
IT'S PAST TIME: UNIONIZATION AND SELF-DETERMINISM IN MINOR LEAGUE BASEBALL

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For more than a century, labor disputes have tormented the relationship between American professional baseball players and management. Although Major League Baseball players unionized in the 1960s, disagreements over workplace conditions and ever-growing profit allocations endured for decades. The first thirty years of collective bargaining between players and League post-unionization fostered notable improvements in players' labor conditions. However, those years were also plagued by acrimonious negotiations, grievances, lawsuits, lockouts, strikes, and eventually, the cancellation of the 1994 World Series.

The story in Minor League Baseball is altogether different. Its players, despite their close nexus with the Major League game, did not unionize alongside their Major League counterparts sixty years ago, and the workforce has suffered the consequences. Further frustrating MiLB labor progress is the sport's long-standing exemption from antitrust law and its exclusion from minimum wage and overtime requirements at both the federal and state level. These harms perpetuated severe working conditions, including long hours, grueling travel schedules, minimal job security, and fixed wages, placing Minor League players squarely in the throes of poverty.

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However, recent events signal change. Following a grassroots labor movement, Minor League players unionized in 2022 and signed their first collective bargaining agreement prior to the 2023 season. Nevertheless, the path ahead remains unclear for the blue-collar workers of baseball, as they must negotiate with a League that has been notoriously unwilling to make even the minutest of concessions without intimidation, anticompetitiveness, and endless litigation. This Note employs lessons from the history of labor in the sport to detail the terms of equitable labor conditions and posits that collective bargaining, while imperfect, presents a vital opportunity for players in the Minor Leagues to hold accountable the cartel that is Major League Baseball and escape the century-old grasp of poverty.

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INTRODUCTION

“[T]he major leagues cannot exist without the Minor Leagues.”

— Ford Frick, Commissioner of Baseball, 1953 Senate subcommittee hearing.¹

To the average spectator, the 2023 Minor League Baseball (“MiLB”) season appeared about the same as all that came before it. Each evening, the suffocating midsummer day’s heat abated, if for just a few hours, as communities large and small across the United States gathered separately but with a common fervor for a pastime as old and as embedded in the American social fabric as any other. A summer’s eve of *baseball* had arrived, and with it, the graceful duality of anticipation and contentment. Everyone in the almost-sold-out crowd had at least a 20 percent chance of getting blasted by the t-shirt cannon. Someone, of course, absolutely embarrassed themselves during the dizzy bat race. And the act’s performers were, as expected, an authentic embodiment of the game itself. Young players took the field, fervently battling for their very livelihoods and the hopes of one day taking the same field in a far bigger city, on a far grander stage. For most, that day will never come. And even for whom it will—it’s not today. Tonight, the players showcased brief-yet-dazzling moments of talent alongside a thematic lack of polish, noted by dozens of old-timers in the stands who occasionally stopped rambling on about how they themselves almost went pro to astutely observe that there’s a reason these boys aren’t in the Big Leagues.

In keeping with Minor League tradition, the perpetual buzz heard around the ground reflected baseball’s place not only in American sports history but also, perhaps more meaningfully, in our social lives. But not all was business as usual. For the first time since Minor League Baseball was established over a century ago, its players took the field each night playing for livable wages and comprehensive benefits alongside the assurance they may finally be able to exercise some control in their careers and create a path to vocational and financial security. Minor League Baseball’s primary

1. NEIL SULLIVAN, *THE MINORS* 239 (1990).

workforce has unionized, and collective bargaining has begun to assume (albeit far past due) its rightful place in the labor relationship between management and players in the Minor Leagues.²

Baseball is unflinchingly American—where batter and pitcher square off in brief, personal duels, and where periods of relative inaction give way to flashes of brilliance: the sharp crack of a long home run, the pop in the catcher’s mitt of a late-game *hit-this* fastball, a clean backhand in the hole turned crisp double play. And, becoming of our national pastime, nowhere on Earth is the sport played quite like it is in American professional baseball. There is an exceptionality to the game played at this level: a rare combination of speed, power, skill, and precision not overlooked by those it has enraptured since the late nineteenth century. The ambler among popular American sports, baseball’s thrill lies with potentiality rather than kinetics, emitting a subtle grace interrupted periodically by moments of pure electricity singular only to it. An outfielder might stand completely still while playing defense for eight innings, not even touching the baseball, then unleash a ninety-nine mile-per-hour, 220-foot *rocket*, throwing out an opposing runner at home plate to win the game in the ninth inning. No other major American sport can provide its fans a similar experience. At the heart of this experience is the players who provide it.

While other scholarship concerning Minor League labor has concentrated on the events precluding fair player treatment, this Note is the first after unionization to comprehensively evaluate both an existing collective bargaining agreement (“CBA”) and a way forward in the Minor League labor relationship. To do so, it will attempt to reconcile the dichotomy between the meandering, artful violence of America’s national pastime and the cancerous greed underlying it. Indeed, as activist players and commentators have slowly peeled back the layers underneath our nation’s most historic game, the deplorable self-indulgence which sits at the very core of baseball’s business sits exposed. Yet still, the depths of and the lengths gone to facilitate the widespread mistreatment of baseball players frame a shocking picture of how it took so long

2. Evan Drellich, *Guide to Minor League Baseball’s First CBA: Everything You Need to Know*, ATHLETIC (Apr. 3, 2023), <https://theathletic.com/4377736/2023/04/03/minor-league-baseball-cba-union> [<https://perma.cc/G9CE-FL9U>].

to effect material change in pursuit of labor parity in the sport, alongside wise lessons in how righting decades of wrongs is an achievable goal through collective bargaining. This Note will highlight these lessons through a historical lens of the sport and its labor relationships in order to advocate for fairness in the latter.

For more than a hundred years, various forms of baseball's management have adopted cartel-like tendencies—openly colluding to fix prices and restrict competition—while using ever-growing newspaper, radio, television, internet, and social media exposure to capitalize on baseball's popularity by carefully directing toward its consumers an image of the sport that reflects our own values and glorifies our own neighborhood heroes.³ Iconic sights and sounds of the sport's storied history feature its players, who fill our stadiums and our card decks, and who inspire in us feelings of Americana and community.⁴ Meanwhile, baseball's executives have reaped astronomical portions of profits from the shadows while laughably (yet successfully) propagating the false narrative that its players are overpaid prima donnas who should be thankful for the opportunities they've been "provided."⁵

These false narratives, which skew the public's perception of the game and dehumanize its players, have frustrated Major League Baseball (MLB or the "League") players' efforts throughout the past fifty years to secure a workplace appropriate for the on-field product of a sport bringing in titanic revenues.⁶ It is the Minor League player, though, who

3. William F. Saldutti IV, *Blocking Home: Major League Baseball Settles Blackout Restriction Case; However, a Collision with Antitrust Laws Is Still Inevitable*, 24 JEFFREY S. MOORAD SPORTS L.J. 49, 80 (2017).

4. Garrett R. Broshuis, *Touching Baseball's Untouchables: The Effects of Collective Bargaining on Minor League Baseball Players*, 4 HARV. J. SPORTS & ENT. L. 51, 56 (2013).

5. Letter from Robert D. Manfred, Jr., Commissioner, Major League Baseball, to members of Senate Comm. on the Judiciary (July 29, 2022) (on file with The Athletic); Stephen L. Carter, *Baseball Players Are Not Overpaid*, BLOOMBERG (Dec. 3, 2021, 9:00 AM), <https://www.bloomberg.com/opinion/articles/2021-12-03/baseball-lockout-are-players-overpaid-not-necessarily> [https://perma.cc/HVA2-WAN2].

6. See Emily Parker, *The Inevitability of Major League Baseball's Antitrust Exemption*, 11 ARIZ. ST. SPORTS & ENT. L.J. 23, 31–32 (2022) (explaining that despite MLB's revenue, League control and anticompetitiveness stunted player ability to actually compete for higher salaries in an open market); Robert Pannullo, *The Struggle for Labor Equality in Minor League Baseball: Exploring Unionization*, 34 ABA J. LAB. & EMP. L. 443, 456 (2020).

has been ubiquitously disregarded.⁷ And the enduring narrative that the opportunity to play professional baseball is simply a dream come true has frustrated commentator demands that the League and its participant organizations (“Clubs”) pay its players a livable wage and deliver adequate working conditions.

One may think it impossible that modern professional athletes in the United States suffer through a decade or more of physical labor, injuries, and foregone vocational alternatives in consideration for salaries placing them directly in poverty. Yet it is, and worse: players have been acutely aware of their exploitation for decades and have still found themselves prevented from acting for lack of resources and fear of retribution from their Clubs,⁸ all to the delight of the executives pocketing the cash. Even after Minor League players’ unionization, the fight to earn a comfortable wage persists.⁹

The game’s best players are those who make headlines, and the same players are often its highest earners. Fifty-five MLB players each earned more than \$20 million during the 2024 season,¹⁰ and since 2019, fourteen players have signed long-term contracts during which they will each earn more than \$300 million.¹¹ Because big-money deals are justifiably noteworthy, what better way to refute allegations of labor abuse than point to those paid in multiples of the average American and ask, simply, what do the players have to complain about? Conveniently for the League, the

7. See generally David Williams, *Major League Baseball’s Indentured Class: Why the Major League Baseball Players Association Should Include Minor League Players*, 53 U.S.F. L. REV. 515 (2019).

8. See Ross E. Davies, *Along Comes the Players Association: The Roots and Rise of Organized Labor in Major League Baseball*, 16 N.Y.U. J. LEGIS. & PUB. POL’Y 321, 324–46 (2013) (detailing the chronological history of labor activism in professional baseball, including the many failed organization attempts by players prior to the formation of the Major League Baseball Players Association).

9. Marc Normandin, *Major League Baseball’s Hubris Helped Lead to Minor League Baseball’s Union*, DEFECTOR (Oct. 14, 2022, 1:11 PM), <https://defector.com/major-league-baseballs-hubris-helped-lead-to-minor-league-baseballs-union> [<https://perma.cc/UZY6-MDFZ>] [hereinafter Normandin, *Hubris*].

10. *MLB Salary Rankings*, SPOTRAC, <https://www.spotrac.com/mlb/rankings> [<https://perma.cc/4S3L-5R27>].

11. This reflects the number of such deals signed as of March 1, 2024. See *id.*; see also Tim Dierkes, *The Largest Contracts in MLB History*, MLB TRADE RUMORS (Dec. 25, 2022, 10:00 PM), <https://www.mlbtraderumors.com/2021/02/mlb-largest-contracts-2.html> [<https://perma.cc/5JYK-KGUT>].

disproportionate number of headlines about the game's relatively few high payees perpetuates lingering assumptions that professional baseball players make substantially more money than they actually do.¹² It thus tracks that the story of the Minor League player remained for decades and up to nearly the moment of unionization a far more unsettling, yet infrequently publicized, topic.

After 122 years, Minor League players took steps to redress their ostracization by signing the league's first CBA prior to the 2023 season,¹³ becoming the largest unionized group of athletes in the United States.¹⁴ But despite unionization leading almost certainly to labor reform, future CBAs must do more to achieve what players deserve.¹⁵ Moreover, even in affording unionized workers increased bargaining power, collective bargaining is a complicated process that draws its fair share of criticism. Minor League players remain exempt from federal minimum wage, overtime, and antitrust protection.¹⁶ And the League has a storied history of doggedly facilitating and exploiting loopholes to leash its workforce.

Still, Minor League players aren't going at labor reform alone; their elected union representative is the Major League Baseball Players Association (MLBPA), arguably the most powerful athlete representative in the history of sports.¹⁷ The matters negotiated, arbitrated, and litigated by the MLBPA over the past fifty-plus years have concerned many issues

12. Daniel Ryan Axelrod, *Baseball's Minor Leaguers Call Foul: How the Save America's Pastime Act Strikes Out Within State Lines*, 49 HOFSTRA L. REV. 499, 499 (2021); see also Kevin Togami, *Bottom of the Ninth Circuit: Senne v. Kansas City Royals Baseball Corporation*, 40 LOY. L.A. ENT. L. REV. 311, 312 (2020).

13. *Minor League Players Overwhelmingly Approve Historic First Collective Bargaining Agreement*, MAJOR LEAGUE BASEBALL PLAYERS ASS'N (Mar. 31, 2023), <https://www.mlbplayers.com/post/minor-league-players-overwhelmingly-approve-historic-first-collective-bargaining-agreement> [<https://perma.cc/5XCC-L43A>].

14. See *infra* Section IV.A.

15. See generally *History*, MAJOR LEAGUE BASEBALL PLAYERS ASS'N, <https://www.mlbplayers.com/history> [<https://perma.cc/9LB3-UHHD>].

16. Theodore McDowell, *Changing the Game: Remediating the Deficiencies of Baseball's Antitrust Exemption in the Minor Leagues*, 9 HARV. J. SPORTS & ENT. L. 1, 8–9 (2018).

17. Barry Svrluga, *Tony Clark Named Executive Director of Major League Baseball Players Association*, WASH. POST (Dec. 3, 2013), https://www.washingtonpost.com/sports/nationals/tony-clark-named-executive-director-of-major-league-baseball-players-association/2013/12/03/e876855a-5c66-11e3-bc56-c6ca94801fac_story.html [<https://perma.cc/EWM5-L5JH>].

today's Minor League players now face. Granted, baseball's past is marred by a cocktail of anti-competitiveness, subjugation, and gluttony, and the initial CBA is not a true reflection of debts owed. Nevertheless, Minor League players at last find themselves able to do their jobs, pay rent, support their families, and work alongside the MLBPA in demanding that the value they bring to the sport is accounted for.

This Note contemplates the impacts of the aforementioned progress. In Part I, it provides an overview of the history of labor in baseball and the divergence of bargaining power over the almost sixty years MLB players have enjoyed a collective voice, including a discussion of both Major and Minor League Baseball's antitrust exemptions. Part II evaluates the sequence of events that led to the modern labor movement in Minor League Baseball, namely the filing and implications of *Senne v. Office of the Commissioner of Baseball* and MLB's extensive lobbying efforts in pursuit of the passage of the Save America's Pastime Act. Part III examines positive effects and drawbacks of collective bargaining. Part IV identifies both existing and potential friction points in MiLB collective bargaining, and Part V argues for the equitable terms that baseball's oft-marginalized working class deserves.

I. BENCHED: EXPLOITATIVE ORIGINS

Bad news, kids—Major League Baseball is a cartel.¹⁸ It's been one for a long time; in fact, anticompetitive tendencies arose as far back as 1882 when the National League of Baseball Clubs (“National League”), one of several competing professional baseball leagues,¹⁹ declared itself the top-flight league.²⁰ Because other leagues lacked any formal agreement, wealthy National League teams engaged in “roster-raiding,”

18. Michael J. Haupert, *The Economic History of Major League Baseball*, ECON. HIST. (Aug. 27, 2003), <https://eh.net/encyclopedia/the-economic-history-of-major-league-baseball> [<https://perma.cc/B5TE-S6WK>]; Broshuis, *supra* note 4, at 53, 72, 89, 91; Pannullo, *supra* note 6, at 455; Saldutti, *supra* note 3, at 65–66; Bernadette Berger, *Shut Up and Pitch: Major League Baseball's Power Struggle with Minor League Players in Senne v. Kansas City Royals Baseball Corp.*, 28 JEFFREY S. MOORAD SPORTS L.J. 53, 58–60 (2021); Williams, *supra* note 7, at 540; Dennis Hui, *Unionizing the NBA G League*, 25 SPORTS LAW. J. 113, 128 (2018); Matthew Durham, *Minor League Compensation and the Save America's Pastime Act of 2018*, 26 NEV. LAW. 17, 17 (2018).

19. See Davies, *supra* note 8, at 324.

20. Broshuis, *supra* note 4, at 58.

poaching the best players from rival leagues.²¹ To combat this, the National League signed inter-league agreements formalizing transaction processes, limiting unrestricted access to the best players.²² The agreements placed other leagues in subordinate tiers to the National League and laid the groundwork for today's hierarchal, affiliated MiLB system.²³

While affiliation allayed player-market volatility from Club perspectives, it tethered those players to their employers. Amateur players entered professional baseball only after being drafted, and their contracts contained reserve clauses—provisions that “reserved” one Club’s right to that player’s services in perpetuity.²⁴ These clauses essentially gave Clubs “property rights” barring players from ever freely contracting with any Club.²⁵ Player contracts thus affected more than a player’s mobility: they virtually eliminated player autonomy over career decisions.²⁶ Clubs enjoyed unchecked power on all player matters, including control over player promotions and demotions between the Major and Minor Leagues, all while retaining indefinite, exclusive rights to player services.²⁷ Although players objected immediately, it would take decades for change. This delay was partly a result of baseball’s antitrust exemption, as discussed in Section I.A. Section I.B details the efforts and eventual successes of a players’ union at the Major League level. The simultaneous plight of Minor League players is examined in Section I.C, which describes the divergence in labor conditions in the half century following the first Major League CBA.

A. *Minor League Baseball’s Antitrust Exemption*

Bad news again—the League is able to manipulate markets because it’s exempt from federal antitrust law. Baseball’s exemption from general antitrust liability makes it

21. *Id.*

22. *Id.*; see also Davies, *supra* note 8, at 324.

23. Broshuis, *supra* note 4, at 58–59.

24. Haupt, *supra* note 18; Ryan T. Dryer, *Beyond the Box Score: A Look at Collective Bargaining Agreements in Professional Sports and Their Effect on Competition*, 2008 J. DISP. RESOL. 267, 268 (2008).

25. ALBERT G. SPALDING, *AMERICA’S NATIONAL GAME: HISTORIC FACTS CONCERNING THE BEGINNING EVOLUTION, DEVELOPMENT AND POPULARITY OF BASE BALL* 272 (1911); Broshuis, *supra* note 4, at 59.

26. See, e.g., Davies, *supra* note 8, at 325–26.

27. See Broshuis, *supra* note 4, at 59.

the only major American professional sport with such immunity,²⁸ and the League's abuse of the exemption has downstream effects far wider than its own labor market. For most enterprises, the Sherman Antitrust Act of 1890 deems illegal "[e]very contract . . . or conspiracy[] in restraint of [interstate] trade or commerce."²⁹ The League restrains trade via, *inter alia*, limited labor markets, open collusion, reserve clauses, and uniform contracts; but despite blatantly suppressing competition,³⁰ courts have held for a hundred years that the League may do so exempt from federal antitrust law.³¹

The exemption, forever lacking any "democratic consensus,"³² originates from a 1922 Supreme Court decision categorizing baseball's nationwide activities as local exhibitions and thus "purely state affairs."³³ Because almost any sporting event is inherently local, this flawed reasoning has endured "on grounds everyone agrees are inapplicable today,"³⁴ while baseball's business expansion has inarguably placed it squarely in interstate commerce.³⁵ While the Curt Flood Act limited the exemption in 1998 by allowing MLB players to access federal antitrust protection, Minor League players remain subject to the same monopolistic conventions.³⁶ The practical effect is that the League may conspire with all thirty member Clubs—each worth, on average, \$2.32 billion³⁷—to depress MiLB wages, extend contract lengths, or otherwise collude to keep

28. Parker, *supra* note 6, at 31; see also John R. Gerba, *Instant Replay: A Review of the Case of Maurice Clarett, the Application of the Non-Statutory Labor Exemption, and its Protection of the NFL Draft Eligibility Rule*, 73 *FORDHAM L. REV.* 2383, 2386 (2005).

29. 15 U.S.C. § 1.

30. *Id.*

31. Nathaniel Grow, *The Save America's Pastime Act: Special-Interest Legislation Epitomized*, 90 *U. COLO. L. REV.* 1013, 1018 (2019).

32. Petition for a Writ of Certiorari at 2, *Tri-City ValleyCats v. Office of the Comm'r of Baseball*, 144 S. Ct. 389 (2023) (No. 23-283).

33. *Fed. Baseball Club of Baltimore v. Nat'l League of Pro. Base Ball Clubs*, 259 U.S. 200, 208 (1922).

34. Petition for Writ of Certiorari at 2, *Tri-City ValleyCats*, 144 S. Ct. 389 (No. 23-283).

35. Karen M. Lent & Anthony J. Dreyer, *The Current State of Major League Baseball's Antitrust Exemption*, *REUTERS* (July 20, 2023, 8:43 AM), <https://www.reuters.com/legal/legalindustry/current-state-major-league-baseballs-antitrust-exemption-2023-07-20/> [<https://perma.cc/GFP8-E8SY>].

36. Berger, *supra* note 18, at 69.

37. *Id.* at 11.

their pockets filled without repercussion. The real-life effect is that the League has done exactly that for decades.

Players aren't the only victims of these exemption-enabled League behaviors—so are you. Across the United States, communities centered around sports franchises benefit from the revenue that those franchises bring into the local economy, the jobs created therein, and the cohesiveness that sports tribalism helps sew into social fabric.³⁸ When the League creates artificial scarcity—either in its own labor market or by franchise disaffiliation or relocation—it distorts interstate market conditions and creates downstream effects causing hardships at the community level across the United States.³⁹ The League promotes (with impunity) its own interests at the expense of “the needs of the market,”⁴⁰ resulting in revenue, jobs, and cohesion stripped from hundreds of thousands of people in dozens of communities at once. No need to propose a hypothetical—just look back at 2020, when MLB cut forty-two affiliate franchises.⁴¹ More accurately, the League “took over the market, decided the number of participants, and dictated which minor league teams would be in or out.”⁴² Harms caused by the League extended well past the franchises and players themselves and into each of these communities,⁴³ but that's what a cartel does.⁴⁴

Language noting MLB bosses' kinship with cartels, monopolies, and “private . . . dictatorship[s]”⁴⁵ is rather abundant and yet goes largely uncontested by those it condemns. Baseball's management often relies on the paradoxical argument that extinguishing competition is good for the sport. In a 2022 letter to a Senate Judiciary Committee

38. *Id.* at 19.

39. *Id.* at 18–20.

40. *Id.* at 19.

41. Joan Niesen, *Following Contraction, Minor League Baseball Is Smaller. But Is It Better?*, GLOB. SPORT MATTERS (Oct. 19, 2021), <https://globalsportmatters.com/business/2021/10/19/minor-league-baseball-contraction-smaller-better-union-mlb-housing> [<https://perma.cc/3T9B-DPHK>].

42. Petition for Writ of Certiorari at 19, *Tri-City ValleyCats*, 144 S. Ct. 389 (No. 23-283).

43. *Id.* at 18; see also Brief of Amicus Curiae Major League Baseball Players Association in Support of Petitioners at 4, 13, *Tri-City ValleyCats*, 144 S. Ct. 389 (No. 23-283).

44. *Cartel*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/cartel> [<https://perma.cc/2AQ4-JY3C>].

45. *Gardella v. Chandler*, 172 F.2d 402, 415 (2d Cir. 1949).

investigating the effects of the exemption, MLB Commissioner Rob Manfred even went so far as to assert it has “meaningfully improved the lives of Minor League players, including their terms and conditions of employment.”⁴⁶ This sort of “anticompetitive is good” nonsense is a recurring motif among baseball executives. In 1967, Atlanta Braves General Manager Paul Richards dubbed the MLBPA’s first Executive Director Marvin Miller an “outsider,” while predicting free agency would eliminate the marketability of “90 per cent [*sic*] of all ballplayers.”⁴⁷

Richards was spectacularly wrong on both accounts then, as Manfred is now—Mr. Miller went on to lead the MLBPA from 1966 to 1982, forever altering baseball’s labor landscape.⁴⁸ Both Richards and Manfred surely knew the absurdity of trying to reframe player opportunity as a feature, rather than a bug, of anticompetitiveness. Otherwise, they both appear to have fundamentally misunderstood the disparate economics of monopolized and free labor markets, as evidenced by what happened *immediately* after what Richards said would be catastrophic for MLB players. In 1975, the last MLB season without free agency, the average salary was \$45,000.⁴⁹ In less than a decade, it had grown to \$289,000,⁵⁰ and by 2020 to \$4.4 million.⁵¹ Attributing this wage growth to factors other than free agency is unsupported—comparisons of revenue and salaries over time overwhelmingly support free agency’s primacy. Between 1975 and 2002, MLB revenues increased 1,800 percent, while player salaries increased 5,200 percent.⁵² The sharp increase in both values indicates that the sport remained overwhelmingly financially healthy, while the chasm between them reflects free agency’s primacy in wage growth. Free agency didn’t eliminate marketability—it fostered competition in labor markets that would have been impossible without MLB player unionization in the 1960s and subsequent

46. Manfred, *supra* note 5.

47. *Players Get ‘Warning’*, PITT. PRESS (Dec. 1, 1967).

48. Richard Goldstein, *Marvin Miller, Union Leader Who Changed Baseball, Dies at 95*, N.Y. TIMES (Nov. 27, 2012), <https://www.nytimes.com/2012/11/28/sports/baseball/marvin-miller-union-leader-who-changed-baseball-dies-at-95.html> [<https://perma.cc/6AZB-S9FE>].

49. Hauptert, *supra* note 18.

50. *Id.*

51. Pannullo, *supra* note 6, at 452.

52. Hauptert, *supra* note 18.

negotiations to limit the effects of baseball's antitrust exemption. For this, MLB players have their predecessors and the MLBPA to thank.

B. Unionization of MLB Players

The MLBPA was hardly the first attempt to organize MLB players. Baseball's workforce strove as early as the 1880s to combat growing labor exploitation, but initial efforts to organize proved futile.⁵³ Unionization efforts rose and fell in the first half of the twentieth century;⁵⁴ although they informed future decisions and paved the way for MLBPA successes, they were plagued by weak leadership, low player support, financial trouble, and fierce opposition from far wealthier management. All ultimately failed.⁵⁵ Even the MLBPA was functionally ineffective as a players' union for more than a decade—although founded in 1954, it was 1968 before the MLBPA negotiated the first CBA in the history of top-flight professional sports.⁵⁶

MLB players' struggle to organize reflects the sport's longstanding power imbalance. The most flagrant evidence of that imbalance—and MLB player motivations to unionize—was the aforementioned reserve clause.⁵⁷ In response to decades of depressed wages and forced immobility, generations of players did what they could to fight the reserve clause—or escape it.⁵⁸ In the 1940s, MLB players frustrated with these contracts accepted offers to play in Mexico.⁵⁹ Later, the same players lost years from their careers after Commissioner Happy Chandler blacklisted any player who left from returning to the League.⁶⁰ Although the dispute eventually settled and the clause survived, the U.S. Court of Appeals for the Second Circuit in *Gardella v. Major League Baseball* assigned blame to the

53. Davies, *supra* note 8, at 325–36.

54. Player-led labor organizations included the Brotherhood of Professional Base Ball Players, the Players' Protective Association, the Fraternity of Professional Baseball Players of America, the National Baseball Players Association of the United States, and the American Baseball Guild. *See id.* at 325–34.

55. *Id.* at 325–37.

56. Broshuis, *supra* note 4, at 55.

57. *Id.* at 65–66.

58. SPALDING, *supra* note 25, at 272.

59. Hauptert, *supra* note 18.

60. *Id.*

reserve clause, calling for its eradication because “no court should strive ingeniously to legalize a private . . . dictatorship.”⁶¹

While unionization didn’t immediately abolish the reserve clause, it achieved other resolutions for MLB players on the way; the 1968 CBA contained important provisions establishing a formal grievance process, a pension plan, and higher minimum salaries.⁶² In 1970, the second MLB CBA built upon the foundation of the first by establishing a binding, neutral arbitration process for dispute resolution. This was critical for players who had previously only been able to file grievances against baseball’s management with management itself.⁶³ Arbitration became an important mechanism for dispute resolution, but sharper disagreements remained,⁶⁴ as play stoppages and lawsuits subsequently plagued the sport for more than a quarter century.⁶⁵

Perhaps most notably, the League stood unwavering on the reserve clause, while players placed it in their crosshairs.⁶⁶ In 1972, MLB star Curt Flood filed a lawsuit after being traded to the Philadelphia Phillies, a Club and city he had no interest in. However, in deciding *Flood v. Kuhn*, the United States Supreme Court refrained from ruling on the legality of the reserve clause.⁶⁷ By dusting off its cryptic and often selectively misplaced *stare decisis* survival guide, and despite noting baseball’s antitrust exemption was an “aberration”⁶⁸ widely held to be “unrealistic, inconsistent, [and] illogical,”⁶⁹ the Court punted to Congress and the clause survived.⁷⁰

Despite the Court’s balk in *Flood*, the reserve clause in MLB contracts was on borrowed time. Three years later, MLB pitchers, Andy Messersmith and Dave McNally, employed the

61. *Gardella v. Chandler*, 172 F.2d 402, 415 (2d Cir. 1949); *see also* Hauptert, *supra* note 18.

62. *See History*, *supra* note 15.

63. *Id.*

64. *See id.*; Broshuis, *supra* note 4, at 70–72.

65. *See generally History*, *supra* note 15.

66. Stephen F. Ross & Michael James, Jr., *A Strategic Legal Challenge to the Unforeseen Anticompetitive and Racially Discriminatory Effects of Baseball’s North American Draft*, 115 COLUM. L. REV. SIDEBAR 127, 144 (2015).

67. *Flood v. Kuhn*, 407 U.S. 258 (1972); *History*, *supra* note 15; Williams, *supra* note 7, at 538–39.

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

69. *Id.* (quoting *Radovich v. Nat’l Football League*, 352 U.S. 445, 452 (1957)).

70. *Id.* at 285.

new dispute resolution provision from the 1970 CBA to challenge the clause in front of MLB-appointed neutral arbitrator, Peter Seitz.⁷¹ Seitz held in favor of the players and determined that Clubs could no longer perpetually renew a player's contract.⁷² Seitz was fired by the owners *the same day* in retaliation for the decision,⁷³ but the reserve clause was eradicated from MLB contracts and the 1976 CBA codified its permanent erasure; all MLB players would thereafter be eligible for free agency after six years of service time.⁷⁴ Incredibly, it took only seven years following MLB's first CBA for players to finally achieve what we now know as free agency.⁷⁵

Free agency became as invaluable for players as its absence was previously worth to the League, and salaries skyrocketed alongside labor market competition. In the 1980s and 1990s, Clubs made horizontal deals with each other to suppress wages,⁷⁶ and dozens of collusion allegations led to the League paying settlements worth nearly \$300 million.⁷⁷ But loss after loss in court did little to deter the League and its Clubs from attempting to seize back control, again in unsavory fashion. During 1994 CBA negotiations, the League demanded a salary cap and regressive free agency terms.⁷⁸ MLB players went on strike, the remainder of the season was cancelled, and the 1994 World Series was never played.⁷⁹ MLB owners then threatened to establish a salary cap and remove third-party arbitration for salary disputes.⁸⁰ Although quickly rescinded, the threat drew complaints with the National Labor Relations Board, and in April 1995, then-Judge Sonia Sotomayor of the U.S. District Court for the Southern District of New York held that the League engaged in unfair labor practices by

71. Broshuis, *supra* note 4, at 71.

72. Davies, *supra* note 8, at 341; Dryer, *supra* note 24, at 270.

73. See Thomas J. Hopkins, *Arbitration: A Major League Effect on Players' Salaries*, 2 SETON HALL J. SPORT L. 301, 309 (1992).

74. Broshuis, *supra* note 4, at 71–72.

75. *History*, *supra* note 15; Broshuis, *supra* note 4, at 71–72.

76. Davies, *supra* note 8, at 344.

77. *Id.*

78. Broshuis, *supra* note 4, at 80.

79. See *Silverman v. Major League Baseball Player Rel. Comm., Inc.*, 880 F. Supp. 246, 251 (S.D.N.Y.), *aff'd*, 67 F.3d 1054 (2d Cir. 1995).

80. *Id.* at 252.

attempting to unilaterally impose its preferred labor terms on employees.⁸¹

The hits kept on coming. In 1998, the Curt Flood Act codified MLB players' protection under federal antitrust law, enabling player access to antitrust litigation.⁸² The law not only fostered competition on the field, but it also at last cooled the parties' attitudes toward litigating off of it. Since the turn of the century, the labor relationship between the League and the MLBPA has been less contentious, if only marginally so. Tensions remain, including a 100-day lockout in 2022 that eventually resulted in a full 162-game schedule,⁸³ but compared to the relationship's infancy, management and employees have struck relative harmony over the past twenty years in baseball's top-flight league. Despite MLB's quasi-peace, the introduction of collective bargaining in the Minor Leagues, when compared with conditions prior to it, suggests future strife. After a strike-, lockout-, and litigation-laden period dominated labor dealings in baseball from the establishment of the MLBPA in the sixties through the mid-nineties, the notion that early days of labor terms will mirror the current MLB-MLBPA relationship colors a shade optimistic.⁸⁴

C. *Delegitimizing Minor League Players*

The League has long exploited the collective organizational vacuum in Minor League Baseball to subjugate its workforce, failing to assist with some of players' most basic human needs. Among those needs, housing has always been a massive problem for Minor League players, as Clubs have been reluctant to shoulder responsibility for players who are often shuffled cross-country between affiliates at a moment's notice.⁸⁵ As a result, players required to juggle a demanding

81. *Id.*; Davies, *supra* note 8, at 344–45; *see also infra* Part III.

82. Davies, *supra* note 8, at 345.

83. Maury Brown, *With MLB Lockout Over, Here Are All the Details of New 2022-26 Labor Deal*, FORBES (Mar. 10, 2022, 10:05 PM), <https://www.forbes.com/sites/maurybrown/2022/03/10/with-mlb-lockout-over-here-are-all-the-details-of-new-2022-26-labor-deal> [<https://perma.cc/Z6WW-Z7Y4>].

84. Davies, *supra* note 8, at 347.

85. Jeff Passan, *MLB to Pay \$185 Million in Settlement with MiLB Players over Minimum-Wage and Overtime Allegations*, ESPN (July 15, 2022), https://www.espn.com/mlb/story/_/id/34249632/mlb-pay-185-million-settlement-minor-league-players-minimum-wage-allegations [<https://perma.cc/SQK2-Y3CG>].

career for almost no money and while being consistently uprooted have resorted to living in overcrowded apartments, with host families, or even in their cars.⁸⁶ While these issues existed for decades, activist-era players started speaking out: in 2021, reports of Baltimore Orioles players living in their cars prompted the Club to “allow” players to split hotel rooms for lower nightly rates.⁸⁷ The offer from the Orioles was far from generous; to rent a room, players had to spend 40 percent of their daily wage instead of the usual 80 percent.⁸⁸ It wasn't just the Orioles; in 2021, the final year before all Clubs were required by the League to take responsibility for player lodging, only one of the thirty Clubs provided housing for all of its Minor League players.⁸⁹

In the past, Minor League players have been, quite literally, left out in the cold both during the season and between seasons.⁹⁰ Even while housing reform was mandated for all Clubs across Minor League Baseball before the 2023 CBA, glaring problems remained, including cramped sleeping arrangements, privacy concerns, mixed housing between player families and single players, and more.⁹¹ These issues, along with player salaries and much more, exemplify just how badly Minor League players needed organizational help to stop their exploitation.

Nowhere is this premise more evident, nor more directly illustrative of the MiLB player's hardship, than wage increases of unionized MLB players compared with their nonunionized MiLB counterparts.⁹² Between 1976—the League's first year with free agency—and the 2022 season, the MLB minimum salary increased by an astronomical 3,584 percent.⁹³ During the same time period, the median individual income in the

86. Axelrod, *supra* note 12, at 507; Nathan Ruiz, *As Advocate Group Raises Concerns About Housing for Orioles Minor Leaguers, GM Mike Elias Says Club Would 'Never Allow a Situation Where Someone Is Not Safe*, BALT. SUN (June 17, 2021), <https://www.baltimoresun.com/sports/orioles/bs-sp-orioles-minor-league-housing-20210617-d6lxf4mdtzag7juoqc5mjeexei-story.html> [https://perma.cc/AZ4W-8LY8].

87. Ruiz, *supra* note 86.

88. *Id.*

89. *Id.*

90. See McDowell, *supra* note 16, at 20.

91. MORE THAN BASEBALL, LEFT STRANDED: HOW MAJOR LEAGUE BASEBALL LEAVES MiLB PLAYERS BEHIND 10 (2022) [hereinafter MORE THAN BASEBALL].

92. See *supra* Section I.A.

93. Broshuis, *supra* note 4, at 92 n.286; see also Brown, *supra* note 83.

United States rose 792 percent.⁹⁴ The federal poverty line increased by 377 percent.⁹⁵ MiLB minimum salary? 129 percent.⁹⁶ This means Minor League players, who were already playing in poverty in the seventies, watched the threshold to escape poverty increase three times faster than their wages.

In the face of irrefutable fact, the League consistently pretends things are wages that are decidedly not wages. In 2022, it claimed to spend \$108,000 each year per MiLB player on compensation and benefits.⁹⁷ Commissioner Manfred, who is paid an annual ‘living wage’ of \$17.5 million, “reject[ed] the premise that Minor League players are not paid a living wage.”⁹⁸ Reality paints a picture diametrically opposed to Manfred’s ironic and “callous” claim.⁹⁹ At the time, wages in the lower levels of the Minor Leagues were just more than \$1,000 a month—players received paychecks only during the five-month season, and some players earned as little as \$4,800 for the entire season.¹⁰⁰ These concerns existed across the board; players at every level were compensated below the

94. The median individual income in the United States was \$5,375 in 1976 and \$47,960 in 2022. U.S. CENSUS BUREAU, P60 No. 114, CONSUMER INCOME: MONEY INCOME IN 1976 OF FAMILIES AND PERSONS IN THE UNITED STATES 1 (1978); U.S. CENSUS BUREAU, P60 No. 279, INCOME IN THE UNITED STATES 8 (2023).

95. The poverty threshold in 1976 for a family of four was \$5,815. By 2022, that number had risen to \$27,750. U.S. CENSUS BUREAU, P60 No. 115, CONSUMER INCOME: CHARACTERISTICS OF THE POPULATION BELOW THE POVERTY LEVEL: 1976 1 (1978); DEP’T OF HEALTH AND HUM. SERV., Annual Update of the HHS Poverty Guidelines, 87 Fed. Reg. 3315, 3316 (Jan. 21, 2022).

96. Many estimates placed pre-unionized Minor League salaries at less than \$10,000 per year, compared with the minor league minimum of \$4,375 from 1976. Even this is generous. The 2022 minimum salary estimate of \$10,000 assumes each player is paid a minimum of \$500 per week for a full five-month season. In reality, many players played shorter seasons in which they are paid less than \$400 a week for less than four months. The higher estimate was chosen to illustrate the divergence in salaries for MLB and MiLB players playing full seasons. See Jeremy Ulm, *Antitrust Changeup: How a Single Antitrust Reform Could Be a Home Run for Minor League Baseball Players*, 125 DICK. L. REV. 227, 242 (2020); see also Broshuis, *supra* note 4, at 63, 92.

97. Manfred, *supra* note 5.

98. Ricky O’Donnell, *Rob Manfred’s Comments on Minor Leaguers Show He Has No Idea What a Living Wage Is*, SB NATION (July 20, 2022, 7:00 AM), <https://www.sbnation.com/mlb/2022/7/20/23270625/rob-manfred-minor-leaguers-living-wage-comments-calculator> [<https://perma.cc/RAV3-96US>].

99. Jelani Scott, *Minor League Advocate Weighs in on Manfred’s Antitrust Exemption Letter*, SPORTS ILLUSTRATED (July 29, 2022), <https://www.si.com/mlb/2022/07/29/minor-leaguer-advocate-harry-marino-weighs-in-rob-manfred-antitrust-exemption-letter> [<https://perma.cc/U3RY-CXCN>].

100. McDowell, *supra* note 16, at 3; see also Drellich, *supra* note 2.

federally recognized poverty line.¹⁰¹ In 2018, a first-year player in Triple-A, just one level away from the Big Leagues, made \$11,825 over the entire *season*.¹⁰² The poverty threshold in 2018? \$12,140.¹⁰³

Signing bonuses, too, are not wages. Despite League attempts to lump player bonuses and wages together in support of the argument that its players are not underpaid,¹⁰⁴ bonuses are research and development expenses offered to incentivize a draftee to forego other alternatives—not wages.¹⁰⁵ Wages and bonuses in the Minor Leagues are peanuts and Cracker Jacks—wages are compensation for performed services, bonuses are the cost of having the right to access that player's services. Of course, many players do receive bonuses when they're drafted, but while some draftees are offered high amounts, 40 percent of drafted¹⁰⁶ players receive less than \$10,000.¹⁰⁷ Furthermore, signing bonuses are artificially depressed by League-recommended amounts and bonus caps,¹⁰⁸ and the market is further constrained by the fact that drafted players are only able to negotiate with the Club that drafted them.¹⁰⁹

101. Levi Weaver, *On Minor-League Pay, MLB's Stance Doesn't Line Up with the Facts*, ATHLETIC (Apr. 4, 2018), <https://www.theathletic.com/293189/2018/04/04/on-minor-league-pay-mlbs-stance-doesnt-line-up-with-the-facts> [https://perma.cc/J4MA-BW5S].

102. *Id.*

103. *Id.*

104. Pannullo, *supra* note 6, at 447; *see also* Manfred, *supra* note 5.

105. Pannullo, *supra* note 6, at 448.

106. This statistic does not take into account the high number of undrafted players also entering professional baseball, almost none of whom receive meaningful signing bonuses; as an example, when the author signed as an undrafted free agent in 2013, he received no signing bonus. In 2023, there were 614 total players selected in the MLB draft, and 229 additional players signed to undrafted free agent contracts. *See* R.J. Anderson & Stephen Pianovich, *2023 MLB Draft Tracker, Results: Full List of All 614 Picks, Plus Analysis of Every First-Round Selection*, CBS SPORTS (July 12, 2023 9:48 AM), <https://www.cbssports.com/mlb/news/2023-mlb-draft-tracker-results-full-list-of-all-614-picks-plus-analysis-of-every-first-round-selection> [https://perma.cc/ME8Y-7N24]; BA Staff, *2023 MLB Undrafted Free Agent Tracker: Agreements for All 30 Teams*, BASEBALL AM. (July 28, 2023), <https://www.baseballamerica.com/stories/2023-mlb-undrafted-free-agent-tracker-agreements-for-all-30-teams> [https://perma.cc/4RMQ-PK2N].

107. Weaver, *supra* note 101; *see also* Ulm, *supra* note 96, at 242.

108. Garrett R. Broshuis, *Deterring Opportunism Through Clawbacks: Lessons for Executive Compensation from Minor League Baseball*, 57 ST. LOUIS U. L.J. 185, 196–98 (2012).

109. *See* Pannullo, *supra* note 6, at 448.

In addition to gaslighting its audience that a \$4,800 annual salary is a living wage, the League has also defended payroll decisions by publicly vying to categorize players as seasonal workers and entertainers.¹¹⁰ In the words of Commissioner Manfred, Clubs “provide playing opportunities for minor-league players. It’s a six-month job. Just like entertainers often work six months at a pop. The other six months are the responsibility of the employee!”¹¹¹ U.S. judges disagree; this argument has been repeatedly shot down by federal courts and the Department of Labor.¹¹² Apparently ignorant of the physical labor required during the “other six months,” Manfred also fails to observe that unlike musicians and entertainers, who can freely enter into contracts to perform as they choose and reap the benefits of their successes and increased popularity to demand better pay and benefits, Minor League players are contractually bound for years on end.¹¹³

This last point is crucial: League management has consistently perpetuated low wages and stifled the MiLB labor market via a modified form of the reserve clause.¹¹⁴ There’s a reason MLB players fought so hard against the clause in the 1970s—it has contaminated player contracts since the earliest days of baseball. *Gardella*, the 1976 CBA, and the Curt Flood Act slowly chipped away the effects of the reserve clause from the League over the second half of the twentieth century; however, core elements of the clause and its function remain in modern MiLB contracts.

While Clubs no longer hold both exclusive and infinite rights to players’ services, don’t sit fastball here—Minor League contracts still operate almost identically in practice. The first professional contract signed by almost every player is the same, and each has long and non-negotiable contract lengths—usually covering the first seven seasons of the player’s career.¹¹⁵ And because most players entering professional baseball are drafted, they have no choice of employer.¹¹⁶ Even the game’s most coveted prospects often find themselves under contract with one Club for their entire

110. Axelrod, *supra* note 12, at 501.

111. Weaver, *supra* note 101.

112. Axelrod, *supra* note 12, at 510.

113. *Id.*; McDowell, *supra* note 16, at 9–10; see Broshuis, *supra* note 4, at 64.

114. *See supra* Part I.

115. McDowell, *supra* note 16, at 9.

116. *Id.*

careers—they can be held in the Minor Leagues for seven years, and even if they make it to the Major Leagues, MLB players are only eligible for free agency after six full seasons.¹¹⁷ Six years is difficult to reach—Clubs can demote players to the Minor Leagues for multiple years while retaining sole rights to the player,¹¹⁸ intentionally suppressing the player's time spent in the Major Leagues and delaying free agency.¹¹⁹ The interplay of these complex rules means a player could be employed by a single Club for *sixteen* years.¹²⁰ Frankly, few players have career lengths anywhere near this, which means the real-life effect is that the reserve clause remains functionally indefinite. For decades, the League used these practices to leash its Minor League players and subsidize its future MLB product with talent paid below the poverty line. But MiLB exploitation over time eventually met resistance as tensions bubbled beneath the surface.

II. GETTING HOT: THE PRECURSORS TO UNIONIZATION

MLB enjoyed a full century of profitability in no small part due to its cartel control over a developmental league fully subsidizing its future MLB labor force—while denying its workers the “basic right of freedom of contract.”¹²¹ However, players kept receipts, and the filing of a game-changing lawsuit in 2014 and the League's knee-jerk reaction shortly thereafter signified the beginning of the end of the League's unchecked power in the Minor Leagues.

117. Weaver, *supra* note 101.

118. *Minor League Options*, MLB, <https://www.mlb.com/glossary/transactions/minor-league-options> [<https://perma.cc/AYJ3-8FX3>].

119. Mike Axisa, *Mariners President Kevin Mather Admits Team Manipulates Service Time and Criticizes Player's English in Video*, CBS SPORTS (Feb. 22, 2021, 2:26 PM), <https://www.cbssports.com/mlb/news/mariners-president-kevin-mather-admits-team-manipulates-service-time-and-criticizes-players-english-in-video> [<https://perma.cc/NB5B-KLEF>].

120. This is calculated in accordance with the following unlikely, but completely possible, scenario: player drafted + 7 years of MiLB control + Added to MLB Roster + 3 years optioned from MLB roster in Spring Training with no service time accrued + 6 years of service time.

121. Brief of Amicus Curiae Major League Baseball Players Association in Support of Petitioners at 6, *Tri-City ValleyCats*, 144 S. Ct. 389 (No. 23-283).

A. Senne

Senne v. Office of the Commissioner of Baseball was a class-action lawsuit that became highly publicized not only for its success but also because it amplified grumblings about MiLB work conditions.¹²² The first-named party in the lawsuit, Aaron Senne, was a Minor League player forced to end his baseball career because, like so many others, playing baseball became financially unsustainable.¹²³ The *Senne* complaint pointed to open collusion among the League and its Clubs to intentionally suppress player wages and benefits; many MiLB players signed on to the class, which was twice-expanded in the suit's first six months.¹²⁴ The effect was twofold: not only did it facilitate player awareness and dialogue over workplace conditions around the country,¹²⁵ it also got the attention of the League.

In 2016, concerned over *Senne* and financial implications following the prospect of having to pay its players even a penny more,¹²⁶ the League undertook an extensive lobbying campaign for legislative protection from federal minimum wage and overtime laws.¹²⁷ MiLB affiliate owners, long under threat that League owners would consolidate the Minor League system, grew concerned about the longevity of their businesses.¹²⁸ MiLB owners realized that the League, if faced with paying higher player salaries, could likely achieve cost-cutting through reductions in subsidies to Minor League affiliates and possible contraction affecting a significant portion of Minor League Baseball.¹²⁹ These owners joined the League in its lobbying

122. Togami, *supra* note 12, at 315.

123. Theodore Tollefson, *How a Mayo High School Grad Paved Way for Minor League Baseball Players to Earn a Living Wage*, POST BULLETIN (Sept. 22, 2022, 7:00 AM), <https://www.postbulletin.com/sports/how-a-mayo-high-school-grad-paved-way-for-minor-league-baseball-players-to-earn-a-living-wage> [https://perma.cc/M9DK-S9JY].

124. See Matt Bonesteel, *Minor League Baseball Players' Lawsuit Alleges that MLB Isn't Paying Them Minimum Wage*, WASH. POST (July 16, 2014, 9:32 AM), <https://www.washingtonpost.com/news/early-lead/wp/2014/07/16/minor-league-baseball-players-lawsuit-alleges-that-mlb-isnt-paying-them-minimum-wage> [https://perma.cc/LGM2-V2JK].

125. Normandin, *Hubris*, *supra* note 9.

126. Grow, *supra* note 31, at 1024.

127. Axelrod, *supra* note 12, at 510–11.

128. See Parker, *supra* note 6, at 57–58.

129. Grow, *supra* note 31, at 1024–25.

efforts,¹³⁰ and the Save America's Pastime Act ("SAPA"), more appropriately known as the "River of Molten Sewage,"¹³¹ was introduced in Congress in 2016.¹³²

B. The River of Molten Sewage

SAPA sought to exclude Minor League players from minimum wage requirements and overtime protections under the Fair Labor Standards Act (FLSA) and, in so doing, supersede *Senne*.¹³³ SAPA is a misnomer *non sequitur*. Really, SAPA saved nothing but the dirtiest corners of our national pastime; it further padded the pockets of the League's "eleven-figure industry . . . preying on [the] powerless, invisible backbone that actually needs to be saved."¹³⁴ Immediate backlash from fans and sports media was so severe, one of the bill's sponsors withdrew her support of the bill less than a week after introducing it, and SAPA went nowhere.¹³⁵ However, the League laid in wait to reintroduce SAPA as a must-pass bill. Two years and two government shutdowns later, Congress was up against a deadline to keep the government open.¹³⁶ The public discovered SAPA's inclusion only five days before the deadline via a leak by congressional officials,¹³⁷ and despite

130. *Id.* at 1025.

131. Grant Brisbee, *Here's Why the Save America's Pastime Act Is a River of Molten Sewage*, SB NATION (July 30, 2016, 1:57 PM), <https://www.sbnation.com/mlb/2016/6/30/12068178/save-americas-pastime-act-minor-league-salaries> [<https://perma.cc/YRX2-GW68>].

132. See Phillip J. Closius & Joseph S. Stephan, *Myth, Manipulation, and Minor League Baseball: How a Capitalist Democracy Engenders Income Inequality*, 89 U. CIN. L. REV. 84, 103 (2020).

133. Axelrod, *supra* note 12, at 511; Grow, *supra* note 31, at 1024–25.

134. See Closius & Stephan, *supra* note 132, at 103.

135. Axelrod, *supra* note 12, at 511; see also Grow, *supra* note 31, at 1026; Aaron Blake, *After Outcry over Minor League Baseball Bill, Congresswoman Can't Disown It Fast Enough*, WASH. POST (June 30, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/06/30/after-outcry-over-bill-on-minor-league-baseball-pay-congresswoman-cant-disown-it-fast-enough/> [<https://perma.cc/7LLW-454S>].

136. Axelrod, *supra* note 12, at 512.

137. *Id.* at 512; see also Mike DeBonis, *Spending Bill Could Quash Minor League Baseball Players' Wage Claims*, WASH. POST (Mar. 18, 2018, 10:26 PM), https://www.washingtonpost.com/powerpost/spending-bill-could-quash-minor-league-baseball-players-wage-claims/2018/03/18/d31cd76e-2b0a-11e8-8ad6-fbc50284fce8_story.html [<https://perma.cc/DFV4-LJPK>].

further public outcry,¹³⁸ former President Donald Trump signed SAPA into law on March 23, 2018.¹³⁹

SAPA, a “textbook piece of special-interest legislation,”¹⁴⁰ occupied pages 1,967–68 of the 2,232-page bill and did exactly what baseball executives wanted it to do—it excluded Minor League players from federal minimum wage requirements and overtime protections, so long as the players received a weekly salary greater than the minimum wage for a forty-hour work week.¹⁴¹ Of course, this calculation was a façade; players work closer to seventy hours per week.¹⁴² SAPA also codified unpaid player labor during mandatory offseason activities and Spring Training.¹⁴³ In the process of pushing the legislation that would cement its authority to keep its employees in poverty, the League spent \$1.3 million lobbying to ensure SAPA’s passage.¹⁴⁴ As it turns out, this expenditure would be much more costly.

C. *The Path to Unionization*

The effect of SAPA on the employees it dehumanized was tremendous, but it cost MLB more in the end. Post-SAPA effects on players were grim, as more than half of Minor League players had to work second jobs in the offseason to support themselves.¹⁴⁵ But despite the League’s manipulation on Capitol Hill, public disapproval regarding SAPA and poor MiLB conditions ballooned.¹⁴⁶ Labor issues had arrived at the forefront of MiLB discourse, clouding the once-rosy image of

138. Axelrod, *supra* note 12, at 513.

139. H.R. 1625, 115th Cong. § 201 (2018); Axelrod, *supra* note 12, at 513.

140. Grow, *supra* note 31, at 1046.

141. H.R. 1625, 115th Cong. § 201 (2018); Axelrod, *supra* note 12, at 512; Mike Axisa, *Congress’ ‘Save America’s Pastime Act’ Would Allow Teams to Pay Minor-League Players Less Than Minimum Wage*, CBS SPORTS (Mar. 22, 2018), <https://www.cbssports.com/mlb/news/2022-world-series-bold-predictions-onslaught-of-home-runs-a-framber-valdez-complete-game-and-more> [<https://perma.cc/A8AL-X592>].

142. Pannullo, *supra* note 6, at 456.

143. Grow, *supra* note 31, at 1038.

144. Weaver, *supra* note 101.

145. *MLB Approves First Contract for Minor League Players*, CBS NEWS (Mar. 31, 2023, 5:51 PM), <https://www.cbsnews.com/news/mlb-minor-league-contract-approved-players> [<https://perma.cc/UC8V-9AHT>]; see also MORE THAN BASEBALL, *supra* note 91.

146. See Normandin, *Hubris*, *supra* note 9; see also Axisa, *supra* note 141.

fame and riches in professional baseball.¹⁴⁷ Unpaid Spring Training,¹⁴⁸ Instructional Leagues,¹⁴⁹ and mandatory offseason workouts¹⁵⁰ don't sound quite like the glamorous life of baseball the League pushed on its viewers for the past century.

SAPA's evils codified the status quo of poverty that *Senne* threatened to uproot; providing for their families, building meaningful careers, and accumulating wealth was already near-impossible for Minor League players. Despite earnings potential if called up to the Big Leagues, more than 82 percent of drafted players never get that call.¹⁵¹ For those drafted outside the top ten rounds of the MLB Draft, where Club investments in player signing bonuses dwindle, that number rises to more than 95 percent.¹⁵² And because earning living wages as a baseball player was almost exclusively an opportunity available to those who had played in the Major Leagues, SAPA ensured the prospects of forging a career playing baseball, or even earning a minimum wage, remained unavailable to the vast majority of those vying to. The League's misstep in its calculations was failing to account for the present and former players who decided in the periphery of SAPA that they'd had enough.

The plaintiffs in *Senne*¹⁵³ litigated the case until 2022, when they secured a \$185 million settlement from the League for wage and overtime violations payable to all eligible Minor League players.¹⁵⁴ Magistrate Judge Joseph Spero of the U.S. District Court for the Northern District of California, who granted summary judgment for the players in *Senne*'s early days, separately awarded almost \$2 million to Minor League

147. Broshuis, *supra* note 4, at 63; Pannullo, *supra* note 6, at 475.

148. Passan, *supra* note 85; Weaver, *supra* note 101.

149. Passan, *supra* note 85.

150. *Id.*; Weaver, *supra* note 101.

151. J.J. Cooper, *How Many MLB Draftees Make It to the Majors*, BASEBALL AM. (May 17, 2019), <https://www.baseballamerica.com/stories/how-many-mlb-draftees-make-it-to-the-majors> [https://perma.cc/74VV-LTK7] (stating that between 1981 and 2010, only 17.6 percent of players who were drafted and signed to a contract ended up playing in Major League Baseball).

152. Manfred, *supra* note 5.

153. *Senne v. Commissioner* is the colloquial reference to the case actually filed as *Senne v. Kansas City*. See *Senne v. Kansas City Royals Baseball Corp.*, 114 F. Supp. 3d 906, 908 (N.D. Cal. 2015).

154. Passan, *supra* note 85.

players for League violations of California state wage laws.¹⁵⁵ In doing so, Judge Spero held that players work year-round while rejecting the recurring League argument that baseball players are seasonal employees, noting that “[players] are not students who . . . perform services, without compensation, as part of the practical training necessary.”¹⁵⁶ Pressure on the League thus mounted—rationales used to marginalize players and attempts to normalize their circumstances began to backfire on baseball’s white-collar ruling class, exemplified yet again by a commissioner who has mastered the personification of irony.

Commissioner Manfred, writing to the Senate Judiciary Committee,¹⁵⁷ claimed that reports of player poverty were “inaccurate” and justified MiLB working conditions by suggesting that since many players transition into other careers by their mid-twenties, their financial woes are temporary—a claim he poorly illustrated by describing former Minor League player Harry Marino’s experience as “fairly typical.”¹⁵⁸ Here, Manfred uncharacteristically found the strike zone—Mr. Marino does in fact epitomize the MiLB condition. After retiring from baseball, he became an attorney, the executive director for the activist nonprofit Advocates for Minor Leaguers, and a MLBPA lawyer, helping lead the grassroots effort to unionize thousands of athletes against a multi-billion-dollar industry and helping negotiate the first CBA in Minor League history.¹⁵⁹ In fact, Mr. Marino’s Minor League experience may underscore stronger patterns than Manfred might care to recognize. The players’ lead attorney in *Senne* was Garrett Broshuis, who enrolled in law school after his own playing career.¹⁶⁰ The author of this Note did the same.¹⁶¹

155. *Id.*

156. *Id.*

157. *See supra* Section I.A (discussing the Senate Judiciary Committee investigating effects of baseball’s antitrust exemption).

158. Manfred, *supra* note 5.

159. *Id.*; *MLB to Voluntarily Recognize MiLB players’ Unionization with MLBPA*, ESPN (Sept. 9, 2022), https://www.espn.com/mlb/story/_/id/34557499/mlb-voluntarily-recognize-minor-league-players-unionization-mlbpa [https://perma.cc/F7SK-YM43]; *see also* Hui, *supra* note 18, at 132 (discussing how athletes unionize and receive certification by the NLRB, which Mr. Marino helped facilitate).

160. Kelly Candaele & Peter Dreier, *How Minor League Ballplayers Won a Union*, NATION (Mar. 6, 2023), <https://www.thenation.com/article/society/minor->

Recent events served a cold reminder to the League: life comes at you fast. *Senne*, widespread public criticism in response to SAPA,¹⁶² and player activism galvanized the path to unionization, which in turn represents a dramatic shift toward equitable bargaining opportunities for Minor League players. Collective bargaining thus offers the promise of better working conditions and the potential to earn a sustainable living—opportunities more than appropriate for the on-field product of the American pastime.

III. OUTFIELD ASSIST: COLLECTIVE BARGAINING

While much of this Note bemoans MiLB exploitation in the absence of collective bargaining, this Part explores its transformative power in reshaping labor relations. Collective bargaining and union representation have “historically been champions for marginalized workers.”¹⁶³ Otherwise stated, for Minor League players the difference in bargaining power between the moments preceding unionization and those immediately following is profound. Before unionization, one employee’s public dissent might not have caused even the slightest disruption—but after, the collective voice of several thousand garners management’s attention. Although it is not without flaws, collective bargaining remains the most robust mechanism to balance power between employers and employees.

Collective bargaining is a cornerstone of modern American labor, providing a path to parity when employees elect to unionize in accordance with the NLRA.¹⁶⁴ Enacted in 1935, this legislation safeguards employee rights to engage in collective bargaining, form and join labor organizations, and bargain with management through representatives of their choosing.¹⁶⁵ The NLRA also safeguards employees against

league-baseball-union-bill-fletcher/ [https://perma.cc/5MSN-WSKJ]; see also Passan, *supra* note 85.

161. Scott Miller, *As Minor Leaguers Unionized, One Went to Law School*, N.Y. TIMES (May 9, 2023), <https://www.nytimes.com/2023/05/09/sports/baseball/chris-rowley-mlb-union-law-school.html> [https://perma.cc/M457-WENE].

162. See *supra* Section II.B.

163. Hannah Borowski, *Union Autonomy and Federal Intrusion*, 95 U. COLO. L. REV. 267, 270 (2024).

164. 29 U.S.C. § 157; see also Borowski, *supra* note 163, at 271.

165. 29 U.S.C. § 157.

Unfair Labor Practices (ULPs), whereby employers may not engage in restrictive or coercive practices in the collective bargaining process.¹⁶⁶ Employers are also prohibited from discriminating against workers on the basis of formation, administration, or membership of a labor organization.¹⁶⁷ This legal framework provides both parties an effective process that tends to incentivize cooperation and communication between the parties so they may reach an agreement.¹⁶⁸ The applicability of NLRA-mandated collective bargaining to Minor League Baseball is discussed in Section III.A. Section III.B covers the process that the parties must engage in to determine the bounds of the deal, and pitfalls within this framework governing employer-union relationships are detailed in Section III.C.

A. *Scope of Collective Bargaining*

The specific provisions governing the labor relationship in a CBA are largely dictated by the parties.¹⁶⁹ However, the NLRA sets parameters for the process to provide a stable and predictable labor relationship for both sides.¹⁷⁰ And despite the complexity of collective bargaining, its subject matter can, reductively, be organized into three descriptive categories: mandatory, permissive, and illegal.¹⁷¹

Mandatory subjects of bargaining, which include wages, hours, and working conditions, are those that the parties are required to negotiate during collective bargaining.¹⁷² The presence of mandatory subjects flows directly from the NLRA's intent to establish legal restrictions for collective bargaining—that employees shall be able to organize for the purposes of

166. *Id.* § 158(a).

167. *Id.*

168. Douglas E. Ray, *Doing Well by Being Good: How U.S. Labor Law Encourages Employer Good Faith Behavior*, 14 INTERCULTURAL HUM. RTS. L. REV. 229, 248 (2019).

169. *See, e.g.*, Brent D. Showalter, *Technical Foul: David Stern's Excessive Use of Rule-Making Authority*, 18 MARQ. SPORTS L. REV. 205, 218 (2007).

170. 29 U.S.C. § 159.

171. Wolfgang S. Weber, *Preserving Baseball's Integrity Through Proper Drug Testing: Time for the Major League Baseball Players Association to Let Go of Its Collective Bargaining Reins*, 85 U. COLO. L. REV. 267, 297 (2014).

172. 29 U.S.C. § 158(d); *see also* *Fibreboard Paper Prod. Corp. v. NLRB*, 379 U.S. 203, 210 (1964).

bargaining the terms of their employment.¹⁷³ The *lex loci* of baseball holds that free agency, reserve clauses, and arbitration are all mandatory subjects of bargaining.¹⁷⁴ These are often the most crucial subjects regarding employee workplace conditions, and employers are prohibited from attempting unilateral implementation of policies or rules relating to mandatory subjects. As the League discovered in 1994, it can be exposed to ULP liability for doing so.¹⁷⁵

Permissive subjects of bargaining are those that employers and employees are allowed, but not required, to negotiate.¹⁷⁶ Because neither party is required to negotiate on permissive subjects, neither party may absolutely demand resolution of these matters.¹⁷⁷ Permissive subjects include all issues that are neither prohibited by the NLRA nor applicable law and are not directly related to wages, hours, and working conditions—while disputed and fact intensive, permissive subjects can cover workplace conduct policies and managerial decisions such as hiring, firing, promotions, and demotions.¹⁷⁸ The derivative effect of the obligation vacuum on these topics is that employers can exercise unilateral rulemaking or policy implementation on permissive subjects without violating the NLRA.¹⁷⁹

Lastly, illegal subjects of bargaining are those which are prohibited due to their relationships with relevant federal and state law.¹⁸⁰ For example, because federal and state laws prohibit discrimination in employment based on certain protected characteristics,¹⁸¹ CBAs cannot include provisions in violation of these statutes. Other illegal subjects of bargaining may include agreements that violate labor laws, such as

173. Mary Kate Bird, *Northwestern University: Opening the Door for Unionization in Collegiate Athletics*, 84 UMKC L. REV. 423, 434 (2015).

174. Broshuis, *supra* note 4, at 95.

175. Susan K. Menge, *Should Players Have to Pass to Play?: A Legal Analysis of Implementing Genetic Testing in the National Basketball Association*, 17 MARQ. SPORTS L. REV. 459, 470 (2007); *see also* Silverman v. Major League Baseball Player Rels. Comm., Inc., 880 F. Supp. 246, 251–52 (S.D.N.Y. 1995).

176. 29 U.S.C. § 158(d).

177. NLRB v. Wooster Div. of Borg-Warner Corp., 356 U.S. 342, 349 (1958); *see also* Sean P. McCarthy, *Bending the Rules to Change the Rule? Was the National Football League's Domestic Violence Policy Collectively Bargained for?*, 26 MARQ. SPORTS L. REV. 245, 248 (2015).

178. McCarthy, *supra* note 177, at 248–254.

179. *Id.* at 245; *see also* Menge, *supra* note 175, at 470.

180. 29 U.S.C. § 158(d).

181. 42 U.S.C. §§ 1981, 12112.

agreements to waive certain rights or protections under the NLRA.¹⁸² Generally, any negotiations that are prohibited by federal or state law cannot lawfully be negotiated around through collective bargaining.¹⁸³ So long as workers and management engage in collective bargaining with proper respect to each of the three categories of negotiation, the parties can in fact largely dictate the terms governing their relationship.

B. The Bargaining Process

At the heart of collective bargaining is the art of negotiation between employee and management, which directly shapes the labor relationship between the parties. The CBA is the agreement contemplated in this process—it details parameters, terms, and conditions of employment, which, in addition to mandatory subjects, often includes benefits, dispute resolution, and conduct provisions.¹⁸⁴ The CBA is enforceable by the National Labor Relations Board (NLRB), the federal agency tasked with interpreting and enforcing the NLRA, which includes overseeing the collective bargaining process.¹⁸⁵ The NLRB also investigates ULP complaints, oversees union representation elections, and is generally responsible for ensuring employer and employee adherence to the NLRA.¹⁸⁶

Collective bargaining imposes obligations on both employer and employee representatives.¹⁸⁷ Both have a duty to bargain collectively; this duty means that the parties must conduct meetings and negotiate in good faith about, at a minimum, the mandatory subjects of bargaining.¹⁸⁸ This duty only obligates negotiation; while parties cannot refuse to negotiate further, even after an impasse on a permissive subject, neither party is required to make concessions or agree to any proposal, even regarding mandatory topics.¹⁸⁹ If there's an existing CBA in

182. *What Is a Collective Bargaining Agreement?*, SHRM, <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/collectivebargainingagreement.aspx> [<https://perma.cc/MRY7-M3S4>].

183. Bird, *supra* note 173, at 434.

184. 29 U.S.C. § 159(a); *see also* McCarthy, *supra* note 177, at 245.

185. Weber, *supra* note 171, at 296.

186. 29 U.S.C. § 160.

187. *Id.* § 159.

188. *Id.* § 158(d).

189. *Id.*; *see also* McCarthy, *supra* note 177, at 248; Weber, *supra* note 171, at 297.

force, neither party may make changes to it without good-faith negotiations.¹⁹⁰

The NLRA further imposes a duty of fair representation on the union representative, which requires representation of the bargaining unit without discrimination or bias.¹⁹¹ The union must negotiate on behalf of all employees regardless of union membership, and it must do so fairly and impartially without discrimination.¹⁹² A union breaches its duty of fair representation when its behavior regarding any eligible employee is deemed arbitrary, discriminatory, or performed in bad faith.¹⁹³ If this appears to be an incredibly vague standard, many agree; critics note that while unions generally act with the best interests of employees in mind, those interests are often more beneficial to a smaller percentage of employees and do not always align with the entirety of the bargaining unit.¹⁹⁴

C. Criticisms of Collective Bargaining

Despite its role as a central mechanism for workers to secure better wages, benefits, and working conditions, collective bargaining is imperfect. For instance, the NLRA affords wide margins to employers to interpret its definition of “working conditions.”¹⁹⁵ Subjects that may directly affect wages and hours, although not the topics of wages and hours themselves, are often argued for and deemed as permissive. Permissive-subject classification of an issue does not obligate employers to negotiate, leaving workers with less influence and making them vulnerable to unequal negotiating dynamics that affect critical terms of their workplace conditions.¹⁹⁶ Employers are able to wrench subjects that should be mandatory into the

190. 29 U.S.C. § 158(d).

191. *Id.* § 158(b); see also *Right to Fair Representation*, NAT'L LAB. REL. BD., <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/employees/right-to-fair-representation> [<https://perma.cc/6AVB-MD34>].

192. 29 U.S.C. § 158(b).

193. Williams, *supra* note 7, at 545.

194. This criticism is illustrated by the (now elapsed) pre-unionization possibility that MiLB players could be added to the MLB bargaining unit, but that there would be a misalignment of interests if done. *Cf.* Parker, *supra* note 6, at 31.

195. McCarthy, *supra* note 177, at 248–49.

196. *Id.* at 249.

permissive category under this vague NLRA framework,¹⁹⁷ and employees find themselves less equipped to bargain on equal footing regarding issues that really should be mandatory subjects of bargaining.¹⁹⁸

Because vagueness allows employers to unduly influence issue-categorization (and thus implement policies unilaterally), collective bargaining falls short of truly neutralizing employer supremacy in labor relations. Where there is room for argument, negotiations too often turn on the depth of the parties' pockets.¹⁹⁹ Although employer duties of good faith somewhat augment undue labor influence, power afforded to workers by the NLRA has been eroded by both the courts and the NLRB.²⁰⁰ While the NLRA was intended to firm up common ground between workers and management, unions have had their options for recourse limited—even when employers commit blatant NLRA violations by making final demand offers, depressing wages and working conditions, or refusing to negotiate, leading to work stoppages or even strikes.²⁰¹ On the other hand, unionized workers have found themselves liable for ULP claims for striking over negotiations that unquestionably implicate mandatory subjects.²⁰² And this is not the only way employers have wrestled deference from the NLRB and courts over time. Courts have held that it is not a ULP for employers to permanently replace striking workers, lock out employees, or even unilaterally change CBAs after a negotiations deadlock,²⁰³ thereby functionally changing terms that directly affect mandatory subjects. Worse, employers can unilaterally act on mandatory subjects if the term is “not clearly” in the CBA.²⁰⁴ This leaves workers with only economic pressure, often in the form of work stoppages, to influence negotiations, while management may follow impasses by implementing critical policies or CBA terms that were either

197. Menge, *supra* note 175, at 470 (lamenting that wiggle room in testing policies can be considered permissive subjects of bargaining and therefore be unilaterally implemented).

198. See McCarthy, *supra* note 177, at 249.

199. Ross & James, *supra* note 66, at 136 (discussing the unequal distribution of bargaining power occurring naturally between employee and employer).

200. Hiba Hafiz, *Structural Labor Rights*, 119 MICH. L. REV. 651, 683–88 (2021).

201. *Id.* at 686.

202. *Id.* at 686.

203. *Id.*

204. *Id.* at 686; see also Weber, *supra* note 171, at 299.

rejected by employees or deemed unclear.²⁰⁵ Employer sidestepping of the NLRA's prohibition on unilateral implementation²⁰⁶ can be achieved simply by arguing the change was not material, substantial, or significant.²⁰⁷

Even if the parties were on even footing, adversarial negotiations processes can be time-consuming and expensive, and CBAs respond poorly to rapidly changing business conditions. Unions are generally funded by membership dues, and legal fees can be prohibitively expensive.²⁰⁸ The failure to reach an agreement can result in lockouts or strikes,²⁰⁹ and CBAs are often inflexible and binding for many years, serving as barriers for employers to respond to changing business conditions.²¹⁰ This rigidity naturally incentivizes management to exploit CBA and NLRA loopholes. And because of increased economic pressure on employers, higher salaries may mean fewer jobs, and management will almost invariably explore cost-cutting and other operational changes to offset increased labor costs.²¹¹ But while these shortcomings hinder the interests of organized workers, collective bargaining remains a vital tool for employees to negotiate a better workplace.

Under this new framework, Minor League players have secured their first-ever opportunity for some measure of self-determination. With union leadership well aware of the potential pitfalls in collective bargaining, a bargaining unit that has shown its willingness to stand up to the League, and indications that Minor League players are in fact quite valuable, Minor League players are better positioned than ever to achieve labor parity.

205. Weber, *supra* note 171, at 300.

206. 29 U.S.C. § 159(a).

207. Millard Processing Servs., 310 N.L.R.B. 421, 425 (1993).

208. See Davies, *supra* note 8, at 338–40.

209. Ross & James, *supra* note 66, at 147.

210. Bradley D. Marianno, Paul Bruno & Kathrine O. Strunk, *The Effect of Teachers' Union Contracts on School District Efficiency: Longitudinal Evidence from California*, SAGE OPEN 1 (2021).

211. Major League Baseball has already tied player working conditions to other cost-cutting measures. See Brittany Ghiroli, *Three-Year Study Proposes \$35,000 Minimum Salary for All MiLB players*, ATHLETIC (Apr. 8, 2022), <https://theathletic.com/3231377/2022/04/08/three-year-study-proposes-35000-minimum-salary-for-all-minor-league-players> [<https://perma.cc/CVR6-US5J>].

IV. PROJECTED STARTERS: MINOR LEAGUE CONSIDERATIONS

An employer will, in many cases, get “the union it deserves.”²¹² While other groups of athletes have unionized merely to formalize a labor relationship, MLB bosses’ decades-long dehumanization of their workforce ignited a highly motivated, highly publicized grassroots labor movement.²¹³ The *déjà vu* from lessons unlearned half a century ago is astonishing, and the initial CBA reflected player influence and motivation—the deal was not ratified by players until the last week of March, just weeks before the 2023 season opened.²¹⁴ While labor equality is still in its infancy in Minor League Baseball, this Part examines the nascent labor dynamics between players and the League. Issues regarding the composition of MiLB’s bargaining unit are discussed in Section IV.A. Section IV.B covers MiLB players’ ongoing antitrust challenges. And the MLBPA’s proven track record, alongside a valuable example of another minor-league sports union aid Section IV.C in contending that player interests are supported by precedent.

A. *A Large and Transient Workforce*

Minor League players now constitute the largest unionized workforce in American professional sports,²¹⁵ surpassing the combined totals of the NFL, NBA, NHL, and MLB.²¹⁶ But this creates a challenge. As in Minor League Baseball, where a

212. Davies, *supra* note 8, at 346.

213. See Pannullo, *supra* note 6, at 465.

214. *Minor League Players Overwhelmingly Approve Historic First Collective Bargaining Agreement*, *supra* note 14.

215. Bargaining units in the four major American men’s sports total, broken down as follows: the NFLPA represents approximately 2,000 players, the NBPA represents 450 players, the NHPA represents 700 players, and the MLBPA represents 1,200 players. *NFL Players Inc.*, NFLPA, <https://nflpa.com/about/players-inc> [<https://perma.cc/57NM-YV7L>]; *Overview & History*, NBPA, <https://nbpa.com/about> [<https://perma.cc/FTP3-6GTD>]; Michael Russo, *Misunderstood NHLPA Vote: Many Hurdles Remain Before Next Vote on Return to Play*, ATHLETIC (May 25, 2020), <https://theathletic.com/1835486/2020/05/25/misunderstood-nhlpa-vote-many-hurdles-remain-before-next-vote-on-return-to-play> [<https://perma.cc/8MLT-U86M>]; Pannullo, *supra* note 6, at 444; see also Christopher Deubert, *Unionization of Minor League Baseball Presents Interesting Issues*, JD SUPRA (Sept. 27, 2022), <https://www.jdsupra.com/legalnews/unionization-of-minor-league-baseball-8785121> [<https://perma.cc/76JB-TPGD>].

216. Deubert, *supra* note 215.

relatively large workforce generates relatively little revenue compared with the Major Leagues, securing higher wages and benefits is complicated by the argument that higher wages are not supported by league revenues.²¹⁷ While a fallacy,²¹⁸ this argument is often copy-pasted by the League in support of depressed player wages.²¹⁹ In contrast, an accurate valuation of the MiLB player pool tells a different story and calls for significant pay increases for players.²²⁰

MLB leadership has justified worse benefits and working conditions by arguing that players are transient, moving in and out of the job in a relatively short time period.²²¹ This circular reasoning disregards the well-documented fact that Minor League careers have been truncated primarily by a lack of proper wages and benefits.²²² Moreover, the argument generalizes all players based on data reflecting the status quo—the fact that given these conditions, few players see viable long-term careers solely within the Minor Leagues. Of course this is true: Minor League players are always trying to play their way out of Minor League Baseball and into the Big Leagues. The League therein fails to realize that its argument is self-incriminating. Perhaps if the working conditions in Minor League stadiums around the country weren't so dreadful, players would be able to build meaningful baseball careers even if they never make it to the Big Leagues, and the profession wouldn't be so volatile.²²³ Here, better pay, benefits, and working conditions may carry the potential to prolong careers, limit transience, and reduce instability within the Minor League bargaining unit.²²⁴

217. Sergei Klebnikov, *Minor League Baseball's Most Valuable Teams*, FORBES (July 8, 2016, 11:11 AM), <https://www.forbes.com/sites/sergeiklebnikov/2016/07/08/minor-league-baseballs-most-valuable-teams> [<https://perma.cc/34JK-3YYJ>].

218. See *infra* Part V.

219. Manfred, *supra* note 5.

220. See *infra* Section V.A.

221. Manfred, *supra* note 5.

222. See *Senne v. Kansas City Royals Baseball Corp.*, 114 F. Supp. 3d 906 (N.D. Cal. 2015).

223. Candaele & Dreier, *supra* note 160 (noting players hoarding clubhouse food, couch-surfing, taking on personal debts, or even experiencing homelessness to survive Minor League Baseball).

224. Andrew P. Osborn, *Down to Their Last Strike: How the MLB Antitrust Exemption Has Hurt MiLB Players' Salaries and Why It Is Up to Them to Fight Back*, 47 J. CORP. L. 259, 273 (2021).

In the interim, and even somewhat in perpetuity, the MiLB bargaining unit will change frequently.²²⁵ But this is not a unique challenge. Many large U.S. workforces are also inherently transient,²²⁶ and many have bargaining units easily outnumbering Minor League players.²²⁷ Even in those workforces, turnover is a non-issue; many unions, notably Service Employees International and Teamsters, successfully negotiate labor terms in industries with much larger and more dynamic labor forces than Minor League Baseball.²²⁸

The MiLB bargaining unit size and transience may not itself be a collective bargaining issue, but it threatens to impinge MLBPA efforts to combat MiLB contraction. The League has long linked the prospect of higher wages with fewer MiLB affiliates.²²⁹ And while cutting specific Minor League affiliates does not directly affect players assigned there temporarily, there's no way to avoid the fact that contraction shrinks the labor market. Understandably, concerns over fewer job opportunities contributed to player hesitation to unionize, and they remain a current concern for Minor League players.²³⁰

Although the League has signed agreements with its affiliates that provide temporary protection against contraction until 2030,²³¹ the agreements are likely only a temporary stop.²³² In 2023, more Minor League prospects made their MLB debuts than ever before, and more MLB players categorized as “prospects” played in the Big Leagues than ever before. It's easy to point to these numbers as early Club efforts to streamline player development for future attempts to

225. Deubert, *supra* note 215.

226. Rakesh Kochhar, Kim Parker & Ruth Igielnik, *Majority of U.S. Workers Changing Jobs Are Seeing Real Wage Gains*, PEW RSCH. CTR. (July 28, 2022), <https://www.pewresearch.org/social-trends/2022/07/28/majority-of-u-s-workers-changing-jobs-are-seeing-real-wage-gains> [<https://perma.cc/4KKW-AUQZ>] (listing several service industry sectors as experiencing “relatively elevated” industry departures by employees).

227. *The Largest Labor Unions in the US*, WORLDATLAS, <https://www.worldatlas.com/articles/the-largest-labor-unions-in-the-us.html> [<https://perma.cc/7CVL-SY24>].

228. *Id.*

229. *Id.*

230. Ulm, *supra* note 96, at 244–45.

231. Normandin, *Hubris*, *supra* note 9.

232. Ulm, *supra* note 96, at 245; *see also* Parker, *supra* note 6, at 46.

contract the MiLB labor pool.²³³ Contraction is unlikely to happen soon—it is addressed in the CBA and affiliate agreements²³⁴—but the League has fewer affiliates in its sights, implicating job security for future Minor League players.²³⁵ Aided by financial might and antitrust immunity, the League poses a threat to again collude via horizontal agreement among its Clubs to shrink Minor League Baseball and depress competition.²³⁶

B. Antitrust and Statutory Considerations

While collective bargaining does much to address many of the labor issues for Minor League players, it does not repeal SAPA or eliminate the MiLB antitrust exemption. However, its provisions can mitigate the practical effect of both. Carefully framing issues implicating antitrust and SAPA as mandatory subjects of bargaining is especially important in forcing the League to negotiate.²³⁷

While unionized players contracted around SAPA's impact on wages by negotiating salaries well above minimum wage,²³⁸ the Minor League federal antitrust exemption persists, and the parties agreeing on how to restrict the labor market during collective bargaining creates a non-statutory labor exemption.²³⁹ This means the matters “that the parties were required to negotiate collectively” are also exempt from federal antitrust law.²⁴⁰ Minor League Baseball's *sui generis* antitrust exemption remains,²⁴¹ which means players must be cautious around a few issues, including decertifying the MLBPA and future MiLB contraction. However, there is reason to believe that baseball's general antitrust immunity is in its death throes. Other than the League itself, baseball's common law

233. Jonathan Mayo, *We've Seen a Record Number of Top 100 Prospects in MLB This Year. Why?*, MLB (Sept. 15, 2023), <https://www.mlb.com/news/record-setting-number-of-top-100-prospects-in-mlb-2023> [<https://perma.cc/Y27Y-FQXB>].

234. Normandin, *Hubris*, *supra* note 9; Drellich, *supra* note 2.

235. *See infra* Part V.

236. Petition for Writ of Certiorari at 13, *Tri-City ValleyCats*, 144 S. Ct. 389 (No. 23-283).

237. Showalter, *supra* note 169, at 218.

238. John Brucker, *(Screw) America's Pastime Act: The Mirage of Sapa & Minor League Baseball Wages*, 51 SETON HALL L. REV. 517, 518 (2020).

239. Deubert, *supra* note 215; *see also* Gerba, *supra* note 28, at 2394.

240. *Brown v. Pro Football*, 518 U.S. 231, 250 (1996).

241. Deubert, *supra* note 215.

antitrust exemption has “practically no supporters”²⁴² among judges and scholars, and the Supreme Court has held that *stare decisis* has “less-than-usual force” regarding matters of the Sherman Act.²⁴³ Regardless of how long the exemption lasts, players now able to negotiate how the labor market may be restricted can mitigate its effects with careful CBA construction with the help of the MLBPA.

C. MLBPA and PHPA: Two Major Precedents for Minor League Interests

Minor League players don’t just benefit from newfound NLRA protection; they’re also able to model the successes of their own representative, as well as another minor-league union.²⁴⁴ For this, players can look to the work of both the MLBPA and the Professional Hockey Players Association (PHPA).

The MLBPA is a powerhouse union whose impact on baseball is often understated.²⁴⁵ The MLBPA has a half-century long track record of negotiating effective labor agreements on the MLB side that are now directly applicable to MiLB negotiations.²⁴⁶ Therefore, considering the overlap between Major and Minor League considerations, optimism about achieving more equitable labor terms more easily than the late 1960s might not be so naïve.²⁴⁷ And to put it on ice, the PHPA’s work offers a valuable blueprint for balancing player compensation and autonomy in a way that benefits both players and management.²⁴⁸ Indeed, nowhere has this been executed more symbiotically than in professional hockey.²⁴⁹

The PHPA is not only the first-ever American minor-league union—it’s also the oldest players association in the United States,²⁵⁰ serving as the union representative for

242. Petition for Writ of Certiorari at 3, *Tri-City ValleyCats*, 144 S. Ct. 389 (No. 23-283).

243. *Kimble v. Marvel Ent.*, 576 U.S. 446, 461 (2015).

244. Pannullo, *supra* note 6, at 469.

245. Hui, *supra* note 18, at 127.

246. *See supra* Part I.

247. *See supra* Section I.A.

248. FUNDAMENTALS OF SPORTS LAW § 18:3; Hui, *supra* note 18, at 130; Axelrod, *supra* note 12, at 505.

249. Pannullo, *supra* note 6, at 469–71.

250. While the MLBPA was formed in 1954, it didn’t become effective until 1968. The PHPA and the NHLPA were formed in the same year, although the

hockey players playing for MiLB-like affiliates of the National Hockey League (NHL) since 1967.²⁵¹ The PHPA has negotiated higher wages, better benefits, and established career programs, enabling players to build careers.²⁵² Compare this with MiLB players' gamble on a slim chance of making it to the League—a gamble where sacrifices too often outweigh the rewards.²⁵³ The PHPA has also implemented a career-enhancement program for its players to great success. Each year, the NHL pays for career-development programs for dozens of its players, including academic courses and firefighter training.²⁵⁴ Just like MLB Clubs, NHL teams also pay minor league salaries—and although the NHL earns less than *half* of the revenue the League generates,²⁵⁵ it pays players more. Players in the American Hockey League, hockey's equivalent of Triple-A baseball,²⁵⁶ make a minimum salary of \$50,000 per season and earn an average of \$118,000.²⁵⁷ Compare those numbers with pre-unionized Triple-A salaries as low as \$11,000.²⁵⁸ Despite shelling out higher wages, the NHL's minor-league affiliates have enjoyed higher franchise values,²⁵⁹ and NHL franchises themselves have appreciated an average franchise-valuation increase of more than 10 percent a year.²⁶⁰ The fact that higher wages *can* work for both athlete and management is thus

PHPA preceded the NHLPA. Additionally, although the NBA G League unionized in 2020, this union is still in its early formation stages and is not yet well-established. See Pannullo, *supra* note 6, at 466.

251. Hui, *supra* note 18, at 130.

252. *Id.*

253. Axelrod, *supra* note 12, at 505–06.

254. See Marc Normandin, *Why Minor League Baseball Players Haven't Unionized*, SB NATION (June 5, 2018, 11:00 AM), <https://www.sbnation.com/mlb/2018/6/5/17251534/mlb-draft-minor-league-baseball-union-phpa> [<https://perma.cc/U49Y-5UPT>] [hereinafter Normandin, *Haven't Unionized*].

255. McDowell, *supra* note 16, at 17.

256. Triple-A is the highest level of baseball in the Minor Leagues. See *supra* Section I.C.

257. Normandin, *Haven't Unionized*, *supra* note 254.

258. Weaver, *supra* note 101. It is also notable that NBA G League players, who unionized in 2020, enjoy a minimum salary of more than \$40,000, and the G League minimum has increased more than 15 percent in the past two years. Luke Adams, *NBA G League Salaries Increase for 2022/23*, HOOPS RUMORS (Nov. 3, 2022, 7:52 AM), <https://www.hoopsrumors.com/2022/11/nba-g-league-salaries-increase-for-2022-23.html> [<https://perma.cc/ZYC2-XBQ8>].

259. Hui, *supra* note 18, at 130.

260. *2022 NHL Franchise Valuations Ranking*, SPORTICO (Nov. 1, 2022), <https://www.sportico.com/feature/nhl-team-values-ranking-list-1234693065> [<https://perma.cc/2SBJ-UJK8>].

demonstrated,²⁶¹ but the League knows this; the premise's truthfulness has been piling up in Club bank accounts since 1968.²⁶² In any event, the PHPA-NHL relationship is evidence that the path to equitable terms in MiLB CBAs—in which players and executives both benefit long term—is achievable.²⁶³

It's past time for improved working conditions in the Minor Leagues. The CBA's still-wet ink has set the stage for future players to call the note on debts owed.²⁶⁴ And although negotiations will perpetually present uncertainties and challenges, the PHPA offers a guiding standard, and the MLBPA's experience and resources can be invaluable in attaining meaningful improvements in labor terms for Minor League players.

V. FAIR PLAY: THE CASE FOR AN EQUITABLE DEAL

"Yesterday's price is NOT today's price!"

— Joseph "Fat Joe" Cartagena²⁶⁵

Minor League players overwhelmingly ratified the first-ever MiLB CBA on March 31, 2023,²⁶⁶ and Club owners approved it in the following days.²⁶⁷ While such a sentence would have been laughable just a few years ago, the CBA comprehensively codifies various facets of player employment, especially noteworthy during such a transformative period. Among these developments, the CBA addresses wages, housing, benefits, job security, player conduct, resources and facilities, and player offseason support.²⁶⁸ However, because the players negotiated these important issues against the framework of the pre-unionization workplace—a setting

261. Hui, *supra* note 18, at 130.

262. See *supra* Section I.A; Hui, *supra* note 18, at 130.

263. See generally *infra* Part V.

264. Bird, *supra* note 173, at 437–38.

265. PUSHA T, *Diet Coke, on IT'S ALMOST DRY* (Def Jam Recordings 2022).

266. *Minor League Players Overwhelmingly Approve Historic First Collective Bargaining Agreement*, *supra* note 14.

267. Drellich, *supra* note 2; see also *MLB Approves First Contract for Minor League Players*, *supra* note 145.

268. Drellich, *supra* note 2.

prohibitive to achieving real parity—a truly fair deal remains elusive.

A. *The Deal*

The CBA represents a tectonic shift in bargaining power that will surely reverberate into future CBAs, and it also contains important provisions that will contour the career of today's MiLB player. In it, the League agreed not to reduce the number of MiLB affiliates for the duration of the five-year deal.²⁶⁹ All MLB affiliates must comply with heightened facility standards.²⁷⁰ The reserve clause was shortened from seven to six seasons for players entering professional baseball who are nineteen or older, encompassing almost all draftees signed out of college.²⁷¹ While the drug policy was previously governed solely by the League, it will now be jointly administered by the League and the MLBPA.²⁷² Players are now entitled to due process and an impartial arbitrator for workplace dispute resolution, accusations of domestic misconduct,²⁷³ violations of the gambling and drug policies, contract disputes, and discipline for off-field conduct.²⁷⁴ After previously having no such rights,²⁷⁵ players are now entitled to the rights from their name, image, and likeness (commonly referred to as NIL).²⁷⁶ Healthcare coverage is expanded to include dental, vision, and dependent healthcare, and players who lose their jobs now have extended healthcare options after termination.²⁷⁷ The pension plan, which previously required five years' service to be eligible, is replaced with a 401(k) plan that players are eligible for immediately.²⁷⁸ Lastly, the CBA

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. This means that accusations of domestic violence are bargained for and the policy is jointly administered, with disputes heard by a neutral arbitrator. *See id.*

274. *Id.*

275. Minor League Uniform Contracts provided no player rights to their name, image, or likeness, and instead afforded all such rights to their Club. Christopher R. Deubert, *Labor & Employment Law Guidance for Professional Sports Teams*, 32 MARQ. SPORTS L. REV. 359, 395 (2022).

276. Drellich, *supra* note 2.

277. *Id.*

278. *Id.*

addresses one of the most important issues in the years leading to unionization—housing—by taking steps to ensure that players shipped between cities on a regular basis have proper accommodations.²⁷⁹

Perhaps as a consequence of League failures leading to reports of MiLB homelessness, the League mandated housing policies after the 2021 season.²⁸⁰ The policies were then subsequently included in the CBA, setting guidelines slated for full implementation in 2024, although “reasonable efforts” were required of Clubs to apply the policy in 2023.²⁸¹ Under these terms, almost all players are guaranteed housing.²⁸² Players without such guarantees are generally those high-earning free agents who possess individual bargaining power to negotiate club-provided housing into their contracts if desired.²⁸³ The CBA also sets limitations on the number of beds per bedroom for housing provided in spring training.²⁸⁴ Clubs are now prohibited from assigning players housing with host families.²⁸⁵ Housing locations must be reasonable and commutable,²⁸⁶ and players are able to refuse accommodations and instead receive a Club stipend that must approximate local housing costs.²⁸⁷

Although the CBA addresses many housing issues, the deal still falls short regarding player privacy. Clubs are permitted to conduct room inspections at employee homes and can set policies prohibiting pets and guests,²⁸⁸ raising questions as to how League inspections implicate state laws requiring notice prior to landlord entry.²⁸⁹ Players still frequently share rooms, and the “family-friendly” housing option isn’t quite so friendly to families;²⁹⁰ familial

279. *Id.*

280. Bird, *supra* note 173, at 444; *see also* Drellich, *supra* note 2.

281. Drellich, *supra* note 2.

282. *Id.*

283. *Id.*

284. *Id.*; *see also* *MLB Approves First Contract for Minor League Players*, *supra* note 145.

285. Drellich, *supra* note 2.

286. *Id.*

287. *Id.*; *MLB Approves First Contract for Minor League Players*, *supra* note 145.

288. Drellich, *supra* note 2.

289. *See generally* Ann O’Connell, *State Laws on Landlord’s Access to Rental Property*, NOLO (Nov. 9, 2023), <https://www.nolo.com/legal-encyclopedia/chart-notice-requirements-enter-rental-29033.html> [<https://perma.cc/25GA-YRGA>].

290. *Id.*

accommodations do not guarantee private housing, only separate sleeping spaces. As a result of these policies, players with spouses and children may still be forced to live in shared accommodations with people that they may not trust or even know.²⁹¹ This arrangement constitutes a constructive invasion of privacy,²⁹² where inspections without proper notice, regulating visitors, or forcing families to share living spaces with strangers infringes upon employee autonomy and dignity.²⁹³ In the absence of CBA or judicial resolution of these issues, housing for many will continue to feel transitory and uncomfortable. Housing provisions that are both more flexible and comprehensive are necessary here—player security and privacy, specifically for those with families, depends on it.

In more ways than one, the pursuit of parity persists. The CBA implements a salary cap restricting high-earning MiLB free agents,²⁹⁴ and free agency is still difficult to reach. Though the CBA truncated contract lengths, it did so only by one year and only for some players—so it's still possible to spend as many as sixteen years with one Club before reaching free agency.²⁹⁵ The League has the authority to trim roster sizes beginning in 2024, restricting the number of opportunities for players to enter and develop in professional baseball.²⁹⁶ Players must bring wage and hour disputes through arbitration rather than in the courts, which could inhibit future labor progress achieved via litigation, as in *Senne*.²⁹⁷ And if, as

291. *Id.*

292. Employees have a reasonable expectation of privacy in their homes, even when that housing is provided by their employers. Privacy protections, while generally less robust against private actors compared with governmental intrusion, are only so because often employees have a “range of choice among landlords, employers, vendors, and others with whom they deal.” This is not the case in the MiLB employee-employer relationship, where employees have no choice among any of the three. See Cristina Mathews, *Unlocking the Farmhouse Gate: The California Case for Access Rights for Farmworkers Living in Employer-Provided Housing*, 40 BERKELEY J. EMP. & LAB. L. 443, 473–74 (2019); see also *Katz v. United States*, 389 U.S. 347, 350–51 (1967) (holding that while the Fourth Amendment protects individuals against governmental intrusion, its protections go much further).

293. See Michele Estrin Gilman, *The Class Differential in Privacy Law*, 77 BROOK. L. REV. 1389, 1401 (2012).

294. Drellich, *supra* note 2.

295. *Id.*

296. *Id.*

297. *Id.* Player access to justice in the courts, however, is not completely foreclosed by a commitment to arbitration under the CBA. See generally *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974).

Commissioner Manfred claims, most players spend relatively little time in professional baseball before going on to other careers,²⁹⁸ the absence of any meaningful career-development program in the CBA is noteworthy. Baseball players, whose profession also requires a high degree of skill not directly transposable to many other careers, could surely benefit from a program similar to the one adopted by the PHPA.²⁹⁹

Although the CBA's provisions do much to signify a step away from the pre-unionized MiLB workplace, lingering issues remain largely as a function of the backdrop framing negotiations. Nowhere in baseball's labor landscape is this more evident, nor more important, than player wages. While appearing wholly different when compared to pre-unionized salaries, player compensation still fails to truly reflect the resources, skill, and commitment required of tomorrow's MLB player and what that player is really worth to the League even while playing in the Minor Leagues.

B. Player Compensation: Who Benefits from the Big-Leaguers?

Ostensibly the most objectionable subject of pre-unionized Minor League working conditions was that of player wages,³⁰⁰ and from player perspectives, distancing salaries from poverty was prioritized—and to a degree, achieved—in CBA negotiations. But, to an extent, higher compensation for players should be a target for both employee and employer; in sports, the assumption that only athletes benefit from wage increases is a fallacy.³⁰¹ Evidence from minor league hockey demonstrates this.³⁰² Despite increased payroll costs, players with financial bandwidth to live and train instead of working second jobs or driving Uber are healthier, more productive, and more profitable.³⁰³ It's a simple principle—an athlete who has the resources necessary to live and train properly will, in the aggregate, be in better shape and more resistant to injury. And

298. Manfred, *supra* note 5.

299. Pannullo, *supra* note 6, at 449.

300. See generally *supra* Section I.C.

301. 2022 *NHL Franchise Valuations Ranking*, *supra* note 260; Hui, *supra* note 18, at 130; see also *supra* Section I.A for a discussion on the correlation between higher wages, competitive labor markets, and League financial health.

302. See *supra* Part IV.

303. Ghirelli, *supra* note 211.

healthy athletes cost a *lot* less money: in 2019, MLB Clubs spent more than \$318 *million* paying the salaries of injured pitchers—for perspective, pitchers make up less than half of all players.³⁰⁴ The 2023 MiLB CBA acted swiftly to elevate wages which will in turn provide MLB Clubs with better-resourced athletes. Predictably, however, player salaries still fail to reflect both their present values and the value of the talent subsidization enjoyed by the League.

Because wages are a mandatory subject of collective bargaining and must be negotiated in good faith,³⁰⁵ the MLBPA pressed the League and salaries boomed across the board. At every level of the Minor Leagues, minimum salaries *at least* doubled.³⁰⁶ Players in the lower levels enjoyed the highest increases; rookie league minimums jumped from \$4,800 to \$19,800, a 312.5 percent increase.³⁰⁷ The MLBPA also set a valuable precedent that wages for baseball players must not only reflect the value of their employment but also account for the fact that they are not seasonal nor gig workers.³⁰⁸ The CBA codified this necessity—Minor League players will now be paid smaller portions of their paychecks during the offseason, but will receive pay year-round.³⁰⁹ While these are important advances of player interests, don't be fooled by the frequency of the direct deposit or gaudy percentage increases in player wages. The chasm between pre-unionization wages and those negotiated in the 2023 CBA are a much clearer representation of past abuses by the League than they are evidence that new player wages are fair *per se*. Minor League players still do not receive additional compensation for

304. See Josh Myers, *The Cost of Pitching Injuries*, DVS BASEBALL (Nov. 18, 2022), <https://www.dvsbaseball.com/articles/the-cost-of-pitching-injuries> [<https://perma.cc/FA9Q-M2FJ>].

305. 29 U.S.C. § 158(d).

306. Specifically, annual minimum salaries have been raised as follows: Rookie or Complex League players now earn \$19,800, a substantial increase from the previous \$4,800. Players in Low A leagues now receive \$26,200, up from \$11,000, while those in High A leagues earn \$27,300, also up from \$11,000. Double A players are now compensated at \$30,250 annually, compared to the previous \$13,800. Triple A players have seen the largest raise at the lowest percentage increase, with an annual salary of \$35,800, up from \$17,500. See Drellich, *supra* note 2.

307. *Id.*; see also *MLB Approves First Contract for Minor League Players*, *supra* note 145.

308. See Pannullo, *supra* note 6, at 462.

309. Drellich, *supra* note 2.

playoff qualification,³¹⁰ which would both incentivize player development and cultivate winning Club cultures. In contrast, minor league hockey players can receive as much as \$20,000 for making the playoffs.³¹¹ Much improvement is needed, and no matter the lens through which player compensation is examined, it still is not enough.

In the 2023 CBA negotiations, each party's methodology for calculating salary amounts remains unclear, but it wasn't determined by the hour. Calculating player wages on the basis of time has proven to be inefficient at best, and predatory at worst.³¹² Even if fair, the value of players paid by the hour is difficult to quantify.³¹³ So while it's likely that the negotiations focused largely on League costs per player and thresholds allowing players to generally be free from having to work non-baseball offseason jobs, the reality is that the conversation should look altogether different.³¹⁴ Minor League players, as the primary product of an entire industry and the entire future product of a much larger one, should be paid not only for their present services but also for their intrinsic value as they subsidize the League's costs to develop its future labor pool.

While data post-COVID have not been made available, 2019 revenues in Minor League Baseball were \$864 million.³¹⁵ Since then, the League has lamented increasing costs while cutting ties with 25 percent of its worst-performing affiliates in

310. Mark Stanton, "*Juuuusst A Bit Outside*": A Look at Whether MLB Owners Can Justify Paying Minor Leaguers Below Minimum Wage Without Violating the Fair Labor Standards Act, 22 JEFFREY S. MOORAD SPORTS L.J. 727, 746 (2015).

311. Normandin, *Haven't Unionized*, *supra* note 254.

312. Hui, *supra* note 18, at 126–27; *see also* Evan Drellich & Daniel Kaplan, *Judge Rules Minor League Players Are MLB Employees Throughout Year and Are Owed Damages*, ATHLETIC (Mar. 15, 2022), <https://theathletic.com/3188098/2022/03/15/judge-rules-minor-league-players-are-mlb-employees-throughout-year-and-are-owed-damages> [<https://perma.cc/N9QH-T9MC>]; Brucker, *supra* note 238, at 529.

313. Daniel Sparks, *Swing and a Miss: Why Congress Is Missing the Mark on Their Latest Proposed Legislation*, 51 J. MARSHALL L. REV. 613, 623 (2018).

314. MORE THAN BASEBALL, *supra* note 91, at 8.

315. Major League Baseball claims that 89 percent of this revenue went toward operating expenses. Interestingly, despite reporting MLB revenues of \$10.8 billion in 2022, Major League Baseball did not disclose operating expenses or net revenues. *See* Niesen, *supra* note 41; *MLB Sets New Record for Revenue with over \$10.8B*, SPORTS BUS. J. (Jan. 12, 2023), <https://www.sportsbusinessjournal.com/Daily/Issues/2023/01/12/Leagues-and-Governing-Bodies/mlb-record-revenue.aspx> [<https://perma.cc/5ACG-LVGT>] [hereinafter *MLB Sets New Record for Revenue*].

lower leagues and, presumably, plans to shrink MiLB rosters to 165 players per Club.³¹⁶ Yet as demonstrated in minor league hockey,³¹⁷ higher player wages bears no correlation with diminishing franchise values.³¹⁸ This is especially true considering other solid economics—Minor League affiliate values have both soared and proven to be recession-proof in recent years.³¹⁹ And although the League claims that Minor League Baseball is not profitable, and that it spends much higher portions of its MiLB revenues on operating costs than other sports leagues, neither its yearly expenditures nor profits come close to accounting for the future value it derives from its exclusive access to the MiLB labor pool.

While high operating expenses are a real consideration, correlating wages solely with expenses in the Minor Leagues both undervalues the players and ignores the cost-effective source of the entire MLB talent pool: Minor League players. With few exceptions, *everyone* in the history of the sport has first played in the Minor Leagues. Only twenty-three drafted players, *ever*, have gone straight to the Major Leagues.³²⁰ So, whereas MiLB operating costs may be relatively high when compared with MiLB revenue, the assertion that its players' salaries are not supported by the business model nonsensically ignores the fact that MiLB labor subsidizes the cost of exclusive access to 100 percent of the future MLB labor pool, and it has done so for more than a century.³²¹

While this Note will not attempt to model the detailed economic benefit derived by the League, it is important to note just how the League taps Minor League Baseball—incurring expenses fractional to the value it later extracts from that market. Firstly, MLB owners have established a developmental labor pool over which the League exercises complete managerial control, colludes to depress wages, and collects a profit.³²² Second, the lack of meaningful competition in American professional baseball means that MLB access to this

316. Niesen, *supra* note 41; *see also* Drellich, *supra* note 2.

317. Axelrod, *supra* note 12, at 506.

318. Hui, *supra* note 18, at 130.

319. McDowell, *supra* note 16, at 6–7.

320. Jason Catania, *Players to Go Straight from MLB Draft to The Show*, MLB (Sept. 18, 2020), <https://www.mlb.com/news/players-who-went-directly-from-the-draft-to-mlb> [<https://perma.cc/9RKQ-EGHJ>].

321. *See supra* Section IV.A.

322. Niesen, *supra* note 41.

market is both unrestricted and exclusive.³²³ The inverse of this truth is that employees in the labor market, in return, have no access to plausible alternatives. Over time, this has greatly skewed bargaining power and led to dehumanizing pre-unionization labor conditions. It has also padded the pockets of MLB executives.³²⁴

The League therefore has the power to intentionally suppress the costs of labor development without fear of losing players to competitors and brings MLB-ready athletes to the Major Leagues at minimal expense.³²⁵ Commissioner Manfred seems not to understand this financial advantage when he complains that the League subsidizes the Minor Leagues with hundreds of millions per year.³²⁶ If the League annually invests millions while—also annually—earning billions in revenue *exclusively* from former Minor League players, this so-called “subsidy” actually appears to be quite a lucrative investment.³²⁷ In any case, reality again raises an eyebrow to a Manfred claim. Minor League Baseball operates at a profit,³²⁸ and even if the League does sink \$300 million into Minor League salaries every year, League revenues approaching \$12 billion³²⁹ irrefutably signal that its previous investments pay off at astronomical rates.³³⁰ Even assuming static revenue and no value added by those who do not make it to the Major Leagues, as the chart below details, the true value of the MiLB labor pool that the League has exclusive access to each year is rather astounding.

323. See *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 923 (9th Cir. 2019).

324. McDowell, *supra* note 16, at 7.

325. See *supra* Section I.C.

326. Brucker, *supra* note 238, at 528.

327. *MLB Sets New Record for Revenue*, *supra* note 315.

328. Niesen, *supra* note 41.

329. See *MLB Revenue Split Versus NFL and NBA*, ROYALS REV. (Nov. 4, 2022, 12:00 PM), <https://www.royalsreview.com/2022/11/4/23438378/mlb-revenue-split-versus-nfl-and-nba> [<https://perma.cc/T7DP-FT75>]; see also Andrew Cohen, *MLB Revenue Hits Record \$11.6 Billion: Report*, HEAVY. (Jan. 19, 2024, 1:59 PM), <https://heavy.com/sports/mlb/sets-revenue-record-11-6-billion> [<https://perma.cc/4YSX-RDNW>].

330. Brucker, *supra* note 238, at 528. For an estimate of League revenue that additionally accounts for payroll costs, see Boeck, *infra* note 332.

Criteria	Formula	Value
MLB's Annual Revenue, per Player ³³¹	$\$6,800,000,000.00^{332} / 780 \text{ (Players)}^{333}$	\$8,717,948.72
Expected Career Revenue Contribution per MLB Player ³³⁴	$\$8,717,948.72 * 5.6 \text{ years}^{335}$	\$48,820,512.82
Expected Career Revenue Contribution per MiLB Player ³³⁶	$\$48,820,512.82 * 17.6\%^{337}$	\$8,592,410.26
Return on Investment per MiLB Player, per Year ³³⁸	$\$8,592,410.26 / 5 \text{ years MiLB}^{339}$	\$1,718,482.51
Total Yearly Value of MiLB Pool ³⁴⁰	$\$1,718,482.51 * 4,950 \text{ (Players)}$	\$8,506,486,153.84

331. This value shows the amount of revenue the League earns per Major League player in a given season, using available data from 2023.

332. This value, while approximate, accounts for MLB revenue less player salaries, lending itself to a more accurate estimate of the revenue MLB itself receives in the course of a season. MLB revenue in 2023 was \$11.6 billion, and combined League payrolls totaled approximately \$4.8 billion. *See* Cohen, *supra* note 329; Scott Boeck, *MLB Payrolls 2023: Full List of Every Baseball Team from Highest to Lowest*, USA TODAY (Oct. 24, 2023), <https://www.usatoday.com/story/sports/mlb/2023/04/06/mlb-team-payrolls-2023-highest-lowest-mets/11612107002> [<https://perma.cc/FNR2-PJ7W>].

333. While more than 1,000 players typically appear in Major League Baseball over the course of an entire season, on any given day, the total number of active players is exactly 780 (26 players on the active roster for 30 teams). So, for the purposes of calculating the how much MLB earns from player labor in the course of the season, the number 780 more accurately reflects the League benefit from the on-field product.

334. This value accounts for the League's portion of revenue as applied throughout the average length of a Major League player's career.

335. Bijay Gyawali, *Average Career Length of MLB Player by Position*, MLB RUN (Apr. 19, 2023, 10:42 AM), <https://mlbrun.com/average-career-length-of-mlb> [<https://perma.cc/8CE7-6EAS>].

336. This value accounts for the vast majority of MiLB players who don't ever play in MLB in showing the expected revenue the League generates in MLB per MiLB player's career.

337. Only 17.6 percent of MiLB players ever play in the Major Leagues; this is included to ensure that the calculation of expected revenue accounts for and excludes the vast majority of players who do not contribute to future MLB revenues. *See* Cooper, *supra* note 151.

338. This value further adjusts the revenue derived by MLB per each MiLB player by attributing the total value on a per-year basis, assuming the average MiLB career is approximately five years.

339. This approximates the time period that MiLB players play in the Minor Leagues before they either make it to the Major Leagues or transition out of baseball, although exact numbers are difficult to account for. This metric helps show a per-year, per-player value of the MiLB player pool. *See* Emely Garcia, *Fair or Foul: Examining Income Share Agreements in Professional Football and Baseball*, 18 COLO. TECH. L.J. 161, 174 (2020).

340. This value concludes by showing the per-year value of each MiLB player multiplied by the total MiLB labor pool. Notably, most estimates show the MiLB

Even pretending that MiLB business is not in fact profitable and MLB accounts take a \$300 million hit on operating the league each year, the revenue it generates in the future from maintaining its \$8.5 billion investment will far exceed the cost. It really is that simple; the League generates multiple billions of dollars in revenue per year drawing from a developmental labor force it has complete control over, and despite Manfred's attempts to indicate otherwise, Minor League Baseball pays for itself.³⁴¹ If MLB owners are permitted to derive any benefit at all from the future value of their developmental league, so should the players who cause the sport itself to exist.³⁴²

The 2023 season appeared just like all before it, but the sport has forever changed. Still, accounts are not settled. Minor League players are, plainly, not compensated fairly with respect to the value they add to the business, and the League staunchly refuses to part with a single penny without a fight. Contracts between MLB Clubs and affiliates, binding through 2030, enhance Minor League players' bargaining power for fair wages alongside the 2023 CBA's agreement against contraction,³⁴³ and data offers compelling arguments for player wage increases based on a complete assessment of their market value. Wages are a mandatory matter in collective bargaining, affording Minor League players negotiations leverage to demonstrate and demand proper compensation for their collective worth.

Collective bargaining has already proven itself an effective instrument for addressing the many issues facing Minor League players, and as time passes, effects on the game and its workforce will become clearer. For true labor equality, there is

bargaining unit totals approximately 5,500 players. However, in the interest of erring on the side of potential criticism, this value reflects the total number of players the CBA requires MLB teams to deliver to affiliates beginning in 2024 (165 players for each of 30 Clubs).

341. Niesen, *supra* note 41.

342. One possible way to model the future values of players is as follows: if 15 percent of MiLB players make it to the Major Leagues, those players contribute to the revenues generated by the League in the future. When initially promoted, they will make MLB minimum wage. Therefore, the CBA could provide that the Minor League bargaining unit is entitled revenue sharing percentages equal to 15 percent of all wages paid the previous season to players earning the Major League minimum. The PHPA has made it work. See Closius & Stephan, *supra* note 132, at 103.

343. Normandin, *Hubris*, *supra* note 9.

much work to be done. However, through collective bargaining, Minor League players can recognize the inherent value they bring to the League well before any of them ever play there, and armed with this knowledge they are ever-better positioned to remain unified, advance their interests, and demand the working conditions that their added value warrants.

CONCLUSION

Management got the union it deserves. Fortunately, so did Minor League players. But the road ahead remains difficult to travel for players who may find it difficult to match pre-unionization motivation and media engagement. That is, however, exactly what's needed—failing to maintain pressure on the League in future CBAs would be akin to throwing away an umbrella in a rainstorm because it's now dry underneath.³⁴⁴ Minor League players must realize that the hard work is just beginning, and they only need to look to their MLB counterparts as evidence. The display of unity in MLB collective bargaining, over time, created leverage and paved the way for increased competition and more favorable labor conditions. But even those victories took decades, and MLB players directly contributing to immediate League revenues enjoyed greater initial leverage. Minor League players must show identical resolve and unity; the League is a petty, lawful cartel with over a century of experience poisoning the quality of life for its players and the communities it affects while leveraging athlete popularity to portray an inaccurate economic picture of the sport. Furthermore, a transient bargaining unit may encounter more resistance against their demands and be less willing to engage in work stoppages or strikes. However, alongside a savvy union representative, a motivated workforce can remain unified and maximize their leverage and can take careful steps to ensure that they receive fair compensation and proper treatment through collective bargaining. Armed with data and a long history of progress by their Major League counterparts favoring their own interests, there is reason to believe they can do so in a fraction of the time it took sixty years ago. It's past time.

344. *Cf. Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).