ARBITRATION: A MAJOR LEAGUE EFFECT ON PLAYERS' SALARIES

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I. INTRODUCTION: SOME HISTORY

While the 1990 Major League Baseball season has faded into history and many fans may have gradually forgotten the spring training lockout, in all probability, they still have at least some memory of the major issue which brought it about: salary arbitration.[1]

To the public, it must seem as if nothing has skyrocketed as fast over the last decade as the salaries of those individuals, who are both, talented and fortunate enough to sustain careers as major league baseball players.[2] It is this author's opinion that there are several factors which have combined to produce this remarkable result. The team owners continually blame this anomaly on salary arbitration and free agency.[3] Certainly, both of these processes have contributed significantly to the sharp rise in salaries, however there are other factors. These factors include the vast sums of money received by the clubs from both network and cable television contracts,[4] as well as the revenues generated from licensing fees.[5] When this added wealth is combined with the inability of many of the owners to refrain from spending large sums of money on marginal ballplayers in the free agent market, the end product is a significant escalation of players' salaries.[6]

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1. William C. Symonds, *A Crucial Inning for Baseball*, BUSINESS WEEK, Oct. 23, 1989, at 90.

2. Ethan Lock & Allan DeSerpa, *Salary Increases Under Major League Baseball's System of Final Offer Arbitration*, 2 LAB. LAW. 801, 806 (1986).

3. C. Raymond Grebey, Jr., *Another Look at Baseball's Salary Arbitration*, 38 ARB. J. 24 (1983). While players and agents praise the arbitration system, the present attitude of club management is critical of the whole process. *Id.*

4. William Oscar Johnson & William Taaffe, *A Whole New Game*, SPORTS ILLUSTRATED, Dec. 26, 1988, at 34.

5. Brenton Welling, et al., *Professor Hardball*, BUSINESS WEEK, Apr. 3, 1989, at 85-87.

6. Kevin A. Rings, Note, *Baseball Free Agency and Salary Arbitration*, 3 OHIO ST. J. ON DISP. RESOL. 243, 251 (1987).

Another factor to consider is that the owners have often second guessed themselves and signed long term guaranteed contracts in the hope of binding someone they perceive to be a key player in the future at the current market price. If all goes well, the owners will get a good ballplayer who will be paid at this year's rate and will be bound to their club for perhaps an additional two years.[7] If things go wrong, this procedure can be a financial disaster, particularly in cases where the player is injured and rarely plays for his club over this two or three year period but still receives full compensation.[8]

This article will attempt to explore in some detail the history of the business of baseball, which eventually led to the current system of salary arbitration and free agency. An understanding of the game's past is necessary in order to appreciate the impact salary arbitration has had on the industry. In addition, this article will discuss the salary arbitration process, its contribution to the rise in player salaries, as well as the impact of television revenues.

Futhermore, this author will examine the effects of what may be the two most important dates in baseball history: 1) December 23, 1975: when arbitrator, Peter Seitz, dealt a fatal blow to baseball's reserve system[9] and 2) September 21, 1987: when arbitrator, Tom Roberts, ruled that the baseball owners colluded to artificially depress the market for free agents.[10]

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7. Such is the case with the Minnesota Twins and Kirby Puckett. Prior to the 1990 season, Puckett, a perennial all-star, was made baseball's first three million dollar per year player when the Twins signed him to a three-year contract. Moss Klein, *Bonilla Bonanza Has Trickle Down Effect,* SPORTING NEWS, Dec. 23, 1991, at 22. In retrospect, given today's salaries, Puckett, who played a key role in Minnesota's World Series win in 1991, is arguably a true bargain.

8. One example of this is Philadelphia Phillies' pitcher Ken Howell, who was signed at two million dollars per year, but missed the entire 1991 Major League Baseball season due to shoulder surgery. Bill Brown, *Philadelphia Phillies,* SPORTING NEWS, Jan. 27, 1992, at 31. Another example is the Chicago Cubs' experience with pitcher, Danny Jackson. Jackson, a 22 game winner in 1988, has been on the disabled list six times in the past two seasons (only 1991 with Chicago) and is just now approaching the midpoint of a four-year, $10.5 million contract. *Id.* Perhaps the classic example is the Cleveland Indians' misfortune with Keith Hernandez, who played 43 games for the Indians due to injuries after signing as a free-agent for $3.5 million over three years. Murray Chass, *Money, Money and More Money,* N.Y. TIMES, Nov. 21, 1991, at B18 [hereinafter *Money, Money*]. The Cleveland-Hernandez saga was reminiscent of Atlanta Braves' experience with Bruce Sutter. *See* Bob Spitz, *Is Collusion the Name of the Game,* N.Y. TIMES, July 12, 1987, (Magazine), at 22, 31.

9. LEE LOWENFISH & TONY LUPIEN, THE IMPERFECT DIAMOND 18 (1980).

10. Robert Safian, *Tom Roberts Breaks Into the Majors,* 10 AM. LAW 121, 121-24 (1988).

A. The Old Days

While Abner Doubleday is credited with the invention of baseball, the game did not turn "pro" until 1868.[11] At the time, these professionals received wages ranging from $800 to $1,400 per year.[12] Due to the success of these professionals on the field, the perception that teams could not succeed without professionals spread, and by 1875, the National League of Baseball Clubs, the forerunner of today's National League, was born.[13]

From the inception of organized professional baseball, the League sought to establish a policy of self governance in all matters from game-fixing to player salary disputes.[14] The old owners were tight fisted and often tyrannical.[15] Some even required their less talented players to double as groundskeepers and turnstile attendants.[16] Not surprisingly, this high handed manner of dealing with employees resulted in labor disputes.[17]

One of these early disputes led to the inception of baseball's reserve system. "Orator Jim" O'Rourke was a star player with a Boston club in 1879.[18] O'Rourke became enraged when his club refused to buy him a uniform, and as a result, he quit the team only to sign on with a Providence club.[19] In response to O'Rourke's actions, the team owners reached a secret "gentleman's agreement," which initially allowed each owner to keep a list of five players who were protected, and thus reserved for the owner of their team.[20] In turn, other team owners agreed not to attempt to lure these reserved players away from their current clubs.[21] The agreement proved to be very successful, and ultimately, the five player limit was expanded to include the

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11. Rings, *supra* note 6, at 244. The issue as to whether Mr. Doubleday actually invented the game has been the subject of much debate. *Id.*

12. *Id.* at 244, n.8.

13. *Id.*

14. *Id.* at 244-45. The first problem baseball encountered was player discipline. *Id.* at 244. In 1877, four players charged with fixing baseball games were banned from playing professional baseball for life. *Id.* The new league implemented the punishment without resort to the courts. *Id.* Already, baseball had begun to set the precedent of governing itself without outside interference. *Id.* This policy of self governance was the major factor which lead to the comparitively low salaries paid to professional baseball players until the 1970's. *Id.* at 245.

15. LOWENFISH & LUPIEN, *supra* note 9, at 30-37.

16. *Id.*

17. *Id.* at 34-37, 39-53.

18. *Id.* at 41.

19. Rings, *supra* note 6, at 245.

20. LOWENFISH & LUPIEN, *supra* note 9, at 18.

21. *Id.*

entire team.[22] By the 1880's, the owners inserted a reserve clause in every contract. This clause gave the owners the option of renewing a player's contract *ad infinitum* at a salary determined by the owner.[23] If the player refused to sign, the club could automatically and unilaterally invoke the clause, year after year, leaving the player with two options: either, continue to play for his current owner, or retire from baseball, permanently.[24]

The combination of the reserve system, the practices of the owners and their free wheeling manner in which they traded players for cash, prompted many players to rebel. Most notable among these rebels was John Montgomery Ward, a two-time forty game winner as a pitcher, who, following injury, later became a star shortstop.[25] In addition to being a successful athlete, Ward was an educated man. He supported himself through law school with the money he had saved from playing baseball.[26] He would later contribute his literary skills to the Philadelphia magazine, *Lippincott's*, in 1887, by authoring an article entitled: "*Is the Ballplayer Chattel?*".[27] Consequently, by 1885, Ward helped organize the Brotherhood of Professional Baseball Players.[28]

Ward was frustrated by the owner's abuses. Among these were the following: the suspension of a sick player, Charlie Foley, which forced his retirement at age 27; the sale of Chicago White Sox outfielder Mike "King" Kelly to the Boston Red Sox, and the Detroit Tiger's sale of Deacon White and Jack Rowe to the Pittsburgh Pirates.[29] Ward's response to these perceived injustices was to form a players' league, which initially attracted the greats of the day. Ironically, this included Charlie Comiskey, who would later become the

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22. *Id.*

23. *Id.* The owners argued that the reserve clause was necessary to keep a "competitive balance" between the teams. *Id.* The clause was also defended on the ground that it protected the investment the baseball owners had made in the skills of particular players. *Id.*

24. *Id.*

25. *Id.* at 27-34. One shudders at the thought of taking a 40 game winner to arbitration in today's market.

26. *Id.* at 28, 31.

27. *Id.* at 31.

28. *Id.* at 27-31. The Brotherhood of Professional Baseball Players sought to provide relief for players from the abuses of management. *Id.* at 30. The charter of the Brotherhood promised "to protect and benefit its members collectively and individually, to promote a high standard of professional conduct, and to advance the interests of the 'National Game'." *Id.*

29. *Id.* at 31-34.

frugal owner of the Chicago White Sox.[30] The players' remedy of self-help failed miserably as the Brotherhood of Professional Baseball Players lost money and many of its star players were lured back by the owners' promises of steady pay and steady work.[31] The Brotherhood of Professional Baseball Players folded in December of 1890, after just one season.[32]

Relief was eventually sought in the courts, and surprisingly, it was not forthcoming. In 1922, the reserve clause was challenged by the Federal Baseball Club on the basis that the current league conspired to monopolize the baseball business.[33] In holding for the defendants, Justice Holmes, speaking for a unanimous Court, stated that the reserve clause comported with the nation's antitrust laws because baseball was not engaged in interstate commerce.[34] The Court reasoned that "[t]he business is giving exhibitions of baseball, which are purely state affairs."[35] Therefore, the transportation of persons across state lines was only considered incidental and deemed to be an insignificant interference with interstate commerce.[36]

The Court reconsidered the reserve system in *Toolson v. New York Yankees*.[37] Ed Toolson, a minor leaguer, was the next player to press his challenge of the reserve system to the Supreme Court. Toolson claimed that the Yankees were in the habit of stockpiling their own talent and keeping young ballplayers in their minor league chain so that rival clubs could not acquire their skills. Surprisingly, the Court rejected Toolson's contentions that *Federal Baseball* should be

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30. Comiskey was so cheap he ordered players to take the field in dirty uniforms in order to save on cleaning bills. *See* ELIOT ASINOFF, EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES 21 (1963). Perhaps, had Comiskey not been so frugal about players' salaries, certain members of his club would not have been so inclined to "throw" the 1919 World Series to Cincinnati in exchange for bribes offered by gamblers. *Id.*

31. LOWENFISH & LUPIEN, *supra* note 9, at 50.

32. *Id.* at 49-53.

33. Federal Baseball Club v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922). The Federal Baseball Club was a member of the Federal League of Professional Baseball Players and was formed in an attempt to compete with the current league while attracting established ballplayers.

34. *Id.* at 209. While Justice Holmes conceded that the business involved people crossing state lines, he reasoned that this was insufficient "to change the character of the business." *Id.* Thus *Federal Baseball* was "strike one" in the player's attempts to overcome the reserve system in the context of a traditional legal forum.

35. *Id.* at 208.

36. *Id.* at 209.

37. 346 U.S. 356 (1953). The reserve system in baseball was also challenged in an earlier case. *See* Gardella v. Chandler, 79 F. Supp. 260 (S.D.N.Y. 1948), *rev'd*, 172 F.2d 402 (2d Cir. 1949). For an informative discussion of the circumstances surrounding *Gardella*, which settled before it ever reached the Court, see LOWENFISH & LUPIEN, *supra* note 9, at 155-68.

overruled due to the interstate nature of the radio and television broadcasts of the games and the revenues derived from these broadcasts.[38] Unfortunately for Toolson, however, the Supreme Court was "caught looking" at the owner's pitch, noting that if *Federal Baseball* were overruled, it would mean an end to competitive baseball, and death to the sport.[39]

Curt Flood became the next player to challenge the reserve clause on the basis that it violated antitrust laws after he was refused the right to negotiate a new contract with another club. The United States Supreme Court once again examined the tenuous antitrust exemption, which the team owners enjoyed.[40] In sustaining baseball's exemption, the Court sided with management and held that the reserve clause was necessary to preserve baseball's economic stability and competitive balance.[41] The Court overlooked the fact that until 1972, only four teams had won sixty percent of the pennants, with the Yankees far in the lead.[42] This proved to be the proverbial third strike concerning the players' attempts to seek traditional legal redress for the perceived injustices of the reserve system. This series of legal disasters underscores why the Players' Association eventually turned to the method of alternative dispute resolution known as arbitration.

B. The Battle for Free Agency

It should be noted that baseball is one of the few endeavors where the employees negotiate a collective bargaining agreement, which establishes a minimum salary, yet leaves the individual players free to contract with individual clubs at salaries in excess of the mini-

38. *Toolson,* 346 U.S. at 356-57. In contrast, Justice Burton in the dissent focused on baseball's revenues from such broadcasts, the interstate nature of both the game and the broadcasts, and the monopolistic reserve clause. *Id.* at 357-65. (Burton, J., dissenting).

39. *Id.* at 356-57. The Court did not even consider the plaintiff's antitrust claims and simply dismissed the case under the authority of *Federal Baseball. Id.* at 357. The Court reaffirmed baseball's exemption from the antitrust laws because Congress had allowed the exemption to exist for over thirty years. *Id.* Thus, *Toolson* became "strike two" in the triology of legal disasters which befell the players in their attempts to overturn the reserve system before the nation's highest Court.

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

41. *Id.* at 272-73. The Court conceded that baseball was a business involved in interstate commerce. *Id.* at 282. This finding destroyed the rationale upon which the baseball exemption was created. The Court recognized that the antitrust exemption in baseball was an anomaly, however, it nonetheless concluded that the exemption was entitled to the benefit of *stare decisis. Id.* at 284-85.

42. LOWENFISH & LUPIEN, *supra* note 9, at 19.

mum guaranteed by the collective bargaining agreement (Basic Agreement). Major League Baseball's First Basic Agreement reached, in 1968, established a minimum salary of ten thousand dollars. In addition, it established a grievance procedure, making the Commissioner the ultimate arbitrator of any grievance, despite the fact the Commissioner is chosen by the owners.[43]

In 1970, the Second Basic Agreement raised the minimum salary to fifteen thousand dollars by 1972, and established a grievance procedure whereby a grievance could be submitted to a panel of arbitrators outside the Commissioner's office.[44] For the first time in baseball's history, the owners would be unable to maintain total control of the grievance procedure.[45] As a result, Peter Seitz, an experienced arbitrator, eventually left his mark on the game on December 23, 1975.[46]

Before delving into the Seitz opinion, it is important to keep in mind two events which served as a backdrop for the decision. The first event occurred prior to the 1972 season, when the Players' Association went on strike to seek a "fair cost of living increase" to their pension and medical benefits.[47] Before the April first walkout, the players' representative, Marvin Miller, proposed that these increases be funded by surplusage in the pension fund's securities, but he was rebuked. The strike was eventually ended when the owners agreed to Miller's earlier proposal.[48] Despite the public relations "black eye" that the players' association received as a result of the strike, the work stoppage did reveal to management the Association's solidarity and resolve.[49]

The second event was the 1973 Basic Agreement, which granted the players two major concessions: the ten and five rule[50] and salary arbitration.[51] After winning these concessions from management, it

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43. *Id.* at 203.
44. *Id.* at 211.
45. *Id.*
46. *See Professional Baseball Clubs*, 66 LAB. ARB. (BNA) 101 (1975) (Seitz, Arb.).
47. LOWENFISH & LUPIEN, *supra* note 9, at 215-17.
48. *Id.* at 215-16.
49. *Id.* at 216.
50. *Id.* at 217. The ten and five rule allowed any player with ten years major league experience and five years with his current club, the right to refuse a trade. *Id.*
51. *Id.* The salary arbitration process required that once a player and club reached an impasse in negotiations, the dispute would be resolved by an outside arbitrator provided the player met the eligibility requirements. *Id.* at 217-18. However, it was the eligibility standards which were at the heart of the 1990 lockout. *See* Murray Chass, *Baseball's Labor Dispute Settled with Compromise on Arbitration*, N.Y. TIMES, Mar. 19, 1990, at A1.

was not surprising that two veteran players would ultimately submit their complaints about the reserve clause to arbitration.[52] The controversy centered on Section 10(a) of the Uniform Player's Contract.[53] The players contended that the reserve clause only allowed the club to renew the contract for one year, while club owners insisted that the clause could be invoked year after year, unilaterally, at the club's discretion.[54]

The arbitration panel consisted of three men: John J. Gaherin, the owners' delegate; Marvin J. Miller, the players' representative, and Peter Seitz, a professional arbitrator with over twenty years experience.[55] Due to the composition of the panel, it seemed likely that Seitz would cast the deciding vote. One of the grievants was Andy Messersmith, a successful pitcher with the Los Angeles Dodgers, who had been under contract for the 1974 season.[56] Messersmith had not reached an agreement with the Dodgers for 1975 because he had requested a raise from $95,000 to $150,000, but the club would only offer $100,000.[57] As a result, the Dodgers invoked the reserve clause and renewed Messersmith's contract at $100,000.[58] Messersmith played the 1975 season without signing a contract, and then claimed that he had played out his option year. Therefore, Messersmith reasoned, he was now a free agent who could sell his services to the highest bidder.[59] The Dodgers factored this in when they renewed his contract for the 1975 season. The new contract contained another reserve clause, which the club contended they could invoke again and bind Messersmith to the club, *ad infinitum*.[60] Dave McNally, the second player, who along with Messersmith challenged the reserve clause, had also played part of the 1975 season before retiring, without signing a contract with the Montreal Expos.[61]

After reviewing the evidence, Seitz, perhaps realizing the tenuous position of management, drafted an eight page letter to the owners, strongly suggesting that it would be in the best interests of base-

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52. LOWENSTEIN & LUPIEN, *supra* note 9, at 17.
53. Richard M. Moss & Leland Macphail, Jr., *Prologue* to LOWENFISH & LUPIEN, *supra* note 9, at 17.
54. *Id.* at 17-18.
55. *Id.* at 19.
56. HOWARD RAIFFA, THE ART AND SCIENCE OF NEGOTIATIONS 103 (1982).
57. *Id.*
58. Rings, *supra* note 6, at 250.
59. *Id.*
60. *Id.*
61. LOWENFISH & LUPIEN, *supra* note 9, at 17.

ball to submit the issue to further collective bargaining.[62] The owners did not comply to Seitz's suggestion and on December 23, 1975, Seitz issued his sixty-one page ruling, confirming that the reserve clause merely gave the owners an additional option year, thus leaving Messersmith, now a free agent, to sign with another team.[63]

Although the owners fired Seitz within hours of his decision, free agency had begun and Messersmith's market value increased almost overnight to $1.5 million per year.[64] The owners challenged Seitz's ruling in federal court and were struck down.[65] This resulted in the formation of the 1976 Basic Agreement.[66] The 1976 Basic Agreement allowed players with six years in the major leagues to qualify for free agency via the re-entry draft.[67] This process allowed teams to bid for free agents in inverse order of finish, to assure a competitive balance.[68] This provision was ultimately eliminated, allowing those veterans with six years experience, not under existing contract, to become available to the highest bidder.[69] Additionally, the 1976 Basic Agreement kept salary arbitration intact for those players with at least two years of major league experience who were ineligible for free agency.[70]

Free agency would also have an impact on the salary arbitration process. Salary arbitration was implemented in 1974, and by 1975, more than one full season after the process was initiated, the average player's annual salary was $44,676.[71] Following the 1991 season, the average player's salary was $851,492.[72]

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62. *Id.* at 20.

63. *Id.* at 21. Seitz held that the "careless" wording of the reserve clause did not mean what most players thought. Rings, *supra* note 6, at 250. Seitz concluded that a player could achieve free agency as long as he gave notice to his team one year prior to his contract expiration. *Id.*

64. Rings, *supra* note 6, at 250.

65. Kansas City Baseball Corp. v. Major League Baseball Players Ass'n, 532 F.2d 615 (8th Cir. 1976).

66. LOWENFISH & LUPIEN, *supra* note 9, at 220.

67. *Id.* at 22.

68. *Id.*

69. *Id.* at 220.

70. Lock & DeSerpa, *supra* note 2, at 804.

71. *Id.* at 801 n.2.

72. *Baseball Salaries Jumped 42% to 851G in '91*, STAR LEDGER (N.J.), Dec. 5, 1991, at 80 [hereinafter *Baseball Salaries*]. The figure cited in the text is that of the Players' Association. The owners' number is $845,383, however, the numbers differ because of the owners treatment of signing bonuses. Overall, the players' figure is 42.5% greater than the 1990 average. *Id.* Imagine the effect of recent five million dollars per year contracts of Messrs. Bonilla, Larkin, Gooden, Clemens, Morris and Tartaball will have on the 1991 figures. Murray Chass, *Reds' Larkin Scraps Up A $25.6 Million Contract*, N.Y. TIMES, Jan. 20, 1992, at C5.

II. Salary Arbitration: The Process

The 1985 Basic Agreement provided that, beginning in 1987, any player, or team with a player not under contract who had three to five years of major league experience, could "submit the issue of the player's salary to final and binding arbitration without the consent of the other party."[73] The 1985 Agreement was the major stumbling block during the lockout, which preceded the 1990 Basic Agreement.[74] The thirty-two day stalemate finally ended because the players and management agreed that automatic eligibility for salary arbitration would begin after a player had three years experience. However, the players gained a concession when management agreed to include a clause whereby the top seventeen percent of players with two to three years experience would qualify for arbitration, provided they spent a minimum of eighty-six days on the previous season's roster.[75] Additionally, besides added pension benefits and a promise of triple damages if collusion reemerged, the players achieved a minimum salary of $100,000.[76] The players also agreed to the provision that a player with six or more years of service who is ineligible for free agency, can elect salary arbitration with the club's consent. If the club refuses to give the player consent, he can elect free agency within ten days of the refusal.[77]

The procedure for salary arbitration is as follows: a player's election to submit to arbitration must be made in January and hearings are then scheduled between February 1st and February 20th.[78] Before the hearings, the player and club submit single season salary figures to the arbitrator and also exchange these figures between themselves. These figures need not be identical to the offers made in prior negotiations.[79] Subsequently, each side submits an offer, and presents evidence at the hearing. Following the hearing, usually within twenty-four hours, the arbitrator will select one of the two fi-

73. Lock & DeSerpa, *supra* note 2, at 803-04.

74. Symonds, *supra* note 1, at 90.

75. Record (N.J.), Mar. 20, 1990, at A1. The players had claimed that the clubs had been in the practice of "calling up" key players one month into the season, rather than including them on the roster from opening day. This was an attempt to delay arbitration for an additional year due to the requirement of three years service. *See* Record (N.J.), Feb. 11, 1990, at S4. The Association claimed this happened to the Mets' John Franco (then with the Reds) and Vince Coleman (then of the Cardinals). *Id.*

76. Record (N.J.), Mar. 20, 1990, at A1.

77. Lock & DeSerpa, *supra* note 2, at 804.

78. *Id.*

79. *Id.*

nal offers.[80] The arbitrator cannot compromise and choose a figure in between the offers submitted. The selected offer chosen by the arbitrator will then become binding on both sides.[81]

According to the 1985 Basic Agreement, the arbitrator, in deciding which offer to choose, may consider the following:

> The quality of the player's contributions to his club during the past season (including, but not limited to his overall performance, special qualities of leadership and public appeal); the length and consistency of his career contributions; the record of the player's past compensation; comparative baseball salaries; the existence of any physical or mental defects on the part of the player, and, the recent performance record of the club including, but not limited to, its league standing and attendance as an indication of public acceptance.[82]

At the hearing, any evidence may be submitted which is relevant to these criteria, and the arbitrator assigns such weight to the evidence as he deems appropriate under the circumstances.[83] Criteria which will not be accepted include: the financial condition of the player and the club; press comment, other than recognized player awards; previous offers made by either side, and, salaries in other sports or occupations.[84] The resulting contract is "not guaranteed, and contains no bonus or incentives provisions."[85] In arriving at his decision, an arbitrator may look at the midpoint of the two figures, and then decide if a player should be paid one dollar more or one dollar less.[86]

III. SALARY ARBITRATION: THE IMPACT

From its inception, salary arbitration has had a major impact on the salaries of those players who were eligible for the process. Recall

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80. RAIFFA, *supra* note 56, at 110. This form of arbitration is known as final offer arbitration. *Id.*

81. *Id.* The system leads to the elimination of player hold outs and lengthy contract disputes. *See* Lock & DeSerpa, *supra* note 2, at 804. Once the decision is rendered, the parties are required to comply with the arbitrator's award. *Id.*

82. RAIFFA, *supra* note 56, at 110-11.

83. Murray Chass, *The Arbitrator's Game*, SPORT, June, 1987, at 29 [hereinafter *Arbitrator's Game*].

84. *Id.*

85. Lock & DeSerpa, *supra* note 2, at 804. The arbitration system provides the benefit of having a neutral party determine the salary dispute. *Id.* Additionally, since the arbitrator must choose one of the salaries submitted, parties are relegated to assuming a realistic bargaining position, for if a party were to put forth an unrealistic offer or demand, an adverse result would seem likely. *Id.*

86. *Arbitrator's Game*, *supra* note 83, at 29.

that salary arbitration existed prior to free agency. In 1974, although five hundred players were eligible for salary arbitration, only fifty-four players filed, with twenty-nine actually going to arbitration.[87] The average percentage annual salary increase for those opting for arbitration, winners and losers alike, was 29.3%, compared to the 11.7% increase of all player's salaries during the same period.[88]

The results of the 1975 arbitration hearings show an even greater contrast. The sixteen players opting for arbitration received an average percentage increase of 30.9%, while the overall percentage increase for all the other players in 1975 was only 9.3%.[89] So, regardless of arbitration, and before the advent of free agency, the owners were beginning to feel the pinch of salary arbitration. However, prior to 1974, the baseball owners enjoyed a market where they established the market rate for players' skills unilaterally, with the exception of the minimum salary set by the collective bargaining agreement.[90] The process of salary arbitration, before free agency, caused the owners to increase their offers significantly to those players choosing the arbitration process.[91] However, this pales in comparison to what would occurred after free agency.

The figures concerning salary arbitration should be viewed in four different time frames: 1) 1974-1975, the era before free agency; 2) 1978-1985, the free agency era before collusion; 3) 1986-1987, the collusion period and 4) 1988 to the present, the post-collusion era. As stated earlier, during the 1974-75 arbitration cases, managements' offers increased by a combined average of 19.7%[92] but with a final settlement increase of 29.8%[93] for both years. The overall player salary increase for those years averaged 10.5%.[94]

During the free agency era, 1978-85, only 143 players opted for arbitration, but these players received a combined average increase of 106.2% in final settlement, as compared to a 22.9% average increase for all other players during those years.[95] During this same period,

87. Lock & DeSerpa, *supra* note 2, at 806.

88. *Id.* at 807.

89. *Id.*

90. LOWENFISH & LUPIEN, *supra* note 9, at 211. As of 1972, the collective bargaining agreement called for a minimum salary of only $15,000. *Id.*

91. Lock & DeSerpa, *supra* note 2, at 807. There was a combined average 19.7% increase for offers in 1974 and 1975 over previous years. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

the clubs' offers increased an average of 69.9% for those players utilizing the arbitration process.[96] Even when these eras are combined, if the players who had submitted their salary disputes to arbitration had lost, they would still have realized an average salary increase of approximately 58%.[97]

Two questions arise: first, was the addition of free agents' salaries to the salary arbitration equation the sole cause of the astronomical rise in player salaries? And if so, second, how did the free agent bidding escalate out of the owner's control? First of all, the demise of the reserve system was bound to cause a substantial increase in salaries because, prior to the Messersmith case, baseball salaries were artificially depressed due to the lack of any meaningful collective bargaining.[98] Second, there was a tremendous growth in television revenues during the free agency period. These revenues have continued to escalate.[99] In 1976, Major League Baseball received $23,275,000 for network television coverage.[100] By 1984, this figure rose to $160 million ($5.1 million per team), with payments increasing to $240 million in 1989.[101] Also, consider non-network television revenues, which, unlike network revenues, are not shared between the teams. While Major League Baseball received $38.7 million in 1980 from non-network sources that figure reached $104.95 million by 1984.[102]

This growth in revenue provided many of the owners' with the capital necessary to compete in the free agency market. The problem, however, has not been that the owners have bid for free agents, but the manner in which they have done so.[103] This additional revenue from television, combined with the will to win, caused the owners to

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96. *Id.*

97. *Id.* It is misleading, however, to merely look at the salary increases of players through arbitration. *Id.* at 806. Before blaming salary increases on arbitration, "it is necessary to examine both the economic nature of the arbitration process and the market forces which impact upon this process." *Id.* at 807.

98. *Id.* at 108.

99. *Id. See also* RADAR, IN ITS OWN IMAGE 143-44 (1984).

100. Lock & DeSerpa, *supra* note 2, at 811.

101. *Id.* at 802 n.4.

102. *Id.* at 802 n.5. The current changes in this area concerning revenue from non-network television, will be discussed in the section dealing with the post-collusion era of baseball. Currently, baseball is in the middle of a four year, 1.06 billion dollar deal with CBS, which expires at the end of the 1993 season. Richard Sandomir, *Vincent Sounds an Alarm on T.V. Revenues*, N.Y. TIMES, Nov. 22, 1991, at B12.

103. Rings, *supra* note 6, at 251.

become embroiled in "The Law of Increasing Desperation."[104] This phenomena can be described as "the fear that strikes the rest of the league when one team signs a quality free agent," which results in a panic among the other clubs, who begin bidding furiously to land a free agent, whom they hope will help them compete for the pennant.[105]

Consequently, many owners have signed ballplayers of marginal ability, advanced age, or questionable health. An example of this was the case of Rennie Stennett. In December of 1979, Stennett was signed by the San Francisco Giants as a free agent, to a five year, three million dollar contract, despite a recent history of leg injuries and despite the fact that he did not hit a single home run and he compiled but twenty-four runs batted in with the Pirates during the 1979 season.[106] In 1980, Stennett played 120 games and produced thirty-seven runs batted in (RBI), but he was released the following season after accounting for only seven RBI's in thirty-eight games.[107] The end result was that the Giants had to buy out his contract.[108]

By the end of the 1985 season, baseball appointed a new Commissioner, Peter Ueberroth, and the owners had a new policy concerning free agents: collusion.[109] Collusion involved the concerted action of the owners to prevent instances of free agency.[110] The players accused the owners of refusing to deal with free agents, thus restraining competition.[111] Under the collusion policy during the 1986 and 1987 seasons, only two star players changed teams: Lance Parrish, and Andre Dawson.[112] Both surprisingly settled for basic contracts worth less than what each had received the previous year, but

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104. *Id.*

105. *Id.* Owners often believe that once another team strengthens itself with a quality free agent that they also should attempt to keep pace with other teams. *Id.* The end result is that salaries escalate "according to the law of supply and demand, instead of in relation to the player's talent and usefulness." *Id.*

106. Peter Gammons, *And Here We Go Again*, SPORTS ILLUSTRATED, Dec. 19, 1988, at 50-53.

107. *Id.* at 50.

108. *Id.*

109. Peter Schmuck, *The Price of Peter's Principles*, SPORT, Jan., 1989, at 10.

110. Brief for Players Ass'n at 12, Major League Players Ass'n v. The Twenty-Six Major League Baseball Clubs, Grievances 86-2, Panel Dec. No. 76 (Sept. 21, 1987) (Roberts, Arb.).

111. *Id.*

112. Daniel Seligman , et al., *National Pastime: Capital vs. Labor*, FORTUNE, Sept. 28, 1987, at 9.

both contracts contained incentive clauses to compensate for the difference.[113]

However, it was the treatment of two former Detroit Tigers' superstars, Jack Morris and Kirk Gibson, that served to highlight the efforts of the owners. In 1986, Jack Morris, the winningest pitcher of the 1980's, entered the free agent market only to be disappointed.[114] He even offered to sign contracts with the Minnesota Twins, and later the New York Yankees, and have an arbitrator determine his salary, but he was rebuffed, even rejected down by the free spending owner of the New York Yankees, George Steinbrenner.[115] He eventually re-signed with the Detroit Tigers, and had an arbitrator award him, what was then, the largest arbitration award in baseball history.[116] Kirk Gibson, the hero of the Tigers' 1984 World Series victory, also tested the free agent waters after the 1985 season and failed to receive an offer by any club.[117] Similar to Morris, he received only one offer, that of his former club.[118]

The players believed that the lack of opportunities in the free agency market was due to the owners. Consequently, the players filed grievances alleging that the owners had conspired to depress the salaries of free agents.[119] The players claimed that this was a violation of Article XVIII(H) of the Collective Bargaining Agreement.[120]

On September 21, 1987, arbitrator, Thomas T. Roberts, ruled that the owners were guilty of collusion concerning those players who became free agents following the 1985 season.[121] In August of 1988, arbitrator, George Nicolau, ruled similarly concerning the 1986 free agents.[122] The Players' Association and management settled the grievences filed by the 1987 free agents.[123] While the owners have

113. Spitz, *supra* note 8, at 22.

114. Rings, *supra* note 6, at 260.

115. *Id.*

116. *Id.* That distinction now belongs to Ruben Sierra of the Texas Rangers, who was recently awarded five million dollars. Murray Chass, *Palmiero wins $3.85 Million in Arbitration*, N.Y. TIMES, Feb. 21, 1992, at B14.

117. Spitz, *supra* note 8, at 31.

118. *Id.*

119. Rings, *supra* note 6, at 251.

120. *Id.* at 252 n.60. Article XVIII establishes baseball's free agency, and paragraph (H) prohibits concerted action between two or more clubs, or two or more players when exercising rights guaranteed in Article XVIII. *Id.*

121. Major League Baseball Players' Ass'n. v Twenty-Six Major League Baseball Clubs, Grievance No. 86-2, Panel Dec. No. 76 (Sept. 21, 1987) (Roberts, Arb.).

122. Gammons, *supra* note 106, at 52.

123. *Id. Accord* Telephone Interview with Robert Lenaghan, Major League Baseball Player's Association (April 13, 1992). The matter was settled on December, 21, 1990, when the

since agreed to pay the Major League Baseball Players Association (MLBPA) triple damages if they are found guilty of any future collusion,[124] the 1985 free agents were awarded a limited period of automatic free agency, which allowed them to negotiate with other clubs.[125]

This fiscal restraint by the owners may have been reflected in the salary arbitration process and during 1986, the salaries of players eligible for arbitration increased only an average of 5.5% from the previous year's awards.[126] In 1987, the increase was 7.8% over the previous year and in 1988, only a 7.4% increase was recorded.[127] Additionally, the change in the eligibility rule for arbitration, from two to three years experience affected those players who were eligible in 1988. Those players received an average wage increase of $250,000 from their 1987 salaries, which is a .4% decrease from the figure for players with three to four years experience in 1987.[128] Therefore, the combination of collusion and the increase in the eligibility requirements for salary arbitration resulted in significantly smaller percentage increases through arbitration than was the case during the era of true free agency.[129] Artificially depressed salaries, free agency, television revenues, and the "Law of Increasing Desperation"[130] combined to increase player salaries sharply until the era of collusion. However, due in part to the other factors used in salary arbitration, for example such as players' recent performance and past contribution, collusion could only slow, and not reverse, the pace of the escalating salaries.[131]

Clearly, salary arbitration has had a dramatic effect on player salaries. However, it is this author's contention that it is not so much

owners agreed to deposit $280 million with the Players' Association. *Id.* Arbitrator, George Nicholau, found the owners liable, but had not issued a damages remedy at the time of the settlement. *Id.*

124. Murray Chass, *Baseball's Labor Dispute Settled with Compromise on Arbitration*, N.Y. TIMES, Mar. 19, 1990, at A1.

125. Safian, *supra* note 10, at 124. This resulted in Kirk Gibson leaving the Tigers and signing with the Dodgers, where he helped them win the 1988 World Series. *Id.*

126. Peter Bodly, *Arbitration Inflation Rate Dips Just a Little*, USA TODAY, Feb. 24, 1989. These figures represent comparisons of arbitration awards contrasted to the awards from the previous year, not as compared to the individual player's own salary for that preceding year. *Id.*

127. *Id.*

128. *Id.*

129. Symonds, *supra* note 1, at 90.

130. Rings, *supra* note 6, at 251.

131. *Id.* at 262.

the process, but rather, the availability of the process, combined with free agency and its many attendant features, which have caused the dramatic rise in players' salaries. When the free agent market was non-existent, or artificially depressed, arbitration awards in terms of percentage increases were not unreasonably high.[132] However, the combined average percentage increase in salary for players who opted for arbitration between 1978 and 1985 was 106.2%.[133] Thus, free agency had a demonstrable effect on the salary arbitration process. In addition, the television contracts and the "Law of Increasing Desperation," resulted in over-priced free agents, whose salaries skewed the overall market, affecting an arbitration award.[134] The owners were in a difficult position because a productive player could focus on any contract as a comparable salary. For example, imagine a productive player in 1981 using Rennie Stennett's contract as a comparable salary and you see the difficult position in which the owners and the arbitrators found themselves. However, it does appear as though the owners placed themselves in this position by offering these huge contracts to players like Stennett.[135] While Stennett was once a respected hitter, by the time the San Franscico Giants had signed him, his abilities had declined and he was hampered by injuries.[136]

The problem with the owners' plan of fiscal restraint (collusion) was that they failed to act reasonably. Certainly, they were justified in not engaging in a bidding war over Rich Gedman, who has never proven himself to be a consistent high quality player.[137] However, when they passed up proven quality performers like Morris, Gibson and Dawson, not only did they reveal their collusive plan, they also hurt their teams. If the owners had contained themselves to bidding on the truly outstanding players over the past decade, perhaps they would not be complaining quite so much about salary arbitration and free agency.[138]

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132. The combined average salary increase for 1974-75 was 29.8%. Lock & DeSerpa, *supra* note 2, at 807. By contrast, those players eligible for salary arbitration in 1992 increased their average salaries by 101%. Peter Pascarelli, *Reopener Tactic May Mean '93 Skiddoo*, SPORTING NEWS, Mar. 2, 1992, at 29.

133. Lock & DeSerpa, *supra* note 2, at 807.

134. Grebey, *supra* note 3, at 28.

135. Gammons, *supra* note 106, at 50-53; *See* Fred Bruning, *Millionaires of Mediocrity*, MACLEAN'S, Jan. 8, 1990, at 11.

136. Gammons, *supra* note 106, at 50.

137. Spitz, *supra* note 8, at 22, 63.

138. Symonds, *supra* note 1, at 90.

Some owners may not have learned their lesson. The collusion rulings have served as a signal to the owners that they must make some effort to compete in the free agency market, but once again owners cannot seem to confine themselves to the truly excellent players.[139] Mr. Steinbrenner, for instance, returned to the free agency market with a vengeance in 1989.[140] He signed proven all-star, Steve Sax, for three years at four million dollars, but then also spent $3.6 million for a three year contract for Andy Hawkins, which was $1.6 million over the next highest offer.[141] Also in 1989, the New York Yankees signed Dave LaPoint to a $2.575 million contract over three years.[142] At the time he was signed, LaPoint had a career record of sixty-seven wins and sixty-six losses, however, poor records in 1989 and 1990 left him with a career losing record.[143]

In 1990, Mr. Steinbrenner signed Pasqual Perez, with a record of nine wins and thirteen losses for Montreal in 1989, at $5.7 million over three years.[144] Since then, Perez pitched only sporadically for the Yankees, and has spent a considerable amount of time on the disabled list and is currently being suspended from baseball for one year because he has tested positive for cocaine use.[145] In retrospect, the Yankees certainly could have spent the $5.75 million more productively.

At today's prices, Sax may well have been a bargain at four million dollars paid out over three years. However, Sax was recently traded to the Chicago White Sox for Pasqual Perez's brother, Melido Perez, and a couple of minor league pitchers.[146] More recently, the Yankees have re-entered the free-agent market, signing Danny Tartabull and Mike Gallego for a combined total of $30.6 million dol-

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139. Bruning, *supra* note 135, at 11.

140. Gammons, *supra* note 106, at 53.

141. *Id.* at 52. Hawkins entered the 1989 season with a career record of 60 wins and 58 losses. *Id.* He had 15 wins and 15 losses with the Yankees in 1989. *N.Y. Yankees: Final 1989 Statistics*, USA TODAY, Feb. 21, 1990 at 4C. Following another poor year in 1990, Hawkins was eventually traded, along with his $1,533,333 salary to the Oakland A's in mid-1991. *Money, Money*, *supra* note 8, at B18.

142. Gammons, *supra* note 106, at 53.

143. *See* Gammons, *supra* note 106, at 53. LaPoint was not re-signed and is no longer pitching in the major leagues.

144. Franz Lidz, *Wild and Crazy Hombres*, SPORTS ILLUSTRATED, Jan. 8, 1990, at 40.

145. Moss Klein, *Sac-to-Sox Swap Suits Both Sides*, SPORTING NEWS, Jan. 20, 1992, at B26. Perez forfeit $1.9 million of his salary for the last year of his three year deal with the Yankees. Jack O'Connell, *New York Yankees*, SPORTING NEWS, Mar. 16, 1992, at 18.

146. This move may not have been financially motivated due to the fact that Melido Perez, at that time, was eligible for arbitration and was seeking $1.3 million. Don Burke, *A High Stakes Salary Game*, RECORD (N.J.), Jan. 18, 1992, at B1.

lars.[147] Quite notably, it seems that the Yankees may have learned a lesson and are staying away from big name free agent pitchers. Instead, they have decided to risk smaller sums in the hope that a once promising pitcher, for example, Allan Anderson, can rebound into his 1989 form.[148]

The Yankees were not the only team offering large sums to free-agents. The recent bidding war over Bobby Bonilla involved several clubs who competed for Bonilla's services until the last minute.[149] This process left at least one general manager somewhat frustrated and angry due to his belief that he had been used by Bonilla's agent to influence the bidding process.[150]

Even the usually fiscally conscious Milwaukee Brewers entered the fray by offering pitcher, Bill Wegman, a four-year, $9.5 million contract, which he gladly accepted.[151] Wegman later admitted that the offer was for one year longer than he had hoped to receive.[152] While Wegman may have pitched well in 1991, his history of injuries should have indicated to the Brewers' General Manager, Sal Bando, that any contract for more than two years would be risky.

The length of the contract is surprising given the nineteen million dollars spent by the club in 1991 for the combined contracts of injured pitcher Teddy Higuera[153] and dissappointing designated-hit-

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147. Jack O'Connell, *New York Yankees*, SPORTING NEWS, Jan. 20, 1992, at 31. Tartabull is indeed a talented hitter, although in the past his health has been an issue, and Gallego, primarily a utility infielder for the Oakland Athletics, is only a .232 career hitter. Jack Curry, *Yankees Keep Active By Getting Gallego*, N.Y. TIMES, Jan. 8, 1992, at B9.

148. Anderson was 17-10 with a 3.80 earner run average ("E.R.A.") in 1989 and won the American League E.R.A. title in 1988. Jack Curry, *Yankees Sign Anderson to a Minor League Deal*, N.Y. TIMES, Jan. 30, 1992, at B11. However, he has been 12-29 over the past two seasons with a combined 4.71 E.R.A. *Id.* Anderson signed a one-year minor league contract which will pay him $500,000 if he makes the major league club, and only $60,000 if he pitches at the Yankees AAA club in Columbus, Ohio. *Id.*

149. The four clubs bidding for Bonilla included the Chicago White Sox, the California Angels, the Philadelphia Phillies and the New York Mets. Ultimately, the Mets won the bidding competition awarding Bonilla a $29 million contract over a period of five years. Dave Nightengale, *Hold On Cowboy*, SPORTING NEWS, Dec. 23, 1991, at 19.

150. Whitey Herzog, the California Angel's General Manager, was so upset that he verbally assailed Bonilla's agent, Dennis Gilbert, during the winter meetings in Florida. Nightengale, *supra* note 149, at 19.

151. Wegman, who pitched well in 1991, had a record of fifteen wins and seven losses with an e.r.a. of 2.84. However, he has a career average of .500 and has spent almost as much time on the disabled list over the past three years as he has on the mound. Moss Klein, *A.L. Report*, SPORTING NEWS, Nov. 25, 1991, at 29.

152. *Id.*

153. *Id.*

ter/first baseman Franklin Stubbs.[154] This spending is not a new phenomena and indeed it leaves a general manager open to criticism. Consider the three year, $3.6 million contract the Pittsburgh Pirates offered journeyman pitcher, Walt Terrell, prior to the 1990 season, despite a record of eighteen wins and thirty-four losses during the previous two years. Another example is the three year, $2.66 million contract Texas awarded Gary Pettis preceding the 1990 season, despite his meager production of only eighteen runs batted in during 1989.[155]

Once collusion ended, the impact of large salaries paid to free agents affected owners in salary arbitration. Despite the previous lulls in the salary arbitration awards during 1986 and 1987, those players who utilized the process in 1988 experienced an average increase in their individual salaries of sixty-five percent.[156] In 1989, that figure rose seventy percent, and in 1990, it climbed to eighty-two percent. This represents the greatest percentage leap since collusion ended.[157] Of the twenty-four players who ultimately went to arbitration in 1990, fourteen of them increased their combined average salaries from $373,179 to $900,357.[158] Furthermore, the ten remaining players, while not successful in their arbitrations, increased their average salary from $441,700 to $909,000, an increase of 106%.[159]

More importantly, from a labor-management standpoint, the average salary of those players making their initial debut in the arbitration process increased by 158%.[160]

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154. T. Wendel, *AL Best*, USA TODAY BASEBALL WEEKLY, Nov. 15-21, 1991, at 4. Stubbs' statisistics were not impressive. He had a batting average of .213, hit 11 home-runs, and had only 38 runs batted in. *Id.*

155. Peter Gammons, *Rich Man's Game*, SPORTS ILLUSTRATED, at 60-62 [hereinafter *Rich Man's Game*]. While Pettis remains a good defensive player, his offensive skills have not improved. He hit just .216 with no home runs and 19 RBIs, in 1991. THE WORLD ALMANAC 932 (1992). Terrell was subsequently released, with the Pirates having to buy out the remaining time on his contract at $1.1 million. *Money, Money, supra* note 8, at B18. Some deals are not without consequences, former Pirates General Manager, Larry Doughty, after signing pitcher Bob Walk to a two year $2.8 million contract, with another $900,000 in incentives possible, was fired early in 1992, despite his team's back-to-back N.L. Eastern Division titles in 1990 and 1991. Dave Nightengale, *N.L. Report*, SPORTING NEWS, Jan. 20, 1992, at 28.

156. *Arbitration Paying Off for Players*, RECORD (N.J.), Feb. 23, 1990, at D2 [hereinafter *Arbitration*] *See* SPORTING NEWS, Jan. 29, 1990, at 36.

157. *Arbitration, supra* note 156, at D2. This season, that figure reached 101%. Pascarelli, *supra* note 132, at 29.

158. *Id.*

159. *Id.*

160. *Id.* It is can be seen why players want to shorten the amount of minimum service time required in order to be eligible for arbitration, whereas owners want the minimum service time extended. *Id.*

In 1991, 157 players filed for salary arbitration with all but seventeen players settling before their hearings.[161] However, the average salary increase for the arbitration eligible players was 103%.[162]

In addition, the recent salaries paid to free agents will ultimately be reflected in next year's arbitration figures, and once again, the owners will voice their displeasure with arbitration. This result is that those players eligible for arbitration in 1991 received nearly double the salary of their non-eligible counterparts.[163]

Other factors which may have helped prompt the renewed free agent bidding war include incredible television revenues, and significant licensing fees recovered by Major League Baseball Clubs.[164] In 1989, CBS signed a four year deal with Major League Baseball to televise the playoffs, the World Series, and twelve regular season games for four years at $1.08 billion.[165]

Combine this with the $400 million ESPN paid Major League Baseball to broadcast 175 games per year over the same four years and it demonstrates that the owners had a reliable stream of income available for free agent signings.[166] However, with poor ratings over the past two years, Major League Baseball may not be able to convince, either the networks or the cable companies, to spend these huge sums when their current contracts expire at the end of the 1993 season. Moreover, it has been suggested that Major League Baseball may have to settle for thirty percent less than the present television revenue figures.[167]

The financial state of the game today has been the subject of much controversy lately.[168] This is not surprising given the salaries now being paid to players. Recently, Major League Baseball announced that the clubs' profits dropped thirty-three percent from 1989 to 1990.[169] However, even with the decrease in profits, the clubs' operating profits of $142,867,000 were the second highest in history,

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161. Peter Pascarelli, *The Enigmatic Escalator*, SPORTING NEWS, Feb. 17, 1992, at 9 [hereinafter *Escalator*].

162. *Id.*

163. *Baseball Salaries*, *supra* note 72, at 80. There were 14 players eligible for the arbitration and among this group they earned an average of $518,571 per year. *Id.* This is compared to the $291,992 a year earned by their non-eligible counterparts, who numbered 63 in all. *Id.*

164. Schmuck, *supra* note 109, at 10.

165. Johnson & Taafe, *supra* note 4, at 34.

166. Welling, *supra* note 5, at 85-87.

167. Richard Sandomir, *TV Sports: Vincent Sounds An Alarm On TV Revenue*, N.Y. TIMES, Nov. 22, 1991, at B12.

168. Claire Smith, *State of the Game?*, N.Y. TIMES, Dec. 10, 1991, at B25.

169. *Baseball Claims Profits Dip 33%*, STAR-LEDGER (N.J.), Nov. 19, 1991, at 81.

only exceeded by their profits of $214.5 million earned in 1989.[170] Additionally, in 1991, Major League Baseball drew over sixty million fans for the first time in history and the addition of expansion teams in Denver and Miami for 1993 should increase that number even further.[171] The price of expansion shows how the value of a major league club has increased. When the Toronto Blue Jays and Seattle Mariners entered the American League in 1977, they were charged only seven million dollars per franchise.[172] But for Miami and Denver, the fee is now ninety-five million dollars.[173] Thus, expansion alone will add to the coffers of the existing clubs.

Credit should be attributed to ex-Commissioner Ueberroth for the sport's comfortable financial status. One of his priorities was to raise revenues received from licensing of apparel and other baseball properties.[174] Retail sales, amounting to $650 million after the 1988 season, as compared to $175 million earned in 1984.[175] Major League Baseball earned approximately thirteen million dollars in the 1988 season from licensing fees alone.[176]

Major League Baseball has fought fiercely to keep its cable television revenues flowing. As a result, satellite dish owners, both private and commercial, are paying a heavy price almost $3,500 per dish to decode scrambled transmissions.[177] Therefore, it is hardly surprising that the players are seeking a greater portion of these profits each year.

A more ominous note may be the money being offered the clubs in high market areas, such as New York and Los Angeles, by local cable television companies.[178] In 1989, Mr. Steinbrenner signed an agreement with Madison Square Garden Network, which will bring the Yankees forty-one million dollars per year over a twelve year period.[179] Compare this with clubs, such as Milwaukee and Seattle, whose local television packages range from three to four million dol-

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170. *Id.* Figures for 1991 will not be available until late 1992. The clubs' profits in 1990 were $142,867,000 which is compared to those earned in 1989 wich totalled $214.5 million. *Id.*

171. *Baseball Drew 60 Million Fans*, STAR LEDGER (N.J.), Dec. 5, 1991, at 80. MLB drew exactly 60,663,066 fans last season. *Id.*

172. Ken Gurnick, *Watershed Season*, SPORTING NEWS, Jan. 20, 1992, at 23-24.

173. *Id.*

174. Welling, *supra* note 5, at 87.

175. *Id.*

176. *Id.*

177. William Taafe, *Baseball's Mad Scramble*, SPORTS ILLUSTRATED, Sept. 19, 1988, at 75.

178. Welling, *supra* note 5, at 87.

179. Johnson & Taafe, *supra* note 4, at 42.

lars per year.[180] Consequently, cable television presents a far more serious threat to the competitive balance of baseball than free agency by itself ever did. This is compounded by the fact that local cable television revenues are not shared.[181]

While current salary arbitration figures may only be reflecting this new found wealth, it seems inevitable that the recent bidding wars for free agents will continue to skew the market and significantly effect the salary arbitration process. Many thought that the bidding wars reached a zenith in the case of Mark Langston, who in 1989 signed a five year deal for sixteen million dollars with the California Angels.[182] However, that deal pales in significance with the contract recently signed by former Pittsburgh Pirate, Bobby Bonilla, now a New York Met. Bonilla, along with Jack Morris, Dwight Gooden, Roger Clemens, Danny Tartabull, Barry Larkin and Ruben Sierra, will earn five million dollars or more this year.[183]

IV. The Alternative to Salary Arbitration

While the club owners have frequently criticized the salary arbitration process, they may wish to consider the alternatives before taking any permanent action. Beginning with the 1985 Basic Agreement, a player needed three years experience in order to be eligible for the salary arbitration process.[184] As a result, many quality players

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180. Symonds, *supra* note 1, at 90 (indicating that the Milwaukee Brewers received four million dollars for "local broadcast rights" in 1989 which equals approximately ten percent of the New York Yankees' local broadcast rights). See Grunick, *supra* note 172, at 24. (comparing Seattle's three million dollar local broadcast deal with the Yankee-MSG deal).

181. Johnson & Taafe, *supra* note 4, at 42. This issue has become a point of disagreement between large market owners and their smaller counterparts. *See* Grunick, *supra* note 172, at 24. The smaller market owners are feeling the pinch from the record salaries paid to free-agents. *Id.* They blame the large market owners, who have signed the top five free-agent contracts (New York, Boston, Chicago and Los Angeles). *Id.* However, the larger market teams are quick to point out that not only have small market clubs won their share of titles recently, but that the smaller market clubs have played a role in salary escalation as well, witnessed by Milwaukee's contract with Bill Wegman. *See* Smith, *supra* note 168, at B25 (discussing Dodgers' General Manager, Fred Claire's remarks in defense of the clubs' actions in signing Tom Candiotti and Oral Hershiser).

182. *Rich Man's Game*, *supra* note 155, at 60-62.

183. Murray Chass, *Reds' Larkin Scoops Up A $25.6 Million Contract*, N.Y. Times, Jan. 20, 1992, at C5. Just prior to the time this article was submitted for publication, the Chicago Cubs signed Ryne Sandberg to a four year contract extension, worth 7.1 million dollars per year. Peter Pascarelli, *Is Sandberg's Deal a Fluke of a Barometer?*, Sporting News, Mar. 16, 1992, at 14. Sandberg is now the highest paid player in the game. *Id.*

184. Lock & DeSerpa, *supra* note 2, at 804. The 1990 lockout resulted in this formula being adjusted to include the top 17% of players with between two and three years major

were ineligible, and had to submit to management's demands concerning salary increases. Most often, this did not present a problem, but there were at least three cases which indicate that Major League Baseball clubhouses could be considerably more volatile without the aid of salary arbitration.

The first case involved Boston Red Sox pitcher, Roger Clemens. After the 1986 season, Clemens won both the American League's Cy Young Award, as the League's most outstanding pitcher, and the American League Most Valuable Player Award, based on his overall value to his team.[185] However, Clemens did not have the required two to three years experience in the major leagues to qualify for salary arbitration. Therefore, when salary negotiations reached an impasse, Clemens left spring training camp a month prior to the opening of the 1987 season.[186] The Red Sox offered to increase his salary from $340,000 to $500,000, with incentives amounting to $850,000.[187] Clemens rejected the offer, demanding $2.4 million over two years.[188] The Red Sox then, as was their right under the option clause, reserved his contract unilaterally and began fining Clemens $1,000 for every day he remained out of camp.[189] Clemens' retort was that for each day he was fined, he would raise his salary demand by $1,500 per day.[190]

Eventually, the two sides settled the dispute, but not until May, over a full month into the season.[191] While Clemens distinguished himself by winning his second consecutive Cy Young award, the Red Sox did lose his services for over one month of the season.[192]

A second example is the Los Angeles Dodgers' outfielder, Kal Daniels. During the 1988 season, Daniels finished second on his team in batting average, led his team in walks, and ranked first in the National League in On Base Percentage.[193] However, Daniels too, was ineligible for salary arbitration, having only completed two years in

league experience, provided they were on the team's major league roster for a minimum of 86 days the previous year. Record (N.J.), Mar. 20, 1990, at A1.

185. Rings, *supra* note 6, at 261.

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.* The Clemens dispute illustrates the way contract negotiations occurred prior to the salary arbitration system. *Id.* Players not happy with their contracts were forced to leave training camp in the hope that the team would feel their absence. *Id.* Under the present salary arbitraion system, these problems have been virtually eliminated. *Id.*

190. *Id.*

191. *Id.*

192. *Id.* n.87.

193. Cincinnati Reds Spring Training Program (Plant City, Fla.), Mar. 19, 1989, at 14-17.

the majors. Daniels was asking $325,000 per year, but the club refused and offered $300,000.[194] Daniels reported for spring training, but when negotiations reached an impasse, he walked out of camp.[195] A settlement was only reached when team owner, Marge Schott, entered the negotiations, and offered to end the dispute by using an inanimate arbitrator, a coin.[196] They flipped the coin for the difference, Daniels coming away with the additional $25,000, and the Reds regained his services.[197]

A similar dispute arose concerning the New York Mets' pitcher, David Cone. Cone won twenty games for the Mets in 1988, and finished second in the National League in Earned Run Average.[198] Cone reported to spring training without a signed contract. Negotiations continued with Cone seeking $340,000, but the Mets offered $325,000. When talks hit an impasse, the Mets exercised their option for 1989, at a salary $15,000 below their last offer.[199] Cone complained bitterly to the press, and eventually the Mets agreed to increase his salary to $332,500, slightly below his minimum salary request.[200] Cone too, had been ineligible for arbitration. However, Cone gained a measure of revenge when his salary for 1990 was set at $1,300,000 thanks to an arbitration award.[201] Perhaps Cone's success in his 1990 arbitration hearing was a factor in his decision to eschew the Mets' offer of $3 million per year and have his case heard before an arbitrator. His decision proved wise as he was recently awarded a salary of $4.25 million.[202]

All three disputes mentioned above are examples of what baseball can be like without salary arbitration. On one side, management keeps a firmer hold on payroll, but at the risk of alienating key players, who may ultimately choose to sit out an option year in order to become a free agent. This kind of turmoil may lead to alienation of

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194. Murray Chass, *Fehr Concerned for Younger Players' Salaries*, N.Y. TIMES, Mar. 2, 1989, at D27 [hereinafter *Fehr Concerned*].

195. Telephone Interview with Connie Barthelmas, Public Relations, Cincinnati Reds (Apr. 25, 1989).

196. *Id.*

197. *Id.*

198. *Cone Criticizes Mets*, N.Y. TIMES, Mar. 1, 1989, at B11.

199. *Fehr Concerned*, *supra* note 194, at D27.

200. *Id.*

201. Murray Chass, *Players Big Winners as Arbitration Ends*, N.Y. TIMES, Feb. 22, 1990, at B14 [hereinafter *Big Winners*].

202. Murray Chass, *Mets Strike Out Against Cone In $4.5 Million Arbitration*, N.Y. TIMES, Feb. 19, 1992, at B9. The award also made the Mets the first team in history with four four million dollar per year players. *Id.*

fans, and possibly, failure in the league standings, which in turn could reduce attendance figures and maybe even advertising premiums. All of which could harm at least the small market clubs.[203]

Players such as the three discussed, who can command considerable media attention due to their talent, and may be willing to clash with management, and take their chances. However, the less talented players, whose only dream is to remain in the major leagues long enough to qualify for a pension do not have this advantage. These players, representing the majority of the Major League Baseball players, would likely view the prospect of sitting out an option year as detrimental to their careers. They are aware that as younger, more talented ballplayers come along, those of marginal skill can be quickly forgotten by the fans and the media alike.

V. Other Key Factors: Criteria

The salary arbitration process, or at least the availability of it, may be the key to a player's success in the major leagues. If a player of marginal talents can remain in the major leagues for a minimum of three years and qualify for arbitration, his odds of earning substantially more than the guaranteed minimum salary are significantly increased.[204] This may be due to some of the criteria used in the arbitration process.

The criteria include at least two specific factors, which may contribute to salary inflation under certain circumstances. First, years of service, and second, success of the team, may significantly aid a player of marginal ability in attaining success through arbitration. A recent example of this may be former Mets' infielder, Tim Teufel. Teufel has experienced moderate success as a hitter, but has only been considered an average defensive player. In 1988, he experienced one of his worst years,[205] yet he took his salary dispute to arbitration and won his salary request of $590,000.[206] This was substantially higher than the club's initial offer of $470,000.[207] Without a written opinion to explain Teufel's success in the arbitration process, it is justifiable to assume that the factors of years of service and team success carried the day for Teufel.

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203. Symonds, *supra* note 1, at 90.
204. *See supra* note 163.
205. Record (N.J.), Feb. 19, 1989, at S1.
206. Murray Chass, *Teufel By Decision*, N.Y. Times, Feb. 19, 1989, at S1.
207. *Id.* However, on the day of the hearing, the Mets raised their offer to $525,000.00 but still refused to match the $537,500.00 Teufel had made in 1989. *Id.*

While the criteria discussed above may seem to help only the moderate to marginal players on successful teams, another factor, comparable salaries, may help players on losing clubs. Comparable salaries may allow the salaries paid to marginal players on winning teams to affect the salaries of similar type players on losing clubs. An example of this is illustrated by Steve Balboni, formerly of the Seattle Mariners. Similar to Teufel, Balboni's batting average for 1988 was poor,[208] but he hit twenty one home runs and drove in sixty one runs for a second division club.[209]

Seattle offered Balboni $500,000, which he rejected.[210] He took the dispute to arbitration and was awarded his requested salary of $800,000.[211] Less than two months later, Balboni was traded to the New York Yankees for a minor leaguer.[212]

The trend continued in 1990. Certainly the salaries of Pascual Perez, Dave LaPoint, and Andy Hawkins could have been utilized by Doug Drabek of the Pirates during his arbitration case. While Drabek had fourteen wins and twelve losses in 1989 with an ERA of 2.80[213] for a fifth place club, neither LaPoint, nor Hawkins could manage a winning record or an ERA under 4.00.[214] Perez also had a losing record with an ERA of 3.21.[215] Not surprisingly, Drabek won his arbitration case, and a salary of $1,100,000.[216] Last year, Drabek was in a better position because of his own exemplary record and his team's

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208. RECORD (N.J.), April 4, 1989, B3.

209. *Id.*

210. RECORD (N.J.), Feb. 16, 1992, at E11.

211. *See supra* note 208.

212. *Id.* at B11. This year, Orioles pitcher, Bob Milachi, may have followed in Balboni's footsteps. Although his ERA was 4.01, he did go 10-8 for a sixth place team. Baseball Weekly, Oct. 11-17, 1991, at 55. Yet Milacki was awarded $1.18 million by an arbitrator, $480,000 over the club's offer. Pascarelli, *supra* note 132, at 29.

213. SPORTING NEWS, Apr. 5, 1990, at 47; (Drabek was sixth in the NL in E.R.A. (2.80); fifth in Innings Pitched (244.1); tied for third in complete games (8) and second in shutouts (5)). RECORD, Apr. 8, 1990, at S10. In 1990, Drabek won the Cy Young Award and with a 22-7 record, which helped in his subsequent arbitration hearing in 1991, which netted him an award of $3.35 million. *Id.*

214. SPORTING NEWS, *supra* note 213, at 47.

215. *Id.*

216. *See supra* note 213. Drabek was only one of eight Pittsburgh Pirate players in 1990 whose cases went to arbitration. While the players won five of the eight cases, in terms of the dollar figures for salaries asked and those offered, the team may have saved $445,000. *Id.* Perhaps this policy of not settling before arbitration is one reason the Pirates were a competitive club the past two seasons despite only the 18th highest payroll in baseball at the time. *1990 Major League Payrolls*, SPORTING NEWS, Apr. 23, 1990, at 22.

success in winning the 1991 National League Eastern Division title. These, in turn, led to his record-setting arbitration award.[217]

Salary arbitration is not necessarily an evil, nor is it the sole cause of inflated player salaries. Factored into this equation are several variables. When the huge television revenues, both network and cable, are combined with increasing licensing fees exacted by Major League Baseball from retail sales under Peter Ueberroth's reign,[218] it is clear that team ownership is a lucrative business. Earlier in the decade, the Cincinnati Reds were sold for thirteen million dollars, but by today's estimates, even a small market team would command an asking price of between sixty and eighty million dollars.[219]

Armed with these escalating revenues, owners during this post collusion period, seem to be repeating the mistakes of the past by engaging in bidding wars for free agents of either questionable ability, or advanced age.[220] It seems that once collusion ended, the "Law of Increasing Desperation"[221] was resurrected. As a result, players filing for arbitration in the near future will be commanding even greater salaries, whether or not they actually go through the arbitration process, or settle before a hearing. Recently, Barry Larkin, Rob Dibble, both of the Cincinnati Reds, Cecil Fielder, of the Detroit Tigers and Barry Bonds, of the Pittsburgh Pirates, settled their salary disputes shortly before their arbitration hearings.[222] The large free agent salaries have emboldened players in their demands, which in turn have escalated the teams' offers. Most notably, Chicago White Sox pitcher Jack McDowell, earned an 814% increase in salary by

217. Drabek was awarded $3,350,000.00 in 1991. N.Y. TIMES, Jan. 16, 1992, at B10. David Cone broke that record this year. *See supra* note 202 and accompanying text. However, Cone's record lasted just one day before it was broken by Ruben Sierra. *See supra* note 116.

218. Welling, *supra* note 5, at 87.

219. *Id.* For example, George Argyros bought the Mariners in 1981 for $13 million, but sold them for $77 million in 1989. *Rich Man's Game, supra* note 155, at 60-62.

220. Bruning, *supra* note 135, at 11; *See also* Gammons, *supra* note 106, at 50. Current owner, Jeff Smulyan is now asking 100 million dollars for the mariners. *Mariners Valued At $100 Million,* N.Y. TIMES, Nov. 28, 1991, at B24. A recent offer by a consortium, which included as its prinicipal, a Japanese businessman, has been the center of much controversy. *See* Claire Smith, *Sale In Seattle Turns Into an International Circus,* N.Y. TIMES, Feb. 6, 1992, at B12.

221. Rings, *supra* note 6, at 251.

222. Larkin signed a five year deal for $25.6 million and Dibble settled for a one year contract at $1.4 million midway between his request and the Red's offer. Jerry Crasnick, *Cincinnati Reds,* SPORTING NEWS, Feb. 3, 1992, at 30; Fielder also signed a one-year contract for 4.5 million dollars. N.Y. TIMES, Jan. 30, 1992, at B13; Bonds recently signed what had been prior to the Sandberg deal, baseball's most lucrative one year contract with Pittsburgh for 4.7 million dollars. John Mehno, *Pittsburgh Pirate,* SPORTING NEWS, Feb. 10, 1992, at 14.

losing his arbitration case, just as Glenn Braggs of Cincinnati, lost his case and became a millionaire.[223]

The owners claim that they are compelled to offer these huge sums for fear of having to pay significantly more in arbitration.[224] This is especially true for the talented players who consistently demonstrate their capability by breaking records. However, it is also possible that this would happen even without arbitration, as in the case of Roger Clemens.[225] However, the owners fail to realize that when they enter bidding wars for free agents, who may not be proven high quality performers, they are in actuality hurting themselves with respect to the arbitration cases. This is because other players will utilize these salary figures in their own negotiations, and during the arbitration process.[226] Collusion was not the solution because it was riddled with shortcomings.[227] Rather than bidding on gifted athletes, for example like Kirk Gibson and Andre Dawson, the owners remained idle and condemned themselves by their own actions or inactions.[228]

The owners must realize that the players, especially the star players, are integral to the success of the business known as baseball.[229] These players often deserve a large share of the revenues be-

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223. McDowell will earn $1.6 million in 1992, which is $700,000 less than his requested increase. Pascarelli, *supra* note 166. In contrast, Braggs had to accept "only" a 21% salary increase when an arbitrator rejected his bid for a $1.34 million contract, and choose the Reds' figure of one million dollars. *Id.*

224. Grebey, *supra* note 3, at 28.

225. Rings, *supra* note 6, at 261-62; *See* Whitey Herzog, *When Owners Gave Arbitration, They Sold Out the House*, SPORTING NEWS, Feb. 24, 1992, at 8. Angels general manager, Whitey Herzog, admitted that it would have cost the club over one million dollars to sign Jim Abbott even if arbitration were unavailable. *Id.*

226. It cannot seriously be doubted that the contract extended to Bill Wegman by Milwaukee impacted Tom Candiotti's negotiations with the Los Angeles Dodgers. Dodgers general manager, Fred Claire, admitted as much after signing Candiotti to a four year $15.5 million contract. Murray Chass, *Dodgers Put On Big Rush To Secure 2 Top Pitchers*, N.Y. TIMES, Dec. 5, 1991, at B29. Candiotti was only a .500 pitcher last year with an ERA of 2.65 (but career ERA of 3.65), however given Wegman's otherwise mediocre and injury-riddled career Candiotti's numbers may well have been compared favorably. *Id.*

227. Clearly, the salaries paid to other pitchers as well as the $5.425 million per year (two year) contract given to Jack Morris by Toronto would seem to have been fair game for Doug Drabek in negotiating his recent contract with the Pirates. Neil MacCarl, *Toronto Blue Jays*, SPORTING NEWS, Dec. 30, 1991, at 27. The settlement between Drabek and the Pirates, which earned Drabek $4.5 million was reached prior to what would have been his third arbitration hearing in three years. John Mehno, *Pittsburgh Pirates*, SPORTING NEWS, Feb. 24, 1992, at 22.

228. Safian, *supra* note 10, at 122.

229. Paul Fichtenbaum, *Sport Talk: How Much is a Star Worth?* SPORT, June, 1987, at 13.

cause they draw the crowds.[230] They are the reason people pay to attend games. They are also the reason people pay for cable television, and why team merchandise sells. In 1986, Dwight Gooden of the Mets, drew an extra 5,076 fans each time he pitched at an opponent's ballpark.[231] Multiply this by his number of road starts (seventeen) and again by twelve dollars, "the average per capita each fan spent at the ballpark for tickets, concessions, and parking," in 1986, and it is clear that he made the National League richer by $1,035,156.[232] This is not including the extra returns the team reaped when he pitched at home in Shea Stadium.

The owners should not fear the effects of salary arbitration concerning stars like Gooden, Morris or Clemens, because they represent the few, legitimate superstars. They are future Hall of Famers, and the market will reflect that. Therefore, the owners should realize that very few players could ever compile statistics to match these players, thereby precluding most players from using these salaries to increase their own.

Salary arbitration has played a significant role in the rise of player salaries, however it seems that the owners are as much to blame for this as the salary arbitration process, the Players' Association, or even the arbitrators.[233] It is the owners' excesses in the free agent market which have helped skew the criteria. The arbitration cases have certainly reflected the indiscretions of the owners in the free agent market and will continue to do so.[234]

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230. *Id.*

231. *Id.*

232. *Id.*

233. Lock & DeSerpa, *supra* note 2, at 812-13; *See* Bruning, *supra* note 135, at 11; *Accord*, Murray Chass, *Notebook: Security Guards: New Position at Camps*, N.Y. TIMES, Feb. 11, 1990, at S9.

234. Not all of the owners are without a strategy when it comes to free agency and the arbitration process. For instance, the Chicago White Sox have tried to implement their own pay for performance by using incentive bonuses in their contracts. Joel Bierig & Bruce Levine, *Incentive Incentives*, SPORTING NEWS, Dec. 30, 1991, at 20. Baseball being the labor-management battleground that it is, this innovative tool is now the subject of a grievance filed by the MPLA. *Id.* at 21. When it comes to arbitration hearings, strategy also pays off. San Francisco has not participated in an arbtritation hearing during general manager Al Rosen's tenure. Mark Newman, *San Francisco Giants*, SPORTING NEWS, Nov. 18, 1991, at 40. Rosen maintained his perfect record when he recently settled his club's case with Catcher Kirt Manwearing. Dave Nightengale, *Hello, Lunacy: Lasorda Is On the Hot Seat*, SPORTING NEWS, Feb. 17, 1992, at 12. With the posssible exception of Kevin Mitchell, Rosen has usually been popular with his players and perhaps not coincidentally, his team has won two divisional crowns over the past five years. Some teams, for example Philadephia, try to "pick their spots," and only to go through the arbitration process when they are confident that they will prevail. Dave Nightingale, *N.L. Report*, SPORTING NEWS, Feb. 17, 1992, at 12. Philadephia has an unblemished record of 5 wins

The owners cannot be accused of collusion if they refused to sign players of marginal skill at a significant increase in salary. While this is merely a fiscal restraint, failure to make reasonable offers to gifted players amply demonstrates collusion.[235] Owners must realize that they have to show restraint regarding marginal free agents, or risk the effect of inflated salaries on the arbitration process. The two phenomena are interrelated. The clubs should realize that the relatively few superstars are worth the huge sums requested because they stir fan interest, which in turn, sells tickets, and advertising space.

In conclusion, salary arbitration, despite its role in the escalation of salaries, is not necessarily an evil and may even be good for the game. It eliminates holdouts and prolonged salary disputes. It is also a fair way of resolving legitimate disputes without the time or cost of court involvement.

VI. Some Other Considerations and Suggestions for the Future

While arbitration rules are very specific as to what criteria may or may not be used, no specific weight is accorded any single factor.[236] As a result, each arbitrator has the discretion to award any weight to these variables that he believes is appropriate under the circumstances. This leaves many clubs, agents and players in a virtual guessing game, forcing them to produce as much evidence as possible concerning each factor. Many club executives have criticized these variables, claiming the inclusion of free agent salaries in the category of comparable salaries, is the direct cause of escalating salary arbitration awards.[237] Therefore, they claim that it should be excluded.[238] However, if free agent salaries are not included, the players

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and no losses since 1985. Other clubs, most notably Pittsburgh, have been more willing to "mix it up" in arbitration. *See supra* note 220. Last year the Pirates took Bonds, Bonilla and Drabek to arbitration hearings, winning all but the latter, yet wound up paying a combined 8.5 million dollars in salaries. Joe Sexton, *Cone and the Mets to Make Their Pitches in Arbitration*, N.Y. Times, Jan. 16, 1992, at B10. Perhaps this is why the Pirates settled with John Smiley, Barry Bonds, and Doug Drabek this year, but still were willing to take some of their lesser known players to hearings, such as Jose Lind and Jay Bell. The club one its arbitration hearing with Bell, but lost to Lind. Record (N.J.), Feb. 23, 1992, at S19. Recently, Smilely was traded to the Twins in return for two minor league players in what some observers feel was an effort to lower the club's salary structure. John Mehno, *Leyland Attempts to Quell the Storm*, Sporting News, Apr. 6, 1992, at S20.

235. Safian, *supra* note 10, at 121.

236. *Arbitrator's Game*, *supra* note 83, at 29.

237. Grebey, *supra* note 3, at 25.

238. *Id.*

claim that it will lead to an artificially depressed market.[239] Another, more problematic view is that the Players' Association is not likely to yield to such a demand, as witnessed during the 1990 lockout.[240]

Perhaps a more acceptable response would be to weigh one or more factors more heavily. The most relevant criterion would be the player's performance for the season preceding the arbitration hearing. While clubs have complained that one year is not indicative of a player's worth,[241] this would serve to reduce the likelihood of an arbitration victory by a player who has not performed up to expectation. Simultaneously, it would serve to reward a player who has produced.

Players may claim that this process would penalize a player who has had a bad year, but presumably, such a player, over his career would have already been rewarded for past performance, perhaps even through arbitration. Therefore, the only players hurt by this process would be those eligible for arbitration for the first time, who, having produced for two years, are experiencing a drop in production during their third season. To accomodate this, the weighted criterion should be an average of the player's statistics over the previous two years, rather than one.[242] This would not be an equivalent of the owners "pay for performance" proposal, because it would be merely a weighted factor in the arbitration process. While some may object to this proposal, it seems to be an acceptable manner of evaluating a player's contribution to his team over a period of time. More importantly, it may aid in building certain expectations on the part of both players and owners, eliminating some of the guess work in arbitration, and perhaps promoting even more pre-hearing settlements.

Adding to the confusion is a second factor: the fact that the rules do not allow for the publication of a written opinion by the arbitrator. Consequently, once a decision is rendered, labor, management, and the public are excluded from learning how the arbitrator reached his decision.

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239. Marvin Miller, *Arbitration of Baseball Salaries: Impartial Adjudication In Place of Management Fiat*, 38 ARB. J. 31 (1983). Miller argues that the most relevant of salaries to be considered by arbitrators are those of free agents. *Id.* at 34. Free agent salaries most accurately reflect the considerations that should be taken into account by an arbitrator in determining a fair salary. *Id.*

240. Murray Chass, *Owners Proposal Met with Sound Rejection*, N.Y. TIMES, Feb. 22, at B14.

241. Grebey, *supra* note 3, at 29.

242. James B. Dworkin, *Collective Bargaining in Baseball: Key Current Issues*, 39 LAB. L. J. 480-86 (Aug. 1988) (citing the ratings used by the Elias Sports Bureau to rank players at their respective positions).

It has been suggested that the arbitration procedure should be amended in order to provide a written opinion.[243] Even if the current criteria remain unchanged, the publication of an opinion would provide a more realistic understanding of the arbitration process and the reasoning behind a decision.

Even a short explanation, with listed reasons, would aid the parties by allowing them to see which factors are most important. Additionally, it would enable the parties to make a more informed decision in the area of arbitrator selection.[244] This would also allow researchers to compare, and test the criteria deemed controlling by the individual arbitrators.[245] Such information would help both sides in evaluating their position in negotiations, particularly the prospects of an arbitration hearing. At minimum a short written opinion could serve to eliminate some of the confusion surrounding the arbitrator's decision making process.

SUMMARY

Salary arbitration has remained a significant factor in the rise of players' salaries over the past decade, and will likely continue to do so in the immediate future.[246] Some of the concerns voiced by management are legitimate, others are pure rhetoric. In order for the salary arbitration process to be successful, management will have to become more selective in bidding on free agents of questionable value. Pursuit of a talented player, will result in the additional revenues a pennant may bring, while pursuit of a marginal player will only deplete revenues and inflate salary figures in arbitration.

Aside from changing the way teams approach the free agent market, management should attempt to implement minor changes in the arbitration procedure when negotiating the next Basic Agreement. Additionally, clubs are still free to release players prior to the arbitration hearing. However, this is a rare occurrence because owners loathe to allow talented players to be released into immediate free

243. *Id.* at 482.

244. *Id.* Some comentators have also suggested the use of a panel of three arbitrators with a "blind vote" in order to prevent the arbitrators from balancing the overall score card between players and owners, a phenomenon which management believes accounts for some unexplainable awards to players with less than startling statistics. *See Escalator, supra* note 161, at 10. Given this year's results, there may well be something to the owner's contentions as the players lost eight out of the first 10 arbitration hearings, but won the last seven out of ten. RECORD (N.J.), Feb. 23, 1992, at S12.

245. *Id.*

246. *Id.* at 480-81.

agency.[247] Between 1974 and 1985, only six of the 189 players who filed for arbitration were ever released in this manner.[248] In 1990, only two players, Greg Minton of the Angels and John Candelaria of the Expos, out of the remaining 161 players who filed for arbitration, became free agents in this manner.[249]

Recently, the clubs have been more willing to refrain from offering players arbitration to those players who have six years major league experience, who are often older players with higher salaries. This year fifty-six players were granted free agency in this manner.[250] The process allowed aging stars, for example, Dave Winfield and Jack Morris, to switch teams, but also relieved their former clubs of huge salaries.[251]

Despite owner complaints about salary arbitration, it seems likely that owners will continue to skew the arbitration process by engaging in bidding wars for players of lesser talent.[252] It is also likely that management will continue to blame arbitration for the increase in players' salaries, overlooking their own considerable role in the process.[253]

However, the owners should not lose sight of the fact that without salary arbitration, baseball would be rife with recurring labor dis-

247. Lock & DeSerpa, *supra* note 2, at 805.

248. *Id.*

249. RECORD (N.J.), Feb. 23, 1990, at D2. Also making history in 1990 was pitcher Joe Hesketh, who took a salary cut in arbitration, the first such player since 1988. *Sports People: Owners 5, Players 3*, N.Y. TIMES, Feb. 11, 1990, at S6. This year, Oakland's Mark McGuire and Walt Weiss settled their cases by accepting salary cuts. Nevertheless, McGuire will make $2.65 million in 1992 and Weiss will have a base salary of $760,000, but with possible incentives would make the $20,000 pay cut evaporate. See *Escalator, supra* note 161, at 9-10.

250. *See* Lock & DeSerpa, *supra* note 2. Among those 56 veterans not offered arbitration, 45 of them received a limited form of free-agency which meant that they could not negotiate with their former clubs until May 1, 1992, while 11 of these players were not so restricted (due to the lifting of the restriction on repeat free-agency within five years). *Transactions*, SPORTING NEWS, Dec. 16, 1991, at 31. This is one way a club can save money if it "picks the spots" wisely. For example, Cincinnati refused to offer veteran reliever Ted Power arbitration, thus making him a free-agent, however, Power, a Cincinnati resident, was willing to take considerably less than the $700,000 he earned in 1991, when he signed a minor league contract with the Reds. *See* Jerry Crasnick, *Cincinatti Reds*, SPORTING NEWS, Nov. 11, 1991, at 35; *see also Transactions*, SPORTING *News*, Feb. 17, 1992, at 11. Should Power make the Major League club and earn all his incentives, he will make $500,000. Jerry Crasnick, *Cincinatti Reds*, SPORTING NEWS, Feb. 24, 1992, at 23.

251. Neil MacCarl, *Toronto Blue Jay*, SPORTING NEWS, Feb. 17, 1992, at 16. Winfield has now joined the Toronto Blue Jays. *Id.* Morris became one of the five million dollar men. *See supra* note 72.

252. Bruning, *supra* note 135, at 11; *See* Gammons, *supra* note 106, at 50-53.

253. Bruning, *supra* note 135, at 11: *Accord* Murray Chass, *Security Guards: New Position at Camps*, N.Y. TIMES Feb. 11, 1990, at S9.

putes such as the holdouts by Roger Clemens and Kal Daniels. These disputes can breed team dissention, fan frustration and alienation, which may be reflected at the turnstiles and in the Nielson ratings.[254] While it would be advisable for the owners to seek some changes in the salary arbitration process, given the financially sound state of the game today,[255] it may be impractical to attempt to significantly overhaul the salary arbitration process at this time. Of course, if the current television revenues are depleted, the owners may have to reassess the entire process. This may entail an attempt to bargain arbitration away from the players, perhaps using a less stringent form of free agency requirement than the present six years service requirement. However, the owners may wish to consider the comments of former St. Louis Cardinals Manager and current Angels' General Manager, Whitey Herzog, who said during the 1990 lockout: "The only way the players association will give up arbitration is if the owners give up baseball."[256]

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254. RADAR, *supra* note 99, at 134-44 (1980). Such holdouts also wreak havoc with a team. Witness the holdouts/walkouts by Cincinnati's Joe Oliver and Jack Armstrong (now with Cleveland) in 1991. The Reds were coming off a world series win and both players were seeking new contracts. However, neither was eligible for arbitration, as each had just completed only their first full seasons in the major leagues. When negotiations were at a standstill, the Reds renewed Armstrong's contract at $215,000 (more than double his 1990 salary of $107,500). Armstrong, however, demanded $315,000, and when he did not receive his requested salary, he walked out of spring training camp in protest. Reds Report, Apr., 1991, at 4. Armstrong returned a week later and was fined $2,500. *Id.* Armstrong struggled throughout the 1991 season and was sent to the minor leagues on August 3, 1991. Reds Report, Oct. 1991, at 4. Although he was the starting pitcher in the 1990 All-Star game, by the time he was demoted to the minors, he had compiled a record of six wins and ten losses with a 5.60 E.R.A.. *Id.* Oliver was asking for a salary of approximately $300,000, but he was renewed at a salary of $185,000. Oliver returned to camp before being fined. Reds Report, Apr., 1991, at 4. Oliver also failed to return to his 1990 form, and by June 26 of the 1991 season, despite having approximately 100 at-bats, Oliver could only manage one home run and four RBI's. Reds Report, Aug., 1991, at 34. One can only wonder what effect these walkouts had on the physical and mental preparation for the 1991 season and what if any effect the walkouts played in the team dissention which seemed to grip the Reds in 1991, a year in which the Reds finished in fifth place. Whether that dissention carries over to the 1992 season will not be an issue for Armstrong as he was traded to Cleveland, along with pitcher Scott Scudder and a minor leaguer for Greg Swindell, who in turn promptly filed for arbitration with his new club. Murray Chass, *Baseball: The Wheel of Fortune: 149 Seek Arbitration*, N.Y. TIMES, Jan. 15, 1992, at B9. Swindell was another player who "won" by losing at arbitration when an arbitrator chose the club's figure of $2.5 million over Swindell's request of $3.67 million. RECORD (N.J.), Feb. 22, 1992, at B10.

255. Johnson & Taaffe, *supra* note 4, at 34-42.

256. *See* RECORD (N.J.), Feb. 11, 1990, at S2; see also Herzog, *supra* note 225, at 8. Mr. Herzog continuously reiterates his personal view that players will not give up on salary arbitration. *Id.*

It has been brought to our attention by the author that an article entitled: "*Arbitration: A Major League Effect On Players' Salaries*," which appeared in Vol. 2, No. 1, of the Journal, contained the following errors which affected the substance of the article.

Page 309 n. 72	- The reference to 1991 figures should read 1992.
Page 312, first full para.	- "So, regardless of arbitration . . .," should read "So, win or lose in arbitration. . . ."
Page 320, first full para.	- "In 1989, that figure rose seventy percent. . . .," should read: "In 1989, that figure rose to seventy percent. . . ."
Page 321, second para.	- "This result is that those players eligible for arbitration. . . .," should read: "This result is likely, given the fact that of all those players with two to three years experience, those players eligible for arbitration. . . ."
Page 321 n. 163	- "There were 14 players eligible. . . .," should read: "Of those players with two to three years experience, there were 14 players eligible. . . ."
Page 324, last para.	- "During the 1988 season, Daniels finished second. . . .," should read: "During the 1988 season, Daniels, then with Cincinnati, finished second. . . ."
Page 329, first full para.	- Footnote 226 is misplaced. It should appear over "negotiations." Footnote 227 is also misplaced. It should appear over "process."

The *Journal* regrets these errors.