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## Baseball's Antitrust Exemption: It's Going, Going!

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It is designed to break your heart. The game begins in the spring, when everything else begins again, and it blossoms in the summer, filling the afternoons and evenings, and leaves you to face the fall alone. You count on it, rely on it to buffer the passage of time, to keep the memory of sunshine and high skies alive, and then just when the days are all twilight, when you need it most, it goes . . . and summer is gone.<sup>1</sup>

## I. INTRODUCTION

Perhaps no other sport invokes more emotion, memories, or love in the United States than baseball. It is almost as old as the United States itself, and is firmly rooted in the fabric of our society. It is one of the few subjects that a ten-year-old orphan can discuss with the same level of proficiency as a sixty-five-year-old brain surgeon. History and tradition have passed it down through generations, and in many respects the history of baseball mirrors the history of our country. Sociological issues such as

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1. A. Bartlett Giamatti, *The Green Fields of the Mind*, YALE ALUMNI MAG. & J., Nov. 1977, at 9.

immigration, segregation, racism, the struggle between labor and management, and self governance have played a part in both the American experience and the history of the game of baseball.

Almost incredibly, though, for the first time since 1904, the 1994 season did not have a World Series. On August 12, 1994, the baseball season was interrupted by its eighth work stoppage when the Major League Baseball Players Association, the union that represents the players and team owners, failed to negotiate a new collective bargaining agreement. There was anger, disgust, and finger pointing by both sides, and the prevalent sentiments of the fans were resentment and sadness.

Protracted negotiations continued through the spring of 1995 with no foreseeable collective bargaining agreement in sight. The owners were determined to play a 1995 season, and with the lone exception of the Baltimore Orioles, each franchise fielded teams of non-union players.<sup>2</sup> The 1995 season began with the actual players only because two days before opening day an injunction was issued by the United States District Court which forced the owners to begin the season under the rules of the expired collective bargaining agreement.<sup>3</sup> Even though the season began with the real players, none of the issues which contributed to the latest work stoppage were resolved. There is still no existing collective bargaining agreement, which leaves open the possibility that the current season may still be interrupted.

During the seven-month strike, many suggested that baseball would somehow be better off, and these types of problems would not emerge, if professional baseball were to lose its judicially created exemption from federal antitrust laws. By subjecting the owners to the same regulations as other industries, many argue that the actions and behavior of the owners would be less conducive to the hostility which has had a history of creating strife with the players.

The purpose of this paper is to explore whether that is really true. Is a judicial or legislative repeal of this exemption the panacea that will restore Major League Baseball to its rightful place as one of our national treasures? The first part of this paper will examine the history and scope of baseball's judicially created exemption from antitrust laws, followed by an examination of the effect of a repeal on certain components of the game such as labor/management issues, franchise relocation, and the minor leagues.

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2. Hal Bodley, *Players to Return*, U.S.A. TODAY, April 3, 1995, at 1C.

3. *Id.*

## II. HISTORY OF THE JUDICIALLY CREATED EXEMPTION TO ANTITRUST LAW

There has been much recent speculation about the inception of baseball and who really invented it. Legend says the game of baseball was invented in the sleepy upstate New York village of Cooperstown by Abner Doubleday around 1840. Another theory is that the early form of baseball played in the United States was a version of the English game known as "Rounders."<sup>4</sup> Still others have attributed the birth of baseball to a fraternal organization known as the New York Knickerbockers Club during the 1840s in New York City.<sup>5</sup> Whatever its origins, baseball's popularity grew at a rapid pace, and it soon became one of the most fashionable forms of recreation in the country.

Towns and cities began to field their own teams, and with enthusiastic followings, traveled to other towns to play games. Larger cities began to form leagues.<sup>6</sup> But due to the escalating competitiveness of the contests, corruption soon followed. During the 1860s baseball went through a transition period from amateurism to professionalism.<sup>7</sup> In order to attract the best players, businesses that sponsored teams began to entice players with jobs and money.<sup>8</sup> In 1869, the Cincinnati Red Stockings became the first professional baseball team, in that each player received a salary.<sup>9</sup>

Other professional teams soon formed, and the result was that on March 17, 1871, the National Association of Professional Baseball Players was formed.<sup>10</sup> While this league contained many of the best teams in the country, it was controlled by the players.<sup>11</sup> Consequently, there was little discipline, little organization, gambling, drunkenness, and players who would jump from team to team in mid-season for more money.<sup>12</sup> These factors combined to lead to the league's demise after the 1875 season.<sup>13</sup>

In 1876, however, the National League of Professional Baseball Clubs was formed by Chicago businessman William Hulbert.<sup>14</sup> Hulbert believed

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4. HAROLD SEYMOUR, *BASEBALL: THE EARLY YEARS* 5 (1960).

5. *TOTAL BASEBALL* 7 (John Thorn et al. eds., 1989).

6. SEYMOUR, *supra* note 4, at 35.

7. *Id.* at 47.

8. *Id.*

9. *TOTAL BASEBALL*, *supra* note 5, at 8.

10. *Id.* at 9.

11. *Id.*

12. *Id.*

13. *Id.* at 9.

14. SEYMOUR, *supra* note 4, at 80. This is the same national league that exists today.

it was possible to apply business principles to baseball and turn a profit by having team owners, not the players, control the league.<sup>15</sup> League bylaws mandated strict control over the players. Players under contract with one national league team were prohibited from playing with another national league club until their original contract concluded.<sup>16</sup> In addition, players who tried to jump to other clubs without the permission of their original team were blacklisted because the rules prohibited a league team from employing a player who had broken any league rules.<sup>17</sup>

But even with these restrictive terms governing the League, the owners still needed to reduce expenses, and the greatest League expense was the players' salaries. They discovered that the competition among themselves in trying to secure the services of the better players was responsible for inflating salaries. This problem resulted in the inception of what is commonly known as the "reserve clause." The owners secretly agreed to reserve a certain number of players on each roster, and it was agreed that none of the other owners would bid for or solicit the services of any other teams' reserved players.<sup>18</sup>

In 1887, the reserve clause was inserted into the uniform contract signed by all players.<sup>19</sup> The impact of the reserve clause was that it made each player property of his respective team in perpetuity, one year at a time. Once a player signed with a team, he was the property of that team for the duration of his career. The player could be traded or released at the discretion of the team. If the player chose to hold out, other clubs were prohibited from employing him.

With the power of the reserve clause and the exploding popularity of the game, Major League Baseball established itself as a premier entertain-

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15. *Id.* One of the original team owners, A.G. Spaulding, said: The idea was as old as the hills; but its application to Base Ball had not yet been made. It was, in fact, the irrepressible conflict between Labor and Capital asserting itself under a new guise. . . . Like every other form of business enterprise, Base Ball depends for results on two interdependent divisions, the one to have absolute control and direction of the system, and the other to engage—always under the executive branch—the actual work production.

*Id.* (alteration in original).

16. *Id.* at 82.

17. *Id.*

18. SEYMOUR, *supra* note 4, at 108.

19. LIONEL S. SOBEL, PROFESSIONAL SPORTS & THE LAW, § 2.1 (1977). The clause states: "It is further understood and agreed that the party of the first part [the team] shall have the right to 'reserve' the said party of the second part [the player] for the season next ensuing the term mentioned in paragraph 2, herein provided." *Id.*

ment industry by the early part of the twentieth century. In an effort to cash in on baseball's increasing popularity, the rival Federal League of Professional Baseball Clubs commenced its inaugural season with eight teams in March of 1913.<sup>20</sup> It tried to raid the rosters of the American<sup>21</sup> and National League teams, but because of the threat of being blacklisted, few players defected to the new league.<sup>22</sup> In addition, the Federal League was not as well financed as the American and National Leagues.<sup>23</sup> Recognizing its bleak outlook, the Federal League sued the National and American Leagues on January 5, 1915, claiming that the reserve clause was an unreasonable and illegal restraint on competition.<sup>24</sup> The case was tried before Judge Kenesaw Mountain Landis, who would later be named by the owners as baseball's first Commissioner.<sup>25</sup> After deliberating eleven months, Judge Landis had not rendered a verdict.<sup>26</sup> Faced with mounting financial pressures, the Federal League settled out of court.<sup>27</sup> Unhappy with the out-of-court settlement, the owner of the Baltimore franchise filed suit against Major League Baseball in what would be the first of a trilogy of cases to reach the Supreme Court regarding professional baseball's subjection to antitrust regulation.<sup>28</sup>

Congress had passed the Sherman Antitrust Act in 1890 for the purpose of preventing business practices which create monopolies.<sup>29</sup> The provisions of the Sherman Act which have historically been used by those trying to eliminate baseball's exemption from antitrust laws are sections 1 and 2. Section 1 makes it illegal to contract or conspire to restrain commerce

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20. *Id.* § 1.2.

21. The American League played its first season in 1901. The League resulted from the National League dropping four of its twelve teams in 1900. Those four teams combined with a strong minor league, named The Western League, for a total of eight original teams. TOTAL BASEBALL, *supra* note 5, at 17.

22. HAROLD SEYMOUR, *BASEBALL: THE GOLDEN AGE* 206 (1971).

23. TOTAL BASEBALL, *supra* note 5, at 644.

24. SOBEL, *supra* note 19, at 3.

25. *Id.*

26. *Id.*

27. *Id.* at 4.

28. *Id.*

29. 15 U.S.C. §§ 1-2 (1994).

among the states.<sup>30</sup> Monopolies or attempts to monopolize trade or commerce among the states are prohibited by section 2.<sup>31</sup>

At issue in its suit against professional baseball,<sup>32</sup> the Baltimore Club alleged three things. First, it was alleged that under section 1 of the Sherman Act the reserve clause in the uniform player contract was an illegal restraint on commerce.<sup>33</sup> The fear of being blacklisted by the American and National Leagues prevented players from joining the Federal League. Second, it was alleged that under section 2 of the Sherman Act, the reserve clause allowed the American and National Leagues to monopolize the trade and commerce of baseball.<sup>34</sup> Lastly, the Baltimore Club claimed that because of professional baseball's size, popularity, profits, and interdependence of one team on another for league play, the operations of the National and American Leagues constituted interstate trade and commerce.<sup>35</sup>

The jury awarded the Baltimore Club \$240,000 in damages.<sup>36</sup> The District of Columbia Court of Appeals, however, reversed and remanded the case with instructions to enter judgment for the National League.<sup>37</sup> On appeal, the Supreme Court affirmed this decision.<sup>38</sup> In his opinion, Justice Holmes, writing for a unanimous court, wrote that although players were required to cross state lines in order to participate in the games, "the transport is a mere incident, not the essential thing."<sup>39</sup> Justice Holmes

30. 15 U.S.C. § 1 (1988). A selected portion of the statute provides:  
[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony. . . .

*Id.*

31. *Id.* § 2. A selected portion of the statute provides, "[e]very person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations shall be deemed guilty of a felony." *Id.*

32. *National League of Professional Baseball Clubs v. Federal Baseball Club of Baltimore, Inc.*, 269 F. 681 (D.C. Cir. 1920), *aff'd*, 259 U.S. 200 (1922), *reh'g granted*, 42 S.Ct. 587 (1922).

33. *Id.* at 687.

34. *Id.* at 686.

35. *Id.*

36. *Id.* at 682.

37. *National League of Professional Baseball Clubs*, 269 F. at 688.

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

39. *Id.* at 209.

reasoned that the games, even though they were played for money, “would not be called trade or commerce in the commonly accepted use of those words.”<sup>40</sup> Since baseball was not trade or commerce, it was not subject to antitrust laws. Justice Holmes, having held that the games were not trade or commerce, did not discuss the Baltimore Club’s arguments regarding the reserve clause in the uniform player contract or its belief that the reserve clause effected a monopoly of the best players by the National and American Leagues. The game and business of baseball, as played and conducted by the National and American Leagues, received a broad and sweeping exemption from antitrust law. This decision was not limited in scope to specifics such as the reserve clause or player restraints.

No serious challenge to baseball’s antitrust exemption materialized again until 1948 in *Gardella v. Chandler*.<sup>41</sup> Danny Gardella played for the New York Giants minor league organization during the 1944 and 1945 seasons.<sup>42</sup> In 1946, he and several other players left organized baseball in the United States and played in the Mexican professional league.<sup>43</sup> In an effort to discourage other players from doing the same, the owners agreed that any player who left to play in the Mexican league would be suspended from professional baseball in the United States for five years.<sup>44</sup> Gardella filed an antitrust suit against Albert “Happy” Chandler, the Commissioner of Baseball, and the American and National Leagues, alleging that because radio and television broadcasts transmitted games across state lines, the leagues were engaged in interstate commerce, and thus should be subject to antitrust regulations.<sup>45</sup> Major League Baseball moved to dismiss the action and the district court agreed, relying on the authority of *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*. However, the Second Circuit Court of Appeals reversed and remanded.<sup>46</sup> Judge Frank wrote that baseball was engaged in interstate commerce, “because the defendants have lucratively contracted for the interstate communication by radio and television of the playing of games.”<sup>47</sup> Shortly

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40. *Id.*

41. 79 F. Supp. 260 (S.D.N.Y. 1948), *rev'd*, 172 F.2d 402 (2d Cir. 1949).

42. *Id.* at 261.

43. *Id.* at 262.

44. TOTAL BASEBALL, *supra* note 5, at 645.

45. *Gardella*, 79 F. Supp. at 262.

46. *Gardella v. Chandler*, 172 F.2d 402 (2d Cir. 1949).

47. *Id.* at 410.



after this decision, Gardella reportedly was paid \$60,000 by Major League Baseball to not pursue his case any further.<sup>48</sup>

It was the enterprise of baseball as a whole that the court found to be subject to antitrust laws.<sup>49</sup> The court examined certain elements of the industry, such as the travel, league structure, reserve clause, and ultimately the broadcasting.<sup>50</sup> In analyzing the combination of these components, it was baseball in the aggregate which the court determined was subject to antitrust law. In discussing the reserve clause, Judge Frank wrote that it “results in something resembling peonage of the baseball player.”<sup>51</sup>

Shortly thereafter, perhaps encouraged by the result in *Gardella*, another player mounted a challenge against baseball’s antitrust exemption in *Toolson v. New York Yankees*.<sup>52</sup> George Toolson was an outfielder in the New York Yankees minor league organization. Unable to make the Yankees, he was assigned to their Binghamton, New York, affiliate, but refused to report.<sup>53</sup> He was placed on the ineligible list by the Yankees, and the team refused to allow him to play with any other organization.<sup>54</sup> Toolson filed an antitrust suit against the Yankees alleging that professional baseball had monopolized the trade and commerce of baseball and that by broadcasting games by radio and television, Major League Baseball was engaged in interstate commerce.<sup>55</sup> The district court dismissed the suit for two reasons. First, the court felt bound by the Supreme Court’s decision in *Federal Baseball*.<sup>56</sup> Second, the court believed it had a “clear duty to endeavor to be a judge and should not assume the function of a pseudo legislature.”<sup>57</sup>

The court of appeals affirmed the dismissal, “[o]n the grounds and for the reasons stated” in the district court’s opinion.<sup>58</sup> Then on November 9,

48. SOBEL, *supra* note 19, at 19.

49. *Gardella*, 172 F.2d at 409.

50. *Id.*

51. *Id.*

52. 101 F. Supp. 93 (S.D. Cal. 1951), *aff’d*, 200 F.2d 198 (9th Cir. 1952), *aff’d*, 346 U.S. 356 (1953).

53. *Id.* at 93. The New York Yankee outfield in 1951 consisted of Hank Bauer, Gene Woodling, and Joe DiMaggio. Also in the Yankee organization was a minor leaguer named Mickey Mantle.

54. *Id.*

55. *Id.* at 94.

56. *Id.*

57. *Toolson*, 101 F. Supp. at 95.

58. *Toolson v. New York Yankees*, 200 F.2d 198, 199 (9th Cir. 1952), *aff’d*, 346 U.S. 356 (1953).

1952, in a one-paragraph opinion, the Supreme Court affirmed, stating, “[w]e think that if there are evils in this field which now warrant application to it of the antitrust laws, it should be by legislation.”<sup>59</sup> The Court believed that if antitrust laws were to be applied to baseball, it was Congress’ and not the Court’s responsibility to do so. But for the purpose of examining the scope of this judicially enacted exemption from antitrust law, the most important part of the opinion is the last sentence. The Court wrote:

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* so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws.<sup>60</sup>

Thus, the industry of baseball, as a whole, had again, courtesy of the Supreme Court of the United States, received a broad exemption from antitrust laws.

The issue of baseball’s exemption from antitrust laws remained dormant until the St. Louis Cardinals traded outfielder Curt Flood to the Philadelphia Phillies at the conclusion of the 1969 season. Unhappy about the trade, Flood sent a letter to Commissioner Bowie Kuhn stating, “I am not a piece of property to be bought and sold irrespective of my wishes,” and asked the Commissioner to declare him a free agent for the upcoming season so he could negotiate with any other major league team.<sup>61</sup> Kuhn refused, resulting in a lawsuit against himself, the teams, and the owners, in the United States District Court for the Southern District of New York.<sup>62</sup> The issue in *Flood v. Kuhn* was similar to those in the previous cases, in that Flood contended that the reserve system constituted a conspiracy among the teams and owners which prevented him from playing with any other team.<sup>63</sup> The district court found that *Federal Baseball* and *Toolson* were controlling, and judgment was entered on behalf of Major League Baseball.<sup>64</sup> The court of appeals affirmed.<sup>65</sup>

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59. *Toolson v. New York Yankees*, 346 U.S. 356, 357 (1953).

60. *Id.* (citation omitted).

61. TOTAL BASEBALL, *supra* note 5, at 646.

62. *Flood v. Kuhn*, 316 F. Supp. 271 (S.D.N.Y. 1970), *aff’d*, 443 F.2d 264 (2d Cir. 1971), *aff’d*, 407 U.S. 258 (1972).

63. *Id.* at 272.

64. *Id.* at 280.

65. *Flood v. Kuhn*, 443 F.2d 264 (2d Cir. 1971), *aff’d*, 407 U.S. 258 (1972).

The Supreme Court granted certiorari and affirmed the decision of the lower courts.<sup>66</sup> The opinion by Justice Blackmun constitutes one of the more entertaining opinions in Court history.<sup>67</sup> The rationale of the Court in affirming the decisions of the lower courts were three-fold. First, the Court noted that in relation to other sports, the exemption granted to baseball in *Federal Baseball* and *Toolson* was an “aberration confined to baseball.”<sup>68</sup> In addition, this aberration was “fully entitled to the benefit of *stare decisis*.”<sup>69</sup> The Court also recognized that the reserve clause was an important part of baseball’s structure, and any judicial attempt to eliminate or modify it may upset league balance.<sup>70</sup> Finally, the Court echoed the sentiments of *Toolson*, concluding that it was the responsibility of Congress, and not the courts, to include baseball within the scope of federal antitrust laws.<sup>71</sup>

But the importance of the decision is found in the first line of the opinion which reads, “[f]or the third time in 50 years the Court is asked specifically to rule that professional baseball’s reserve system is within the reach of federal antitrust laws.”<sup>72</sup> The issue and discussions in the case

66. *Flood v. Kuhn*, 407 U.S. 258 (1972).

67. *Id.* at 261-64. Justice Blackmun’s opinion begins with a nostalgic look at the history of baseball, as well as references to and excerpts from classic baseball literature such as Ernest L. Thayer’s *Casey at the Bat* and Franklin Pierce Adams’ *Tinker to Evers to Chance*. In addition, Justice Blackmun wrote, “[t]hen there are many names, celebrated for one reason or another, that have sparked the diamond and its environs and have provided tinder for recaptured thrills for reminiscence and comparisons, and for conversation and anticipation in-season and off-season.” *Id.* at 262. He then proceeded to individually list 88 of baseball’s greatest players. *Id.* at 262-63.

68. *Id.* at 282.

69. *Flood*, 407 U.S. at 282.

70. *Id.* at 283.

71. *Id.* at 285.

72. *Id.* at 259. The reserve clause, as it read in the Uniform Player Contract at the time of *Flood*, provided:

On or before January 15 (or if a Sunday, then the next preceding business day) of the year next following the last playing season covered by this contract, the Club may tender to the Player a contract for the term of that year by mailing the same to the Player at his address following his signature hereto, or if none be given, then at his last address of record with the Club. If prior to the March 1 next succeeding said January 15, the Player and the Club have not agreed upon the terms of such contract, then on or before 10 days after said March 1, the Club shall have the right by written notice to the Player at said address to renew this contract for the period of one year on the same terms, except that the amount payable to the Player shall be such as the Club shall fix in said notice; provided, however, that said amount, if fixed by a Major League Club, shall be

centered on the legality of the reserve system. The tone of *Flood* appeared to narrow the issue from baseball as an industry, and in a broad sense being exempt from federal antitrust laws, to the reserve clause and its role in the industry of baseball. In support of the contention that baseball's exemption from antitrust laws should be limited to the reserve clause, Justice Blackmun specifically wrote: "Professional baseball is a business and it is engaged in interstate commerce. With its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly."<sup>73</sup>

In summary, the trilogy of Supreme Court cases has provided baseball with an exemption from federal antitrust laws. *Federal Baseball* and *Toolson* have held that this exemption applied to baseball as a whole. The Court in *Flood* also held that baseball has an exemption from antitrust laws, but the scope of this exemption appeared to have been narrowed to just the reserve clause of the Uniform Player Contract. Therefore, as will be discussed below, both in theory and in reality, a legislative repeal would have little effect on labor/management issues, franchise relocation, or the minor leagues.

### III. THE IRRELEVANCY OF *FLOOD V. KUHN*

Advances in collective bargaining have given players mobility through free agency that were not available to them when *Flood* was decided. Major league players who now have more than six years experience are eligible for free agency which allows them to offer their services to the highest bidding team.<sup>74</sup> In addition, subsequent litigation regarding franchise relocation allows the judiciary to further erode whatever was left of baseball's antitrust exemption after *Flood*.<sup>75</sup>

As discussed above, the reserve clause was the result of the owners' recognition that the stability of the game rested on a secure labor force and controlling costs. Its institution prohibited players from jumping teams based on which owner would offer the player the most money. Predictably, the players opposed the reserve clause, and on October 22, 1885, formed the

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an amount payable at a rate not less than 80% of the rate stipulated for the preceding year.

*Id.* at 260-61 n.1.

73. *Flood*, 407 U.S. at 282.

74. TOTAL BASEBALL, *supra* note 5, at 631.

75. *See Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993).

Brotherhood of Professional Baseball Players in an attempt to unionize.<sup>76</sup> At one point, the Brotherhood had a membership of ninety players, and its president was New York Giant John Montgomery Ward.<sup>77</sup> The Brotherhood's existence was short-lived as it disbanded in 1891 for financial reasons, without making any serious gains on behalf of the players.<sup>78</sup>

*Federal Baseball* held that baseball was not subject to federal antitrust law. While this decision was disheartening to the players in terms of antitrust law, it was also detrimental in terms of labor law. The right of employees to unionize and to bargain collectively through representatives of their own choosing is found in section 7 of the National Labor Relations Act.<sup>79</sup> The Act applies to all employers that affect commerce, with the National Labor Relations Board ("NLRB") as the instrumentality to enforce the Act.<sup>80</sup> By application, since baseball was not considered interstate commerce, *Federal Baseball* prohibited the players from bringing labor disputes before the NLRB. Any advances on behalf of the players would have to be gained through negotiation or collective bargaining agreements.<sup>81</sup>

Following only marginal success in the areas of salaries, pensions and other issues, in December of 1953 the players formed the Major League Baseball Players Association, which still exists as the players' formal union.<sup>82</sup> Minor concessions were made on behalf of the owners, but it was not until 1966 when the players hired former Chief Economic Advisor and Assistant to the President of the United Steelworkers of America, Marvin Miller, to be the Association's Executive Director, that the players gained any substantial concessions.<sup>83</sup> Miller was responsible for negotiating

76. SEYMOUR, *supra* note 4, at 221.

77. *Id.* at 223. John Montgomery Ward was elected to the Baseball Hall of Fame in 1964 as an outstanding shortstop and pitcher. During his playing career with the Giants, he went to night school at Columbia Law School, graduating with honors. TOTAL BASEBALL, *supra* note 6, at 642.

78. GEORGE W. SCHUBERT, SPORTS LAW § 6.1 (1986).

79. 29 U.S.C. § 157 (1994).

80. 29 U.S.C. §§ 153-156 (1994).

81. Pittsburgh Pirate and Hall of Famer Ralph Kiner approached General Manager Branch Rickey about a raise after Kiner had hit 47 home runs the preceding season even though the Pirates had finished in last place. Rickey's response was "[w]e could have finished last without you." TOTAL BASEBALL, *supra* note 5, at 632.

82. SCHUBERT, *supra* note 78, § 6.1.

83. WALTER T. CHAMPION, FUNDAMENTALS OF SPORTS LAW § 25.1 (1990). Long time Brooklyn Dodger announcer Red Barber once commented, "[w]hen you speak of Babe Ruth, he is one of the two men, in my opinion, who changed baseball the most. And the second most influential man in the history of baseball is Marvin Miller." MARVIN MILLER, A

baseball's first collective bargaining agreement in 1968 and for negotiating others in subsequent years.<sup>84</sup>

Another important development on behalf of the players occurred in 1969 when the NLRB decided to assert jurisdiction over the baseball industry.<sup>85</sup> As noted above, the NLRB is the instrumentality that polices the enforcement of the National Labor Relations Act, which applies to all business affecting interstate commerce. Prior to 1969, the NLRB had refused to assert jurisdiction over labor matters in baseball because of the holdings in *Federal Baseball* and *Toolson*.<sup>86</sup> This decision by the NLRB was the result of a petition filed on behalf of the National League Umpires.<sup>87</sup> The impact of this holding upon the Major League Baseball Players Association was that they would now be protected by federal labor laws.

While the players made gains in labor law and collective bargaining, the exempted reserve clause was about to receive a damaging blow. The Collective Bargaining Agreement of 1973 contained a provision in which an independent arbitrator would make decisions in a formalized grievance procedure.<sup>88</sup> It would be the arbitration venue, not the courts, that would eliminate the reserve clause.

Pitcher Andy Messersmith signed a one-year contract to play for the Los Angeles Dodgers in 1974.<sup>89</sup> The reserve clause at that time read:

If prior to March 1, the Player and the Club have not agreed upon the terms of the Contract, then on or before 10 days after said March 1, the Club shall have the right by written notice to the Player to renew this contract for the period of one year.<sup>90</sup>

The Dodgers renewed Messersmith's contract at the completion of the 1974 season and he played the 1975 season without signing a new contract.<sup>91</sup> At the conclusion of the 1975 season, Messersmith asserted that he was a free agent, at liberty to negotiate with any team for the upcoming season.<sup>92</sup>

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WHOLE DIFFERENT BALLGAME (1989) (back cover).

84. TOTAL BASEBALL, *supra* note 5, at 372.

85. CHAMPION, *supra* note 83, § 25.1.

86. *Id.*

87. *Id.*

88. *Id.* § 25.3.

89. *Id.* § 25.4.

90. BILL JAMES, HISTORICAL BASEBALL ABSTRACT 263 (1988).

91. *Id.*

92. CHAMPION, *supra* note 83, § 25.4.

The crux of Messersmith's argument was that the Dodgers had renewed the contract for one year and now that one year had concluded. The owners believed, as they had since its inception, that the reserve clause meant one year, and then the next year, and on into perpetuity. The issue between the two sides, however, was not the clause's legality, for that had already been decided in the trilogy of Supreme Court cases. The issue, rather, was the construction of the clause.

The formalized grievance procedure outlined in the governing collective bargaining agreement provided for a three-person arbitration panel with one member chosen by the Major League Baseball Players Association, one member chosen by the owners, and one member chosen by both.<sup>93</sup> Not surprisingly, the partisan votes of Marvin J. Miller representing the players, and John J. Gaherin representing the owners, cancelled each other's vote, and the issue was essentially decided by an independent arbiter, Peter Seitz.<sup>94</sup> Seitz's interpretation of the clause was that teams were able to renew the contract for only one year.<sup>95</sup>

The collective bargaining agreement negotiated just six months after the Messersmith case contained a memorable provision. As a result of the Messersmith decision, any player with six or more years of major league service would now be able to declare himself a free agent.<sup>96</sup> Through gains won in collective bargaining, most notably the right to arbitration, the players were able to accomplish what they could not do through the courts. As discussed earlier, it appears that the last of the Supreme Court cases, *Flood*, held that baseball's antitrust exemption was limited in its scope to the reserve clause. Under the recently expired collective bargaining agreement, players were eligible to become free agents after six years of major league service and were not the property of teams for the duration of their careers. This, coupled with the *Flood* holding and subsequent litigation to be discussed below, have rendered any remaining antitrust exemption practically irrelevant.

#### IV. THE LABOR EXEMPTION ISSUE

Any judicial or legislative repeal of baseball's antitrust exemption would also be of very limited value to the players regarding any judicial recourse against the owners because of certain labor exemptions in antitrust

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93. *Id.*

94. *Id.*

95. *Id.*

96. TOTAL BASEBALL, *supra* note 5, at 631.

law. Under antitrust law, there exist certain statutory and non-statutory exemptions from antitrust sanctions for terms negotiated and agreed to in collective bargaining agreements.

As discussed above, Congress passed the Sherman Antitrust Act in 1890 for the purpose of preventing practices which create monopolies or illegally restrain interstate commerce. Shortly thereafter, in the *Danbury Hatters'* case, the Supreme Court held that a union's effort to organize a hat factory by means of strikes and boycotts violated antitrust law, in that they were illegal conspiracies on trade.<sup>97</sup> To remedy this, Congress passed the National Labor Relations Act,<sup>98</sup> which gave workers the right to organize and select representatives to negotiate the terms and conditions of their employment. Additional legislation by Congress has declared that the activities of labor unions are not subject to antitrust sanctions.<sup>99</sup> These are the statutory labor exemptions. The purpose of this legislation is to foster collective bargaining between labor and employers without one side claiming the other is engaging in activity violative of antitrust law.

In addition, through the development of case law, a nonstatutory labor exemption has been created which covers the terms of collective bargaining agreements between labor and management.<sup>100</sup> The nonstatutory labor exemption to federal antitrust law protects the terms and conditions of collective bargaining agreements from antitrust attack by either labor or management. Regarding professional sports, the landmark case outlining the concept of the nonstatutory labor exemption is *Mackey v. National Football League*.<sup>101</sup> The issue in that case was the legality of the "Rozelle Rule."<sup>102</sup> The Rozelle Rule, named after National Football League Commissioner, Pete Rozelle, provided that when a player's contract expired and the player signed with a new team, the new team had to provide the player's former team with compensation, either in the form of an additional player or players, money, or a draft pick.<sup>103</sup> If the teams could not agree on the form of compensation, Commissioner Rozelle then made the determination of what he thought would be fair and equitable, and that decision would be binding on both teams.<sup>104</sup>

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97. *Lawlor v. Leowe*, 235 U.S. 522, 534-35 (1915).

98. 29 U.S.C. §§ 151-169 (1994).

99. 15 U.S.C. § 17 (1994).

100. *CHAMPION*, *supra* note 83, § 26.2.

101. 543 F.2d 606 (8th Cir. 1976).

102. *Id.* at 609.

103. *Id.* at 610.

104. *Id.*



The complaint against the NFL, filed by thirty-six players, alleged that “the enforcement of the Rozelle Rule constituted an illegal combination and conspiracy in restraint of trade denying professional football players the right to freely contract for their services.”<sup>105</sup> The players could make this argument because in 1957, in *Radovich v. National Football League*,<sup>106</sup> the Supreme Court held that professional football was subject to federal antitrust laws.<sup>107</sup> The NFL argued that it could not be subject to an attack under antitrust laws because the Rozelle Rule was the product of the collective bargaining agreement between the team owners and the National Football League Players Association.<sup>108</sup>

The value of *Mackey* to baseball, and to any potential repeal of an antitrust exemption, is not the outcome of the case; it is the court’s analysis and three-part test to determine when a nonstatutory labor exemption to antitrust law applies. Initially, the court discussed the rationale of the nonstatutory labor exemption claiming that it is necessary to “accommodate the congressional policy favoring free competition in business markets with the congressional policy favoring collective bargaining under the National Labor Relations Act. . . .”<sup>109</sup> Then the court outlined a three-part test that must be met before a nonstatutory labor exemption will be granted. First, the alleged restraint on trade must primarily affect only the parties to the collective bargaining relationship.<sup>110</sup> Second, the agreement seeking the exemption must concern a mandatory subject of collective bargaining.<sup>111</sup> Mandatory subjects of collective bargaining in professional sports include all issues which concern the terms and conditions of employment.<sup>112</sup> Finally, a nonstatutory labor exemption will be granted if the agreement is the product of bona fide arms length bargaining.<sup>113</sup>

In *Mackey*, the court held that the collective bargaining agreement in question was not the product of bona fide arm’s length negotiations, and therefore the Rozelle Rule was not exempt from antitrust suit by the players.<sup>114</sup> By application, if baseball’s traditional exemption from antitrust law were repealed, legislatively or judicially, the holding in *Mackey*

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105. *Id.*

106. 352 U.S. 445 (1957).

107. *Id.* at 452.

108. *Mackey*, 543 F.2d at 609.

109. *Id.* at 611.

110. *Id.* at 614.

111. *Id.*

112. CHAMPION, *supra* note 83, § 25.2.

113. *Mackey*, 543 F.2d at 614.

114. *Id.* at 616.

is unfavorable to the players. If the actions of baseball's owners were subject to antitrust law, they could conceivably seek protection from antitrust attack by the players in the nonstatutory labor exemption.

For the players to be successful in any lawsuit filed against the owners, the players would have to fail to meet any one of the three prongs of the *Mackey* test. This would be a very difficult task for the players because under the *Mackey* test, almost any issue the players would be litigating would primarily affect the parties to the last collective bargaining agreement, namely, the players and the owners. In addition, the legal issue the players would be pursuing almost assuredly would be a mandatory subject of collective bargaining, in that it would affect the terms and conditions of their employment. Finally, based on the long history of concessions earned by the Major League Baseball Players Association in labor negotiations, it would be difficult for the players to argue that the last collective bargaining agreement was not the product of bona fide arms length bargaining. Based on the above, the nonstatutory labor exemption would be a formidable hurdle for the players in their attempt at legal recourse.

One of the contentious issues surrounding the most recent strike was the owners' desire to control labor costs through the use of a "salary cap" which would prohibit the payrolls of teams from exceeding a certain dollar amount.<sup>115</sup> Fortunately for the players, if the owners were to implement a salary cap before a new collective bargaining agreement is reached, by applying the *Mackey* test, it is unlikely that the owners would benefit from the nonstatutory exemption in an attempt by the players to enjoin this action by the owners. This is because the owners would not be able to meet the third prong of the *Mackey* test.

True, the implementation of a salary cap would primarily affect the owners and the players, and it would certainly concern the terms and conditions of employment of the players; however, the salary cap would not be the product of bona fide arms length negotiation. The recently expired collective bargaining agreement did not contain a salary cap, and the players are currently obstinate in their opposition to a cap being included in any new collective bargaining agreement. Therefore, the nonstatutory labor exemption would not protect the owners from antitrust attack if the owners implemented a salary cap.

Another consideration is whether the nonstatutory labor exemption is available to either side when the collective bargaining agreement has

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115. Hal Bodley, *NLRB Official Could be Pivotal Player*, U.S.A. TODAY, Jan. 20, 1995, at 3C.

expired. This question was recently answered in *National Basketball Association v. Williams*.<sup>116</sup> In that case, the collective bargaining agreement between the NBA's players and owners had expired June 23, 1994.<sup>117</sup> The owners sued the players to continue to impose the league's salary cap and draft of college players, which were both agreed to and bargained for in the expired collective bargaining agreement.<sup>118</sup> It was the owners' contention that they were able to continue the imposition of these terms and that they were exempt from antitrust liability under the nonstatutory labor exemption to the antitrust laws.<sup>119</sup> The players claimed that by acting collectively to impose terms of employment after expiration date of the collective bargaining agreement, the NBA teams were "acting as a cartel and committing a *per se* violation of the Sherman Act."<sup>120</sup> The issue was what terms and conditions would govern the employment of the parties until a new collective bargaining agreement could be reached, and whether the imposition of the status quo was a violation of antitrust law.<sup>121</sup>

The court held that it was acceptable for the owners to implement the former terms and conditions of the expired collective bargaining agreement until a new agreement was reached.<sup>122</sup> By application, this case is unfavorable to the baseball players. If the owners were to implement the terms and conditions of the recently expired collective bargaining agreement, *Williams* extends the nonstatutory labor exemption beyond the expiration of the old agreement. As long as the terms and conditions were the same and met the three-part test in *Mackey*, the owners would be shielded from antitrust attack by the players.

In summary, any repeal of baseball's exemption would have minimal impact in terms of what legal recourse would be available to the players against the owners due to both the statutory and nonstatutory labor law exemptions from antitrust law. The statutory exemptions found in 29 U.S.C. §§ 52, 104, 105, 113 provide that the activities of labor unions are protected from antitrust sanctions. Similarly, as a result of case law, primarily *Mackey*, certain nonstatutory exemptions exist if the discrepancy primarily affects the parties to the collective bargaining agreement, is a mandatory subject of collective bargaining, and the agreement is the product of bona

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116. 45 F.3d 684 (2d Cir. 1995).

117. *Id.* at 686.

118. *Id.*

119. *Id.*

120. *Id.* at 687.

121. *Williams*, 45 F.3d at 688.

122. *Id.* at 693.

vide arms length bargaining.<sup>123</sup> Since these labor exemptions would supersede antitrust law, the exemptions would provide a safe harbor for owners from most activities that would normally be subject to antitrust charges.

## V. ANTITRUST EXEMPTION AND FRANCHISE RELOCATION

Another area where baseball's antitrust exemption has come under scrutiny is in the area of franchise relocation. This issue recently manifested itself when the San Francisco Giants were the subject of a controversial sale. Two cases have emerged following the sale, and whatever was left of baseball's exemption after *Flood* continues to be rendered even more meaningless.

In 1988, Tampa, Florida financed the construction of a \$138 million domed stadium in the hopes of attracting a Major League Baseball franchise.<sup>124</sup> In conjunction with the building of this new stadium, a group of investors organized for the purpose of purchasing the San Francisco Giants from owner Robert Lurie and moving the team to Tampa.<sup>125</sup> On August 6, 1992, the investors sent Lurie a letter of intent offering to purchase the Giants for \$115 million. In return, Lurie agreed not to negotiate with other potential purchasers and to encourage Major League Baseball to approve the sale.<sup>126</sup> One month later, Ed Kuhlmann, Chairman of the Ownership Committee for Major League Baseball, instructed owner Lurie to consider other offers to purchase the Giants.<sup>127</sup>

Similarly, National League President Bill White invited another individual to make an offer to buy the Giants, which was done, though the offer was only \$100 million.<sup>128</sup> Both of these acts violated the exclusive agreement between Lurie and the original investors. By a vote of nine to four, the National League owners voted to reject approval of the sale to the original investors, and litigation followed.<sup>129</sup>

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123. See, e.g., *Mackey v. National Football League*, 543 F.2d 606, 614 (8th Cir. 1976).

124. Andrew Zimbalist, *Baseball Economics and Antitrust*, 4 SETON HALL J. SPORT L. 287, 315 (1994).

125. *Piazza v. Major League Baseball*, 831 F. Supp. 420, 422 (E.D. Pa. 1993).

126. *Id.* at 422.

127. *Id.*

128. *Id.*

129. Latour R. Lafferty, *The Tampa Bay Giants and the Continuing Vitality of Major League Baseball's Antitrust Exemption: A Review of Piazza v. Major League Baseball*, 21 FLA. ST. U. L. REV. 1271 (1994).

In *Piazza v. Major League Baseball*,<sup>130</sup> the plaintiffs constituted the original investors tendering the offer for \$115 million. In the suit, investor Vincent Piazza claimed that Baseball had monopolized the market for teams, and that Baseball had placed direct and indirect restraints on the purchase, sale, transfer, relocation of, and competition for such teams.<sup>131</sup> Defendant Major League Baseball (“Baseball”) claimed they were exempt from liability under the Sherman Act, and that Piazza failed to allege that Baseball’s actions restrained competition in a relevant market.<sup>132</sup> Piazza claimed he was “competing in the team franchise market with other potential investors located primarily *outside* of Major League Baseball for ownership of the Giants, and that Baseball interfered directly and substantially with competition in that market.”<sup>133</sup>

The court held that the market in this case was ownership in professional baseball teams.<sup>134</sup> More importantly, the court concluded “that the antitrust exemption created by *Federal Baseball* is limited to baseball’s reserve system,” and therefore rejected Baseball’s claim that it was exempt from antitrust liability.<sup>135</sup> In its analysis, the court distinguished the market for the exhibition of baseball games from the market for the sale of ownership interests in baseball teams.<sup>136</sup> By creating this dichotomy, the trilogy of Supreme Court cases limits baseball’s exemption to the market for the exhibition of games. The holding by this court is consistent with the holding in *Flood* which narrowed the scope of baseball’s exemption from the whole industry to just the reserve clause.<sup>137</sup>

Additional litigation resulted from the Giants’ sale, in *Butterworth v. National League of Professional Baseball Clubs*.<sup>138</sup> When it became evident that the San Francisco Giants would not be moving to Tampa, the attorney general of Florida issued antitrust civil investigative demands to the National League to investigate whether there was “[a] combination or ‘conspiracy in the restraint of trade in connection with the sale and purchase of the San Francisco Giants baseball franchise.’”<sup>139</sup> Baseball moved to set aside the investigative demands based on its assertion that the business of

130. 831 F. Supp. 420 (E.D. Pa. 1993).

131. *Id.* at 424.

132. *Id.* at 429.

133. *Id.* at 430.

134. *Id.* at 439.

135. *Piazza*, 831 F. Supp. at 438.

136. *Id.* at 440.

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

138. 644 So. 2d 1021 (Fla. 1994).

139. *Id.* at 1022.

baseball owns a broad exemption from federal antitrust laws, which includes decisions regarding the sale and location of franchises.<sup>140</sup> The attorney general claimed that the exemption only applied to the reserve system.<sup>141</sup>

Relying on *Piazza*, the Supreme Court of Florida held that baseball's antitrust exemption extended only to its reserve system and remanded the case for trial on its merits.<sup>142</sup> Thus, all litigation concerning the sale of the Giants has affirmed the narrow and limited scope of any exemption from antitrust law owned by baseball. In theory, the owners could claim that the exemption is necessary to insure the stability of league franchises. In reality, based on *Piazza* and *Butterworth*, the courts have rendered any existing exemption meaningless by narrowing its scope to the reserve clause. As discussed earlier, collective bargaining has superseded the reserve system, so in effect, baseball has no relevant exemption from antitrust laws.

#### VI. THE EFFECT ON THE MINOR LEAGUES OF AN ANTITRUST EXEMPTION REPEAL

Still another consideration of any repeal of Major League Baseball's antitrust exemption is the effect it would have on the minor leagues. Currently, baseball's minor league teams are primarily affiliates of their respective major league teams.<sup>143</sup> Each major league team is allowed one team at the AAA level, the level closest in competition and skill to the major leagues, and one team at the AA level, the next closest league to the major leagues in terms of skill.<sup>144</sup> Many teams operate more than one team at the A and Rookie League level, the lowest rung on the minor league ladder.<sup>145</sup>

The major leagues make a significant investment in their minor league affiliates. According to Stanley Brand, Vice President of the Minor League's governing body, Major League teams spend a total of \$130 million on their minor league operations.<sup>146</sup> The parent major league clubs are responsible for all spring training costs and almost all of the salaries of the

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140. *Id.*

141. *Id.* at 1023.

142. *Id.* at 1025.

143. TOTAL BASEBALL, *supra* note 5, at 663. There are some minor league teams that operate independently of any major league affiliation.

144. Zimbalist, *supra* note 124, at 305.

145. *Id.*

146. Dave Anderson, *Baseball's Best Remedy: A Repeal*, PALM BEACH POST, Dec. 18, 1994, at 15C.

players and coaches of their minor league teams.<sup>147</sup> For its significant investment, the minor leagues provide several valuable services to the major leagues: they develop potential players, facilitate fan interest in future players, spread fan base geographically, serve as a reservoir to replace injured players, and, with antitrust implications, hoard all the available player talent which prevents rival leagues from forming.<sup>148</sup>

It is in this context of restraint on minor league players in which antitrust consequences must be considered. As a result of the Messersmith decision by arbitrator Peter Seitz and subsequent collective bargaining agreements, major league players may become free agents after six years of major league service.<sup>149</sup> Minor league players remain the property of their major league organization until they have at least three years of minor league service and are not listed on the forty-man major league roster.<sup>150</sup> Any repeal of an exemption would most likely lead to litigation similar to the claims made by Curt Flood, who argued in his case that any restraint on a player's ability to sell his services to the highest bidder was a result of a conspiracy by owners to monopolize contracts.<sup>151</sup>

Similarly, minor league players would be interested in the opportunity to market their services to other organizations willing to pay more money. Or, as in *Toolson*, a player may make a determination based on personnel that he could reach the major leagues more quickly in a different organization. Additional antitrust claims could be brought alleging that the amateur draft, where teams are selected from the high school and college ranks to compile their minor league rosters, constitutes a conspiracy in restraint of trade by denying the drafted players the right to freely contract for their services to the highest bidder.

Conversely, the argument for an exemption by Major League Baseball is that the teams need some stability in their control over minor league players. In other words, if a repeal of baseball's exemption limited the time constraints on minor league players, the major league teams would have little incentive to invest in players who are in their control for a short period of time. Professional football and basketball draw all of their players from the collegiate ranks. In effect, this makes college football and basketball the

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147. TOTAL BASEBALL, *supra* note 5, at 663.

148. Zimbalist, *supra* note 124, at 304.

149. TOTAL BASEBALL, *supra* note 5, at 634.

150. Ron Kroichick, *Oakland Athletics*, SPORTING NEWS, Dec. 12, 1994, at 41.

151. Flood v. Kuhn, 316 F. Supp. 271, 272 (S.D.N.Y. 1970).

minor leagues for their respective sports. Major League Baseball almost exclusively draws its talent from the minor leagues.<sup>152</sup>

Based on the above, predicting the impact of a repeal on the minors is difficult to do with any certainty. One extreme is a complete free-for-all, where minor league players are able to play where and when they desire based on the major league organization willing to pay the most money. The other extreme is the status quo where the existing restraints on minor league players constitute anticompetitive behavior where the players remain the property of their organization until they become subject to the Rule 5 Draft, complete six years of major league service, are traded, or are released.<sup>153</sup> Reality would lie somewhere in the middle. Major league organizations would have less control over the time a minor league player would remain in the organization. As a result, major league teams would be less likely to subsidize their minor league affiliates at their current levels. Teams at the AAA and AA levels are a necessities for major league teams. Because of the skill level involved all players called up to major league rosters come directly from these teams. As a result of the reluctance to spend money on player development, however, few A level teams would remain.

## VII. CONCLUSION

Much of the discussion regarding baseball's exemption from antitrust laws constitutes much ado about nothing. An analysis of the series of Supreme Court cases that created this exemption reveals that its scope has been significantly narrowed. *Federal Baseball* and *Toolson* granted the baseball industry a broad exemption from antitrust laws. *Flood*, on the other hand, appears to have tapered the exemption to one component of the industry, the reserve clause. Through *Flood* the Court upheld the legality of the reserve clause and its anticompetitive effect of indenturing players to a team for the duration of their career. However, advances in collective bargaining have made the reserve clause irrelevant, because the players have negotiated the right to free agency after six years of major league service. The right to salary arbitration after three years of major league service makes the six years of involuntary servitude before free agency more tolerable.

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152. Two notable exceptions regarding players who have gone straight to the majors from college with no minor league experience are New York Yankee pitcher Jim Abbott, and Toronto Blue Jay first baseman John Olerud.

153. All players who have at least three years of minor league service and who are not listed on 40-man major league rosters are eligible to be drafted by any other organization.



In addition, the value of a repeal and the availability of legal recourse to enjoin anticompetitive activity by either side would be limited due to exemptions in antitrust law. Terms of collective bargaining that primarily affect the parties to the agreement, are mandatory subjects of collective bargaining, and are the product of bona fide arms length bargaining, are shielded from antitrust attack by either labor or management.

Regarding the issue of franchise relocation, the recent litigation concerning baseball's antitrust exemption has confirmed *Flood*, in that the exemption is limited to the reserve clause, and, thus, does not necessarily apply to matters of franchise relocation. The implication of the results of the litigation following the sale of the San Francisco Giants, is that the judiciary, perhaps for policy reasons, is likely to be more hostile to any anticompetitive behavior on the part of Major League Baseball when making franchise decisions.

Lastly, the effect of a repeal on the minor leagues would be difficult to predict. Restraints on minor league players certainly would not be as stringent as they are now which would result in a reluctance by major league affiliates to subsidize their minor league counterparts. No drastic changes, however, would materialize as the AAA and AA farm systems would remain the same, as these levels would continue to be the reservoir from where major league teams draw their players. Is the repeal of the remaining antitrust exemption the answer for baseball? Obviously not. Any repeal will be irrelevant and meaningless from this point onward. Quoting a great philosopher: "It's deja vu all over again."<sup>154</sup>

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154. While not trying to trivialize Yogi Berra's unforgettable statement, nothing could be truer.