 (1972). The Uniforn Player's Contract further provided that Player could be assigned by Club to any other club, *id.* clause 6(a), and that Club would be entitled to injunctive relief to prevent Player from playing baseball for any other organization, *id.* clause 4(a). *See Flood in the Land of Antitrust, supra* note 36, at 543-44.

144. Uniform Player's Contract, clauses 4(a) & 5(a), *reprinted in* Flood v. Kuhn, 407 U.S. at 259-61 n.1.

145. Rule 3(g) of the Major League Rules provided:

(g) TAMPERING. To preserve discipline and competition, and to prevent the entice-

could assign him to another team without his consent.[146] Moreover, although the NLRA obligated team owners to bargain with the Players' Association[147] over the reserve system, the duty to bargain does not require the parties to reach an agreement. The duty to bargain dictates only that parties "enter into negotiations with an open and fair mind and with a sincere desire to reach a mutual basis for agreement."[148] Therefore, the owners lawfully could continue to bargain to an impasse over the reserve system without modifying their position.

Although the owners had no legal duty to change the system, by October 1973 the players had sufficient bargaining strength to force the team owners to agree finally to some alterations of the reserve system. As part of a new three year accord between the owners and the Players' Association, the owners agreed to submit their salary disputes with the players to binding arbitration.[149] This aspect of the agreement marked "the end of management's powerful authority to determine salaries unilaterally, leaving a dissatisfied player only two options: accept the offer or quit the game."[150] Moreover, although the Supreme Court in *Flood* had held that the antitrust laws did not prohibit owners from assigning a player's contract without his consent, the owners, nevertheless, acceded to an Association proposal giving a player the right to refuse to be traded under certain circumstances.[151] In announcing the new agreement, a spokesperson for the owners said that the new arbitration system "effectively answers . . . [the] most effective argument against the reserve clause by achieving a balance of

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ment of players, coaches, managers and umpires, there shall be no negotiations or dealings respecting employment, either present or prospective, between any player, coach or manager and any club other than the club with which he is under contract or acceptance of terms, or by whicb he is reserved, or which has the player on its Negotiation List, or between any umpire and any league other than the league with which he is under contract . . . unless the club or league with which he is connected shall have, in writing, expressly authorized such negotiations or dealings prior to their commencement.

Flood in the Land of Antitrust, *supra* note 36, at 543 n.9.

146. Uniform Player's Contract, clause 6(a), *reprinted in* Flood v. Kuhn, 407 U.S. at 259-61 n.1.

147. *See supra* notes 137-38 and accompanying text.

148. NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956); H.J. Heinz Co. v. NLRB, 311 U.S. 514 (1941). *See supra* note 16.

149. *See* L. SOBEL, *supra* note 32, at 91-93; Note, *supra* note 124, at 1067; Bernstein, *Baseball Adopts Plan to Eliminate Holdouts*, L.A. Times, Oct. 11, 1973, § 3, at 1.

150. Bernstein, *supra* note 149, at § 3, at 1.

151. The veto power applied to players with ten or more years of service and five years with one club. L. SOBEL, *supra* note 32, at 95-96; Bernstein, *supra* note 149, at § 3, at 1.

power between player and club."[152] The Players' Association, however, disagreed with this assessment. The Association argued that the reserve system continued to restrain player mobility, and it vowed to lobby Congress to eliminate the reserve system.[153] Forthcoming events, however, would shift the balance of power between player and club and make congressional action unnecessary.

B. The Messersmith Arbitration

The reserve clause historically contained a "renewal year" provision, which gave team owners the option to renew a player's contract under the terms of the previous contract if the owner and the player failed to reach agreement on a new contract.[154] Andy Messersmith, a pitcher for the Los Angeles Dodgers, played during the 1975 season under the renewal year provision of his contract. Upon completion of the 1975 season, Messersmith attempted to open negotiations with other teams. When no club bid for his services, Messersmith filed a grievance with the Players' Association, and the union took his complaint through the grievance procedure.[155] The Players' Association alleged before the arbitrator that the baseball clubs had "conspired to deny Mr. Messersmith [his right to contract] and [had] maintained the position that the Los Angeles Club is still exclusively entitled to his services."[156] The renewal clause, according to the Players' Association, gave the Dodgers the right to renew the contract for one additional year only. The Dodgers and the leagues argued that when a team renewed a player's contract "on the same terms" as the previous contract, the re-

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152. Bernstein, *supra* note 149, at 10, col. 3 (quoting John J. Gaherin, head of the Player Relations Committee for the Major Leagues of Professional Baseball Clubs).

153. *Id.*, at § 3, at 1.

154. The Uniform Player's Contract provided:

> "If [prior to the beginning of the season] the Player and the Club have not agreed upon 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 . . . .
>
> The Club's right to renew this contract . . . and the promise of the Player not to play otherwise than with the Club have been taken into consideration in determining [the Player's compensation].

Uniform Player's Contract, clauses 10(a) & (b), *reprinted in* Flood v. Kuhn, 407 U.S. at 259-61 n.1.

155. Article X of the Collective Bargaining Contract contained the grievance procedure. This procedure defined "grievance" as "a complaint which involves the interpretation of, or compliance with, the provisions of any agreement between the Association and the Clubs . . . or any agreement between a Player and a Club . . . . " The grievances consisted of the reserve clauses in the Uniform Player Contracts between the clubs and the grievants. *In re* the Twelve Clubs, 66 LAB. ARB. (BNA) 101, 109 n.20 (1975).

156. *Id.* at 101.

newed contract contained the right of renewal clause.[157] Thus, in the owners' view the right of renewal was perpetual. In an opinion that revolutionized baseball the arbitrator concluded that the renewal clause gave a club the right to renew the contract for one additional year only and did not create a contract with another renewal clause.[158] The arbitrator noted that although contract law does not prevent parties from entering into perpetual contracts, the intent to make this type of contract must be express and will not be implied, particularly when the contract is for personal services.[159] Accordingly, the arbitrator concluded that "Messersmith was not under contract when his renewal year came to an end" and was free to negotiate with any team he chose.[160]

Many commentators have written about the Messersmith decision and its revolutionary consequence.[161] The propriety of the arbitrator's decision, however, is questionable. An arbitrator's role in contract interpretation is, among other things, to determine the intent of the parties when they executed the contract.

> The rule primarily to be observed in the construction of written agreements is that the interpreter must, if possible, ascertain and give effect to the mutual intent of the parties. . . .
>
> In determining the intent of the parties, inquiry is made as to what the language meant to the parties when the agreement was written. It is this meaning that governs, not the meaning that can be possibly read into the language.[162]

When Messersmith contracted with the Dodgers, both parties certainly believed that the language in question embodied the reserve system as it had always operated.

> Since the issue before [the arbitrator] was purely one of contract interpretation, one might ask why the arbitrator did not give greater weight to the fact that it has historically been assumed that baseball's right to renew was perpetual in nature. It is generally accepted that particular terms of a contract are to be interpreted consistent with the customs and usages which the parties have developed under it.[163]

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157. *Id.* at 112-13.

158. *Id.* at 114.

159. *Id.* at 113.

160. *Id.* at 114.

161. *See* Comment, *Nearly a Century in Reserve: Organized Baseball, Collective Bargaining and the Antitrust Exemption Enter the 80's*, 8 PEPPERDINE L. REV. 313, 338 (1981). "The result [of the decision and free agency] was an unprecedented increase in salaries. In 1976 . . . the average salary was $52,300. By 1980 it had risen to $143,756 . . . . " Kaplan, *supra* note 23, at 17, 18.

162. F. ELKOURI & E. ELKOURI, HOW ARBITRATION WORKS 202-03 (3d ed. 1973).

163. J. WEISTART & C. LOWELL, *supra* note 13, at 518-19 (footnotes omitted); *see* A. CORBIN, CORBIN ON CONTRACTS §§ 544-45 & 556-58 (1951). Moreover, the Restatement (Sec-

The reserve system had bound the players to teams in perpetuity since the early years of baseball. Moreover, the arbitrator noted that when the contract was executed in 1973, the Players' Association had acquiesced to the renewal year provision "reluctantly."[164] If the parties had believed only one year after the *Flood* decision that the contract eliminated the reserve system and thereafter would bind the players only for one additional year, the Players' Association assent would not have been "reluctant." Indeed, such a contract would have achieved the goal of player contractual freedom that the players had sought for nearly a century through court action,[165] the creation of new leagues,[166] and strikes.[167] Notwithstanding these years of conflict, the arbitrator concluded that the parties did not *intend* to bind the players in perpetuity.[168] The decision thus reversed a century of baseball history and fundamentally changed the relationship between the owner and the player. By limiting the reserve period to one year, the decision greatly diminished the owners' overwhelming contractual advantage. The pendulum, for the first time, had swung to the players.

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ond) of Contracts sets forth the following standards for contract interpretation:

§ 201. WHOSE MEANING PREVAILS

. . . .

(2) Where the parties have attached different meanings to a promise or agreement or a term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made

(a) that party did not know of any different meaning attached by . . . the first party; or

(h) that party had no reason to know of any different meaning attached by the other, and the other had reason to know the meaning attached by the first party.

RESTATEMENT (SECOND) OF CONTRACTS § 201 (1979).

164. *In re* the Twelve Clubs, 66 LAB. ARB. (BNA) 101, 107 (1975).

165. *See supra* text accompanying notes 84-111.

166. *See supra* text accompanying notes 43-83.

167. *See supra* text accompanying notes 140-42; *infra* text accompanying notes 172-80.

168. The arbitrator protested too much when he wrote:

It deserves emphasis that this decision strikes no blow emancipating players from claimed serfdom or involuntary servitude such as was alleged in the Flood case. It does not condemn the Reserve System presently in force on constitutional or moral grounds. It does not counsel or require that the System be changed to suit the predilections or preferences of an arbitrator acting as a Philosopher-King intent upon imposing his own personal brand of industrial justice on the parties. It does no more than seek to interpret and apply provisions that are in the agreements of the parties . . . . To go beyond this would be an act of quasi-judicial arrogance!

In re the Twelve Clubs, 66 LAB. ARB. (BNA) 101, 112 (1975).

C. Strike Two

What antitrust attacks on the reserve system restraints had done for the players in the other major professional sports, the *Messersmith* arbitration decision did for baseball players: it provided a major boost to their union's efforts and "forced the owners to engage in good faith, arms-length negotiations . . . concerning these restraints and all other aspects of player-management relations."[169] In the first contract negotiated after *Messersmith*, the owners for the first time found themselves attempting to persuade the players of the need for some form of reserve system. The Players' Association and the owners agreed to a new system under which a player would be bound to a team for six years instead of becoming a free agent after only one year.[170] During each year of the last three years of that period the player and the owner would negotiate compensation terms. If the parties were unable to agree, the player could take his claim to an arbitrator, who would determine whether the owner's proposal or the player's demand more closely represented the player's relative value. After the six-year contract period had elapsed the player would become a free agent and any team desiring his services and willing to enter the bidding could select him. This new system still would require the team that acquired the player to give up a draft choice to the player's former team.[171] Nevertheless, the new contract replaced the historic reserve system and gave the players freedom of movement for the first time in nearly a century.

The 1976 collective bargaining contract expired on December 31, 1979. During negotiations for a new contract the owners proposed that the club losing a free agent should receive greater compensation than simply a draft choice. Under the owners' proposal the club that a free agent left would have a limited right to select a player from the team that signed the free agent. A team could exempt fifteen players from selection, leaving ten players eligible for

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169. Note, *supra* note 26, at 670; *see* Comment, *supra* note 161, at 340.

170. 1976 Baseball Basic Agreement, Art. XVII, B(2), *reprinted in* Comment, *supra* note 161, at 358; *see* Berry & Gould, *supra* note 129, at 777; Kaplan, *supra* note 23, at 18.

171. 1976 Baseball Basic Agreement, Art. XVII C(2)(c), *reprinted in* Comment, *supra* note 161, at 362; *see* Berry & Gould, *supra* note 129, at 778; Kaplan, *supra* note 23, at 18.

Commentators noted the significance of the contract: "Baseball's owners and players reached agreement today on a four-year pact that for the first time gives the players freedom of movement. . . . The agreement . . . replaces the so-called reserve system which throughout the baseball history has restricted a player to one club traded, sold or released him." *New Baseball Contract Limits Reserve System*, N.Y. Times, July 13, 1976, at 1, col. 1.

selection by the club that the free agent had left.[172] Negotiations over this issue stalled, and on April 1, 1980, the players struck for the second time in a decade. The players walked out of spring training camps, forcing cancellation of the final eight days and ninety-two games of the exhibition season.[173] The players agreed to return for the commencement of the season, but voted to strike on May 23, 1980, unless they reached agreement with the owners.[174] On May 23 the parties reached an accord on all issues except free agent compensation,[175] which they referred to a player-management committee for further study.[176] Under the May 23 agreement the owners reserved the right to implement unilaterally their final version of the compensation scheme if the parties were unable to agree on the free agent compensation issue.[177] Similarly, the players reserved the right to strike over the issue.

The team owners implemented their free agent compensation plan on February 19, 1981, after the player-management committee failed to reach a compromise.[178] On February 25, 1981, the Players' Association executive board approved a May 29, 1981, strike date.[179] Subsequently, the NLRB attempted to enjoin the implementation of the owners' compensation scheme.[180] Finally, on June 12, 1981, the players struck for the third time in nine years. The third strike was truly a watershed event in baseball labor-management relations. The 1981 strike and the negotiated settlement completed the transformation of dispute resolution in baseball—particularly over the reserve system issue—to collective bargaining.

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172. Comment, *supra* note 161, at 350.

173. Note, *supra* note 26, at 681; Kaplan, *supra* note 23, at 17-21.

174. *Chronology of the Baseball Strike*, *supra* note 22, at 18, col. 4.

175. *Id.; see* Comment, *supra* note 161 at 351.

176. *Chronology of the Baseball Strike*, N.Y. Times, Aug. 1, 1981, at 18, col. 4.

177. This element of the agreement actually gained no more for the owners than the law already permitted. Under the NLRA management may implement its last best offer if the parties reach an impasse during collective bargaining negotiations. Taft Broadcasting Co., 163 N.L.R.B. 475, 478 (1967), *enforced sub nom.* AFTRA v. NLRB, 395 F.2d 622 (D.C. Cir. 1968); Bi-Rite Foods, Inc., 147 N.L.R.B. 59, 64-65 (1964). *See* R. GORMAN, BASIC TEXT ON LABOR LAW UNIONIZATION AND COLLECTIVE BARGAINING 445-46 (1976).

178. *Chronology of the Baseball Strike*, *supra* note 22, at 18, col. 4.

179. *Id.*

180. N.Y. Times, June 11, 1981, at D21, col. 4. Judge Henry F. Werker ruled that "there is no reasonable cause to believe that an unfair labor practice has been committed." *Id.; see supra* note 5.

IV. THE IRRELEVANCY OF ANTITRUST

Baseball's antitrust exemption, created in *Federal Baseball*[181] and reaffirmed in *Toolson* and *Flood*,[182] permits baseball—alone among professional sports—to operate freely as a monopoly. Courts,[183] commentators,[184] members of Congress,[185] and players[186] have criticized the reserve system restraints. Moreover, commentators have criticized *Flood* on both legal and policy grounds.[187] Widespread recognition existed that the reserve system restraints clearly would violate the antitrust laws but for the baseball exemption. Antitrust challenges in all other major professional team sports were responsible for fundamental restructuring of player restraint systems during the 1970's. Invalidation of player restraint systems in case after case under the Sherman Act in other professional sports[188] forced owners to engage in good faith collective bargaining with the associations that represent their players.[189] As a result, major changes in the player restraint systems in football, basketball, and hockey occurred during the 1970's. Nevertheless, antitrust law, not collective bargaining, provided the impetus for

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181. *See supra* notes 84-92 and accompanying text.

182. *See supra* notes 101-08 and accompanying text.

183. *See* Gardella v. Chandler, 172 F.2d 402 (2d Cir. 1949); *supra* notes 95-100 and accompanying text. One court said: "The *quasi* peonage of baseball players under the operations [sic] of this plan and agreement is contrary to the spirit of American institutions and is contrary to the spirit of the Constitution. . . . " American League Baseball Club v. Chase, 86 Misc. 441, 465, 149 N.Y.S. 6, 19 (1914) (emphasis in original).

184. *See supra* note 34.

185. *See, e.g., Professional Baseball: Hearings on S.2373 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 92d Cong., 1st Sess. 12 (1971) (remarks of Sen. Ervin).

186. *See, e.g.*, C. FLOOD, THE WAY IT IS (1971).

187. *See* L. SOBEL, *supra* note 32, at 66-72 (calling the decision a misapplication of stare decisis and an inappropriate reliance on testimony that owners would not have invested in teams but for the exemption); Comment, *Baseball's Antitrust Exemption: The Limits of Stare Decisis*, 12 B.C. IND. & COMM. L. REV. 737 (1971) (emphasizing that although Congress has refused to enact legislation bringing baseball within the antitrust laws, it has also refused specifically to sanction the exemption); Comment, *Antitrust Law—Baseball Reserve System—Concerted Conspiracy—Stare Decisis—Congressional Inaction—Professional Baseball Remains Exempt from State and Federal Antitrust Statutes*, 48 NOTRE DAME LAW. 460 (1972) (criticizing the Court for accepting the owners' competitive balance theory while rejecting it in *Radovich*); *see also* Allison, *supra* note 31; Note, *Applicability of Antitrust Laws to Baseball*, 2 MEM. ST. U.L. REV. 299 (1972); *see generally* Berry & Gould, *supra* note 129, at 729 & n.129 (discussing criticism of the courts' reliance on stare decisis as the basis of baseball's exemption from the antitrust laws).

188. *See, e.g.*, Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462 (E.D. Pa. 1972) (hockey); Peto v. Madison Square Garden Corp., 1958 Trade Cas. (CCH) ¶ 69,106 (S.D.N.Y.) (hockey).

189. *See* Note, *supra* note 26, at 670.

the restructuring of the player restraint systems in these sports. One commentator observed, "[C]ollective bargaining on the restraints themselves was a joke. There never would have been a discussion about the draft, the reserve clause, or the Rozelle rule, between the leagues and the players had it not been for the antitrust laws, period, exclamation point."[190] Baseball players, however, could not use antitrust law to relax player restraints because of the *Flood* decision. Without the antitrust option players faced a closely knit monopoly of employers who were free to fix conditions of employment. Thus, baseball's exemption from the antitrust laws left collective action as the players' only recourse.

A. Congressional Inaction

Congress has considered bills that addressed the role of antitrust law in professional sports on many occasions. Between 1951 and 1965 members of Congress introduced more than sixty bills on this issue.[191] Some bills would have exempted all professional sports from the antitrust laws;[192] other proposals would have included baseball within the antitrust laws.[193] Finally, some bills embraced compromise approaches.[194] One bill, for example, subjected professional sports to coverage of the antitrust statutes but exempted certain practices that legislators considered essential to the successful operation of professional sports.[195] Another legislative approach subjected professional sports to the antitrust laws, but empowered courts to permit certain practices under a rule of reason.[196]

Congress did not adopt any of these proposals. This refusal to extend the coverage of the antitrust laws to professional sports in part reflected a consensus that some form of restraint on player

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190. *Professional Sports, supra* note 52, at 307.

191. Hoffman, *supra* note 93, at 241.

192. *See, e.g.*, H.R. 5383, 85th Cong., 1st Sess. (1957); H.R. 4229, H.R. 4230, H.R. 4231, 82d Cong., 2d Sess. (1952).

193. *See, e.g.*, H.R. 5307, H.R. 5319, 85th Cong., 1st Sess. (1957).

194. *See* H.R. 6876, H.R. 6877, H.R. 8023, H.R. 8124, 85th Cong., 1st Sess. (1957).

195. H.R. Res. 10378, introduced by Congressman Celler, expressly exempted activities that were "reasonably necessary" to equalize competitive playing strengths, to grant exclusive franchise territories, and to preserve public confidence in the integrity of professional sports. *See Organized Professional Team Sports: Hearings on S. 616 and S. 886 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 86th Cong., 1st Sess. 5 (1959).

196. *See Hearings on H.R. 5307, H.R. 5319, H.R. 5383, H.R. 6876, H.R. 8023, and H.R. 8124 Before the Antitrust Subcomm. of the House Comm. on the Judiciary*, 85th Cong., 1st Sess. 2 (1957); L. SOBEL, *supra* note 32, at 38.

mobility was essential to the survival of league sports.[197] Moreover, the reticence of Congress to tamper with the internal regulation of sports, and particularly baseball, unquestionably reflected the sacrosanct position that baseball holds in the United States. Throughout the debates on these measures members of Congress demonstrated a marked preference for intrasport dispute resolution:

> Constant intervention in their affairs hy paternalistic do-gooders will lead to nothing but trouble for all concerned. In our view, the policy decisions of sports should be made by people in sports—the owners and players alike. They should not be made by men in black robes who may never have been to a ball park.[198]

The 1981 strike and negotiated settlement only can amplify this congressional reluctance to interfere in the internal workings of the baseball industry. Both labor and management, having attained relative parity in bargaining power, appear fully capable of protecting the interests of employees and the owners without the need for antitrust measures to alter the rules of employment.

B. The Labor Exemption and its Application to the Negotiated Reserve System

The 1981 strike and negotiated resolution effectively ends debate over whether the antitrust laws should apply to baseball's reserve system. The reserve system now has been subjected to rigorous collective bargaining. As a result, even if Congress or the courts removed baseball's exemption from the antitrust laws, the labor exemption to the antitrust laws would foreclose an antitrust challenge now brought by a player dissatisfied by the restraints of the reserve system.[199]

The labor exemption represents an attempt to reconcile two important national policies that under some circumstances are inherently at odds. The purpose of antitrust legislation is to foster competition in the marketplace.[200] National labor policy, however,

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197. *See, e.g.*, Pierce, *supra* note 26, at 580.

198. H.R. REP. No. 1720, 85th Cong., 2d Sess. 12 (1958).

199. Congressional efforts to remove baseball's exemption have continued. During the summer of 1981, broadcaster Howard Cosell and baseball team owner Ted Turner among others testified before a congressional committee that no justifications existed for the continued exemption. *See* L.A. Times, July 17, 1981, § III at 4, col. 1; *id.*, July 16, 1981, § III at 4, col. 1; *id.*, July 15, 1981, § III at 5, col. 1.

200. Northern Pac. Ry. v. United States, 356 U.S. 1, 4-5 (1958) ("The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade."); Allen Bradley Co. v. Local Union No. 3, IBEW, 325 U.S. 797, 806 (1945) ("[Antitrust policy] . . . seeks to preserve a competitive business economy."); L. SULLIVAN, HANDBOOK OF THE LAW OF ANTITRUST 14 (1977) ("The

reflects a congressional assessment that individual bargaining with employers creates an inequality of bargaining power that "prevent[s] the stabilization of competitive wage rates and working conditions between industries."[201] The preamble to the NLRA sets forth the intention of Congress to protect unions and to encourage collective bargaining:

> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by encouraging the practice and procedure of collective bargaining and by protecting the exercise by working of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.[202]

As a result, unions, in pursuit of improved terms and conditions of employment for employees, have negotiated and struck for contracts establishing uniform wages, hours, and working conditions. One effect of the uniform provisions is that competition in the labor market is eliminated.[203] In addition, union activity has restricted competition in the product market to the extent that labor costs determine product prices.[204] Thus, unions and their legitimate goals are, by their nature, anticompetitive.[205]

The Supreme Court in *Allen Bradley Co. v. Local Union No. 3, IBEW*[206] succinctly stated the conflict that the courts face when attempting to fashion an accomodation between labor and antitrust policies:

> [W]e have two declared congresssional policies which it is our responsibility to try to reconcile. The one seeks to preserve a competitive business economy; the other to preserve the rights of labor to organize to better its conditions through the agency of collective bargaining. We must determine here how far Congress intended activities under one of these policies to neutralize the results envisioned by the other.[207]

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purpose of the antitrust laws is to promote competition and to inhibit monopoly and restraints upon freedom of trade in all sectors of the economy to which these laws apply."). *See* Fried & Crabtree, *Labor*, 33 ANTITRUST L.J. 38 (1967).

201. National Labor Relations Act § 1, 29 U.S.C. § 151 (1976).

202. *Id.*

203. Cox, *Labor and the Antitrust Laws: Pennington and Jewel Tea*, 46 B.U.L. REV. 317, 317-18 (1966).

204. A. COX, D. BOK, & R. GORMAN, CASES AND MATERIALS ON LABOR LAW 872 (9th ed. 1981).

205. "In short, unionization, collective bargaining and standardization of wages and working conditions are inherently inconsistent with many of the assumptions at the heart of anti-trust policy." *Id.* at 872.

206. 325 U.S. 797 (1945).

207. *Id.* at 806.

Courts created the labor exemption to the antitrust laws to harmonize these conflicting policies. Under the labor exemption doctrine courts, in certain circumstances, will not subject agreements about wages, hours, and conditions of employment that employers and unions have reached through collective bargaining to antitrust scrutiny.[208]

Commentators first advocated application of the labor exemption to immunize collectively bargained player restraint systems from the antitrust laws at the time *Flood* was pending before the Supreme Court. Michael Jacobs and Professor Winter in a seminal article argued that the Supreme Court had granted certiorari improvidently in *Flood.*[209] Since the team owners and the Players' Association had engaged in collective bargaining regarding a mandatory term or condition of employment—in this case the reserve system—as required by the labor laws, Jacobs and Winter opined that antitrust policy should be subordinate to labor policy favoring collective bargaining.[210] To conclude otherwise, they argued, would threaten two fundamental tenets of labor law: "the exclusive power of the bargaining agent and freedom of contract between employer and union."[211] Supreme Court precedent had held clearly that the courts should invoke the antitrust laws only when employers conspired to utilize their collective bargaining relationship as a sword to injure competitors.[212] A conspiracy of this

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208. The labor exemption to the antitrust laws is a subject that has engaged many of the nation's leading labor and antitrust scholars. The focus of the treatment in this Article is solely upon the application of the doctrine to player restraint systems in professional team sports. A partial list of important writings on the labor exemption to the antitrust laws includes: Boudin, *The Sherman Act and Labor Disputes* (pts. 1 & 2), 39 COLUM. L. REV. 1283 (1939), 40 COLUM. L. REV. 14 (1940); Cox, *Labor and Antitrust Laws—A Preliminary Analysis,* 104 U. PA. L. REV. 252 (1955); Handler & Zifchak, *Collective Bargaining and the Antitrust Laws: The Emasculation of the Labor Exemption,* 81 COLUM. L. REV. 459 (1981); Meltzer, *Labor Unions, Collective Bargaining, and the Antitrust Laws,* 32 U. CHI. L. REV. 659 (1965); St. Antoine, Connell: *Antitrust Law at the Expense of Labor Law,* 62 VA. L. REV. 603 (1976); Sovern, *Some Ruminations on Labor, the Antitrust Laws and* Allen Bradley, 13 LAB. L.J. 957 (1962); Winter, *Collective Bargaining and Competition: The Application of Antitrust Standards to Union Activities,* 73 Yale L.J. 14 (1963).

209. Jacobs & Winter, *supra* note 139, at 29. For a discussion of Flood v. Kuhn, see *supra* notes 103-08 and accompanying text.

210. Jacobs & Winter, *supra* note 139, at 29.

211. *Id.* at 6.

212. *Id.* at 26 (citing Local Union No. 189, Amalgamated Meat Cutters v. Jewel Tea, 381 U.S. 676 (1965); UMW v. Pennington, 381 U.S. 657 (1965); Allen Bradley Co. v. Local Union No. 3, IBEW, 325 U.S. 797 (1945)). Subsequently, the Court in Connell Constr. Co. v. Plumbers & Steamfitters Local Union No. 100, 421 U.S. 616 (1975), proved this conclusion unfounded. In *Connell Construction* the union pressured the employer to agree to subcontract certain work only to firms who were signatory to collective bargaining contracts with

type, Jacobs and Winter argued, was not present in *Flood,* which concerned the reserve clause—"strictly a labor market issue."[213]

The Supreme Court's adherence to *Federal Baseball* and *Toolson* in *Flood* made any consideration of the labor exemption unnecessary. Justice Marshall, however, referred to the labor exemption in his dissent in *Flood,* finding it inapposite to that case:

> There is a surface appeal to respondents' argument that petitioner's sole remedy lies in filing a claim with the National Labor Relations Board, but this argument is premised on the notion that management and labor have agreed to accept the reserve clause. This notion is contradicted, in part, by the record in this case. Petitioner suggests that the reserve system was thrust upon the players by the owners and that the recently formed players' union has not had time to modify or eradicate it. If this is true, the question arises as to whether there would then be any exemption from the antitrust laws in this case.[214]

Although the Supreme Court did not rely on the labor exemption doctrine in *Flood,* the other professional sports leagues utilized the defense in subsequent player challenges to their reserve systems. During the 1970's the players in other professional team sports repeatedly challenged player restraint systems.[215] In each of these actions the leagues invoked the labor exemption to preserve the player restraint systems. For example, in *Mackey v. National Football League*[216] present and former players challenged the free agent compensation structure of the National Football League. The free agent provision, commonly known as the Rozelle Rule, permitted the commissioner of the National Football League to designate the compensation to be awarded to a team losing a free agent from the team hiring that athlete.[217] "The case developed

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the union. Simultaneously, it disavowed any interest in representing the employer's employees. The Supreme Court held the agreement outside of the labor exemption notwithstanding that the employer had made no effort to utilize its collective bargaining relationship to restrain competition in the product market.

213. Jacobs & Winter, *supra* note 139, at 27.

214. Flood v. Kuhn, 407 U.S. at 295 (Marshall, J., dissenting).

215. Smith v. Pro-Football, 420 F. Supp. 738 (D.D.C. 1976) (football); Mackey v. National Football League, 407 F. Supp. 1000 (D. Minn. 1975), *remanded,* 543 F.2d 606 (8th Cir. 1976) (football); Robertson v. National Basketball Ass'n, 389 F. Supp. 867 (S.D.N.Y. 1975) (basketball); Kapp v. National Football League, 390 F. Supp. 73 (N.D. Cal. 1974) (football); Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462 (E.D. Pa. 1972) (hockey); Boston Professional Hockey Ass'n v. Cheevers, 348 F. Supp. 261 (D. Mass.), *remanded,* 472 F.2d 127 (1st Cir. 1972) (hockey).

216. 543 F.2d 606 (8th Cir. 1976).

217. The Rozelle Rule stated:

> Any player, whose contract with a League club has expired, shall thereupon become a free agent and shall no longer be considered a member of the team of that club following the expiration date of such contract. Whenever a player, becoming a free

into a major test for the labor exemption question. Unlike the . . . prior sports cases in which the exemption question was decided in preliminary proceedings, the district court opinion in *Mackey* followed a full evidentiary trial on the antitrust issues."[218] The district court found that the Rozelle Rule constituted an unreasonable restraint on trade.[219] On appeal, the Eighth Circuit set forth a three-pronged test to determine the applicability of the labor exemption in the context of antitrust challenges to player restraints:

> First, the labor policy favoring collective bargaining may potentially be given pre-eminence over the antitrust laws where the restraint on trade primarily affects only the parties to the collective bargaining relationship. Second, federal labor policy is implicated sufficiently to prevail only where the agreement sought to be exempted concerns a mandatory subject of collective bargaining. Finally, the policy favoring collective bargaining is furthered to the degree necessary to override the antitrust laws only where the agreement sought to be exempted is the product of bona fide arm's-length bargaining.[220]

The court found that the Rozelle Rule had no appreciable impact outside the bargaining unit and that it affected "only the parties to the agreements sought to be exempted."[221] Moreover, team compensation for the loss of a free agent fell within the definition of wages, hours, and working conditions and, therefore, was a mandatory subject of bargaining.[222] The League's claim of immunity under the labor exemption, however, failed the tbird prong of the court's test because the Rozelle Rule had not been the subject

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agent in such manner, thereafter signs a contract with a different cluh in the League, then, unless mutually satisfactory arrangements have been concluded between the two League clubs, the Commissioner may name and then award to the former club one or more players, from the Active, Reserve, or Selection List (including future selection choices) of the acquiring club as the Commissioner in his sole discretion deems fair and equitable; any such decision by the Commissioner shall be final and conclusive.

CONSTITUTION AND BY-LAWS FOR THE NATIONAL FOOTBALL LEAGUE, art. 12.1(H), *reprinted in* J. WEISTART & C. LOWELL, *supra* note 13, at 502-03, n. 167.

218. J. WEISTART & C. LOWELL, *supra* note 13, § 5.06, at 575.

219. The district court held the Rozelle Rule to be a per se violation of the Sherman Act as well as impermissable under the rule of reason test. Mackey v. National Football League, 407 F. Supp. at 1007-08. The court found that the Rozelle Rule effectively deterred clubs from siguing free agents, *id.* at 1006-07, and thus, was "substantially identical" to a perpetual reserve system, *id.* at 1006. Under the rule of reason analysis the district court found the rule (1) unreasonably hroad because it affected all players, not merely those whose movement might upset competitive balance; (2) unreasonable in its failure to provide procedures to inform players of negotiations for his services and to protect against a current employer's unreasonable actions which might discourage trades; (3) unreasonable in its duration; and (4) unreasonable in conjunction with other anticompetitive practices of defendants. *Id.* at 1007-08.

220. Mackey v. National Football League, 543 F.2d at 614 (citations omitted).

221. *Id.* at 615.

222. *Id.*

of bona fide arm's-length bargaining.[223] Thus, the exemption from coverage of the antitrust laws would not promote collective bargaining under the circumstances of *Mackey*.[224]

After the *Mackey* decision the League and the Players' Association negotiated an agreement over the free agent compensation issue.[225] In a subsequent challenge to this agreement, the Eighth Circuit again considered the application of the labor exemption to player restraints.

> We emphasize today, as we did in *Mackey* . . . that the subject of player movement restrictions is a proper one for resolution in the collective bargaining context. When so resolved, as it appears to have been in the current collective bargaining agreement, the labor exemption to antitrust attack applies, and the merits of the bargaining agreement are not an issue for court determination.[226]

The Sixth Circuit in *McCourt v. California Sports, Inc.*[227] recently addressed the application of the labor exemption to negotiated player restraints. In 1976 the National Hockey League and the Hockey Players' Association negotiated a collective bargaining agreement that provided for an "equalization payment" or free agent compensation rule. In *McCourt* the league assigned plaintiff player to a new team as compensation against his wishes, and plaintiff challenged the equalization payment rule as violative of the antitrust laws. The National Hockey League argued that the labor exemption immunized the provision from antitrust scrutiny.[228] The trial court found that the equalization payment rule had been imposed unilaterally upon the Players' Association and, therefore, failed the third prong of the *Mackey* test.[229] On appeal the Sixth Circuit reversed the district court and held that the labor exemption was applicable to the equalization payment provision.[230] The court agreed that *Mackey* sets forth the proper standard to determine whether the labor exemption is applicable in a given case.[231] The court, however, concluded that the equalization pay-

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223. *Id.* at 615-16.

224. *Id.*

225. Reynolds v. National Football League, 584 F.2d 280, 282 (8th Cir. 1978).

226. *Id.* at 289. In this case fifteen active and one inactive NFL players objected to the settlement agreement between the NFL and the National Football League Players' Association following the *Mackey* decision.

227. 600 F.2d 1193 (6th Cir. 1979).

228. McCourt v. California Sports, Inc., 460 F. Supp. 904, 910 (E.D. Mich. 1978), *rev'd*, 600 F.2d 1193 (6th Cir. 1979).

229. *Id.* For the *Mackey* test, see text accompanying note 220.

230. McCourt v. California Sports, Inc., 600 F.2d at 1203.

231. *Id.* at 1198.

ment provision was the product of collective bargaining:

> [T]he trial court failed to recognize the well established principle that nothing in the labor law compels either party negotiating over mandatory subjects of collective bargaining to yield on its initial bargaining position. Good faith bargaining is all that is required. That the position of one party on an issue prevails unchanged does not mandate the conclusion that there was no collective bargaining over the issue.[232]

The court found that the equalization payment provision was the product of arm's length bargaining and, therefore, that it was immune from antitrust interdiction under the labor exemption doctrine.

The *Mackey-McCourt* standard for the application of the labor exemption in the context of player restraints represents an accomodation of the collective bargaining process within the antitrust laws. Continued application of this doctrine, however, leads to the conclusion that future action by Congress or the courts to bring the baseball player restraint system within the purview of the antitrust laws is now unnecessary. The reserve system is a mandatory subject of bargaining and primarily affects only the parties to the agreement. Arm's length collective bargaining is shaping the contours of the reserve system in professional baseball. Thus, the negotiated format of the reserve system restraints is appropriately immune from antitrust scrutiny.

V. CONCLUSION

The 1981 strike was the third work stoppage in the history of baseball and the first to come in midseason. The strike was costly to the players, the owners, related businesses, the cities, and, of course, the followers of the game. After seven weeks of often bitter negotiations, management and labor finally reached a resolution of the issues. Because of the events of the 1981 strike, collective bargaining will shape the contours of the reserve system, with all of the costs and periodic dislocations that attend this system of dispute resolution. Congressional action, which advocates sought in order to bring baseball within the antitrust laws, is no longer necessary. Moreover, the labor exemption from the antitrust laws clearly would foreclose attack by dissatisfied players even if the courts or Congress revoked the historic exemption. The application of the antitrust laws to the reserve system "is an issue whose time

232. *Id.* at 1200.

has come and gone."[233] Collective bargaining has come of age in the United States' national pastime. In that arena alone players and management will carry on the historic conflict over the reserve system.

233. Jacobs & Winter, *supra* note 139, at 1.