

Final Offer Arbitration in the New Era of Major League Baseball

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I. Introduction

Baseball is a worldwide pastime that holds great reverence for its history and traditions. Unfortunately, along with the aspects adored by fans throughout the centuries, Major League Baseball (“MLB”) also has a history of failed negotiations and bitter feuds between players and team owners on the issue of player salaries. Player salary negotiations have evolved tremendously as bargaining power fluctuated over the past fifty years. Over time, the players banded together and unionized, creating what is now known as the Major League Baseball Players Association (“MLBPA”).¹ Since its inception, the MLBPA has developed an adversarial position to ownership, resulting in the need for a collective bargaining agreement and protocol for player-owner relations.

Under the collective bargaining agreement instituted as a result of the players’ strike of 1994, players have lobbied for and obtained desirable terms under which they are entitled to negotiate their salaries prior to the expiration of their existing contracts.² The type of salary negotiations utilized by Major League Baseball is known as final offer salary arbitration.³ The institution of salary arbitration in MLB has received rave reviews, and is often attributed for having saved the sport from the backlash of fan resentment following the players’ strike of 1994. Players are now more satisfied than ever with the ability to file for salary arbitration when they

¹ Jonathan M Conti, *The Effect of Salary Arbitration on Major League Baseball*, 5 Sports Law J. 221, 226 (Spring 1998).

² *Id.* at 222.

³ Elissa M. Meth, *Final Offer Arbitration: A model For Dispute Resolution In Domestic And International Disputes*, 10 Am. Re. Int’l Arb. 383, 385 (1999).

feel their productivity exceeds the expectations contemplated at the time their existing contract were created.⁴

However, fans today take every opportunity to criticize and generally detest player greed, the monopolization of talent by wealthier, large-market organizations, and the disparity of quality play among the teams as a result . This article provides a comprehensive analysis of the economic, athletic, and social impact of final offer salary arbitration in Major League Baseball. In Part II, the article delves into the motivations, fluctuations, and evolution of the player-owner relationship and free agency. Part III of the commentary will then focus on the distinguishing features and intricacies of final offer arbitration. Part IV discusses the unique procedural aspects of final arbitration in the framework of MLB, highlighting the positive and negative consequences perceptible in today's game. Part V addresses the comprehensive impact of final offer salary arbitration on MLB from the perspective of fans, team owners, and players. Part VI offers a glimpse into the future of baseball under the current arbitral system. Finally, Part VII concludes this article with a discussion of whether MLB can serve as a model of final offer arbitration for other potential applications.

II. History of player-team owner relationship

Since baseball was first organized as a professional sport in 1871, the game has been riddled with disputes and strife in connection with player salaries.⁵ In the early development of baseball, team owners created a dictatorship over their players known as the “reserve system.”⁶

⁴ *Id.* at 386.

⁵ Chantel D. Carmouche, *Arbitration in Major League Baseball*, 1 J. Am. Arb. 91 (2001).

⁶ *Id.* at 92.

Under the system first developed in professional baseball, players constantly switched teams.⁷ Then, player contracts were only signed one year at a time, which enabled player to offer their services on the open market at the end of each season.⁸ Many regard this characteristic of early baseball as the predecessor to modern day free agency.⁹ The owners during this time period were often described as tight fisted and tyrannical, who grew more displeased with their lack of control over player mobility.¹⁰

On September 30, 1879 team owners among the newly formed National League of Baseball Clubs entered into a gentleman's agreement whereby the owner of each team could designate five of his players as "off limits" from other teams until they were released.¹¹ Accordingly, the owners agreed to refrain from contracting with these specific players, who were therefore "reserved" to their current club.¹² The new "reserve system" oppressed player salaries, increased organization profits, and created a set of agreed upon standards under which the sport operated smoothly.¹³

As the success of the league continued, the reserve system was eventually expanded to cover entire teams.¹⁴ By the 1880's, the team owners inserted a reserve clause in each individual player's contract, barring him from signing with another team until released from his current

⁷ Conti, *The Effect of Salary Arbitration on Major League Baseball*, 5 Sports Law J. 221, 223.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* Owners determined that action must be taken after Jim O'Rourke, a standout player for Boston in 1879 quit his team because the team refused to buy him a uniform, thereafter signing with the team in Providence. *Id.* at 223-24.

¹¹ Carmouche, *Arbitration in Major League Baseball*, 1 J. Am. Arb. 91, 92.

¹² Conti, *The Effect of Salary Arbitration on Major League Baseball*, 5 Sports Law J. 221, 224.

¹³ Carmouche, *Arbitration in Major League Baseball*, 1 J. Am. Arb. 91, 92.

¹⁴ Conti, *The Effect of Salary Arbitration on Major League Baseball*, 5 Sports Law J. 221, 224.

contract.¹⁵ As a result, once a player signed his first contract with a particular professional team, he became the property of that team, and was bound to play for that club for the remainder of his career.¹⁶

The monopolistic business practices of the baseball team owners were first challenged in 1922 in *Federal Baseball Club Inc. v. National League of Professional Clubs*.¹⁷ The Court sided with the owner's contention that the reserve system was an indispensable aspect of the sport, without which clubs could raid each others' rosters for players and eventually destroy the game.¹⁸ Other failed attempts were made to invalidate the reserve system through the courts before players realized other avenues for obtaining equal bargaining power.¹⁹ In 1966, Marvin Miller was appointed as President of the Major League Players Association ("MLBPA"), and the players union's bargaining status was indirectly approved by the National Labor Relations Board in 1969.²⁰

¹⁵ *Id.*

¹⁶ *Id.* The renewal clauses often contained provisions which entitled the team an option to renew the player contract under the terms of the previous contract. *Id.* Thereby, teams were able to renew player contracts every year without renegotiating terms or obtaining the consent of the players. *Id.* This often left players with the conundrum of being forced to play for the same team under the same conditions or permanently retire from the sport. *Id.*

¹⁷ *Id.*

¹⁸ *Id.* In his rationale for endorsing the excessive power of the owners, Chief Justice Holmes determined that baseball was exempt from the antitrust laws. *Id.* In support of his decision, Holmes reasoned that baseball did not constitute interstate commerce and therefore not within the purview of the Sherman Act. *Id.*

¹⁹ *Id.* at 225-26. The second attempt to challenge the reserve system took place in *Toolson v. The New York Yankees, Inc.* Toolson argued against the monopolistic stronghold the owners maintained over the sport, as well as the unreasonable restraints of the reserve clause. *Id.* at 225. The Supreme Court affirmed judgment for the owners citing precedent of *Federal Baseball*. *Id.* The third attempt to bring an end the reserve clause occurred in 1969 by Curt Flood. *Id.* In *Flood v. Kuhn*, the owners relied on the argument that the reserve system was necessary to maintain competitive balance in the sport. *Id.* Once again, the Court agreed with the owners. *Id.* at 226. In addition, the Court concluded that because it had not overturned the prior decisions in over fifty years, it was entitled to the benefit of stare decisis. Carmouche, *Arbitration in Major League Baseball*, 1 J. Am. Arb. 91, 97. Thus, if it were to be overturned, it would be act of congress and not the court. *Id.*

²⁰ Conti, *The Effect of Salary Arbitration on Major League Baseball*, 5 Sports Law J. 221, 226.

By 1973, the players union leveraged enough bargaining power to demand a salary arbitration provision from the owners.²¹ Fearing the union may not relent from its quest to completely overhaul the reserve clause, the owners actually proposed that individual salary disputes with players be submitted to arbitration.²² On February 25, 1973, a collective bargaining agreement was signed between the players union and the owners which provided for salary arbitration as a means for resolving salary disputes.²³ The reserve system eventually reached its end at the hands of an impartial arbitrator named Peter Seitz in the Messersmith-McNally Arbitration in 1976.²⁴ Seitz issued an opinion that the reserve clause allowed teams to renew an expired contract for only one additional year, rather than the previous system of perpetual servitude.²⁵ The Players Relations Committee immediately appealed the decision, claiming Seitz abused his authority, but the decision was upheld and the current system of free agency replaced the reserve system.²⁶

Despite achieving an unprecedented position of power, the MLBPA feared unrestrained free agency would flood the open market with talent, causing a depression of salaries.²⁷ Thus, an

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Carmouche, *Arbitration in Major League Baseball*, at 97. The Messersmith-McNally Arbitration arose out of grievances filed by the Players Union on behalf of Andy Messersmith of the Los Angeles Dodgers and Dave McNally of the Montreal Expos. *Id.* During the 1975 season, Messersmith played under the one-year renewal of his contract after he had been traded from the Angels. *Id.* Following the season, he attempted to offer his services to other teams with the belief that he had fulfilled his one-year renewal and therefore was no longer under contract with the Dodgers. *Id.* Unable to obtain a bid for his services elsewhere, Messersmith sought resolution in arbitration. *Id.* The owners maintained that when a team renewed a contract under the same terms as a player's previous contract, the renewal clause was once again embedded within the renewed contract. *Id.* This philosophy of a perpetual right of renewal was not well received by the arbitration panel, who ultimately ruled in favor of Messersmith and free agency. *Id.*

²⁵ *Id.*

²⁶ *Id.* at 98.

agreement was reached for a free agency system in which a player would not be eligible for free agency until six years of play were completed in the Major Leagues.²⁸ This six year guarantee, replacing the former perpetual servitude enforced by the reserve system, and salary arbitration were solidified and linked under the 1976 Collective Bargaining Agreement, which changed the business of baseball forever.²⁹

III. Final Offer Arbitration

Major League Baseball has adopted a dispute resolution method known as Final Offer Arbitration (“FOA”) as an exclusive method for resolving contract based salary disputes between players and owners.³⁰ This relatively new form of dispute resolution, final offer, or last-best offer arbitration, limits an arbitrator to choosing the final offer made by one of the parties.³¹ “It is designed to motivate each party to negotiation in good faith and genuinely attempt to compromise in order to create a final offer that an arbitrator will select as most reasonable.”³² Major League Baseball is the most publicized use of FOA, however it has been used effectively in the United States public sector as well.³³

When a bargaining impasse is presented in conventional arbitration, an arbitrator has the option to select either party’s position on one or all pending issues, create a compromise between

²⁷ Conti, *The Effect of Salary Arbitration on Major League Baseball*, 5 Sports Law J. 221, 228.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Meth, *Final Offer Arbitration: A model For Dispute Resolution In Domestic And International Disputes*, at 385.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 386.

the parties' positions, or create a unique solution.³⁴ Conventional arbitration is commonly criticized for the "chilling effect" it may have on the parties' incentives to bargain in good faith, when they may have reason to believe a more attractive outcome may result from arbitration than negotiation.³⁵ However, when Final Offer Arbitration is used to resolve a bargaining impasse, each party submits a proposed monetary award to the arbitrator before the hearing, at the conclusion of which, the arbitrator must choose one award without modification or compromise.³⁶ This approach imposes drastic restrictions on the arbitrator's discretion and provides each party an incentive to offer a reasonable or defensible proposal, in the hope that it will be selected by the decisionmaker.³⁷

Final Offer Arbitration entails the inherent risk of a third party neutral endorsing an adversary's final offer.³⁸ This potential to lose entirely in FOA thwarts the chilling effect that

³⁴ *Id.* at 387.

³⁵ *Id.* The theory of the chilling effect states that the availability of arbitration as a dispute resolution procedure decreases the willingness of the parties to engage in good faith and legitimate negotiations. *Id.* Parties to a dispute may also rationalize the conventional arbitration process as a means of reaching some form of compromise from the parties' respective positions, causing the parties to undervalue the risks associated with the arbitration hearing, posture during negotiations, and assert inflated positions so as to influence the arbitrator's determination. *Id.*

³⁶ F. Peter Phillips, *Understanding, Preventing and Litigating Year 2000 Issues: Practical Strategies and Industry-Specific Solutions*, Practising Law Institute (March-April 1999).

³⁷ *Id.* A related variation of Final Offer Baseball Arbitration, referred to as "night baseball" arbitration, requires the arbitrator to determine the award without the benefit or guidance of the parties' proposals and then the actual award is based upon the party's proposal closest to that of the arbitrator. *Id.* Another related form referred to as "High-Low" or "Bounded" Arbitration allows the parties to agree privately on an award without informing the arbitrator that the arbitrator's final award will be adjusted within a predetermined bounded range. For example, "P wants \$200,000. D is willing to pay \$70,000. Their high-low agreement would provide that if the award is below \$70,000, D will pay at least \$70,000; if the award exceeds \$200,000, the payment will be reduced to \$200,000. If the award is within the range, the parties are bound by the figure in the award." *Id.*

³⁸ Meth, *Final Offer Arbitration: A model For Dispute Resolution In Domestic And International Disputes*, at 385.

may otherwise occur.³⁹ It also “acts as a psychological, economic, and political incentive for the parties to reach their own agreement.”⁴⁰

FOA facilitates good faith bargaining by motivating the parties to calculate and present their most reasonable positions prior to the arbitration.⁴¹ Final offers in salary arbitration tend to be reasonable, because they may not have been proposed in prior negotiations and the offers are exchanged simultaneously, making it impossible for the parties to base counteroffers upon the other’s offer.⁴² Therefore, it forces each party to independently determine a reasonable and defensible monetary valuation of a player that is likely to be found more reasonable than the value reached by the other side.⁴³ In addition, the final offer process evokes information that is typically otherwise concealed during negotiations, hindering the parties’ ability to settle.⁴⁴ As each party discloses more information regarding “risk preferences and knowledge of facts relevant to the arbiter’s decision,” the likelihood of reaching a settlement increases.⁴⁵ FOA also creates distributive and interest-based settlement incentives by excluding non-financial issues from arbitration and enabling the parties to gauge their likelihood of success after the final offers are submitted.⁴⁶

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* A “reasonable” position in the framework of FOA is an offer that is defensible and adoptable based upon the criteria an arbitrator may take into consideration. *Id.*

⁴² *Id.*

⁴³ *Id.* at 388.

⁴⁴ *Id.* at 389.

⁴⁵ *Id.*

⁴⁶ *Id.*

The distributive incentive to settle in FOA arises out of the midpoint between the final offers, which provides the arbitrator a starting point for valuation and a range of numbers in which the parties can negotiate.⁴⁷ This enables each party to evaluate the offers presented and the likelihood that the arbitrator would determine the value of the player to be greater or less than the midpoint.⁴⁸ The offer that is closer to the value determined by the arbitrator is likely to win the arbitration, which allows the parties to settle accordingly.⁴⁹ Thus, when organizations submit offers significantly lower than the players' proposals, they often scramble to settle on the player's side of the midpoint before hearings conclude out of fear of losing entirely.

In baseball arbitration, final offers that are relatively close together often settle, because a compromise is not far off.⁵⁰ Likewise, final offers that are extreme often settle as well, because such a disparity increases the likelihood of the arbitrator choosing the side with the more reasonable offer over the other.⁵¹ The possibility of experiencing a devastatingly expensive loss in arbitration creates a significant incentive to settle.⁵²

Interest-based incentives to settle are based upon the readily apparent fact that the parties must coincide in pursuit of a common goal following the salary dispute process. These relationship-specific variables encourage settlement on both sides of the battleground. Once the arbitration process begins, meaning the club has decided to tender the player, the players will

⁴⁷ *Id.* at 390. Because baseball salary disputes tend to settle at or near the midpoint, the party with the more defensible number with respect to the midpoint generally receives a more favorable settlement. *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Conti, *The Effect of Salary Arbitration on Major League Baseball* at 231.

⁵¹ *Id.*

⁵² *Id.*

continue to play for their clubs for at least one year after the arbitration.⁵³ Accordingly, teams prefer to avoid arbitration hearings in which they may be forced to defend their proposals by insulting players and presenting arguments that emphasize a player's mental and physical shortcomings, limited contributions to the team in the past, club record since being a member of the team, or less than ideal public appeal.⁵⁴

On the other side of the bargaining table, players may wish to avoid that actual arbitration hearing as well in order to secure benefits that may otherwise be foregone in the arbitration process.⁵⁵ Benefits that players commonly negotiate for that are precluded from arbitration awards, include but are not limited to individual or team performance based bonuses, guaranteed contracts, no trade clauses, single occupancy rooms on road trips, requiring the team to pay charges incurred in road trips upfront rather than a reimbursement system, locker room perquisites, and specific arrangements to accommodate a player's family.⁵⁶ A player may prefer settlement as a means of preserving any number of potential benefits that may be negotiated outside of arbitration.

Furthermore, the potential to bargain for multi-year contracts also has the potential to encourage both parties to settle.⁵⁷ A critical feature of salary arbitration is limiting the awards to one-year contracts. Organizations often seek guarantees of players' services for extended periods so the team may experience the benefit of a player's improved performance without the

⁵³ Meth, *supra* note 3, at 390.

⁵⁴ *Id.*

⁵⁵ *Id.* Bearing in mind that baseball salary FOA only addresses the issue of salary for the player's immediately following season, it does not offer a forum in which the parties can negotiate on other potential deal points that could potentially appease the players.

⁵⁶ *Id.*

⁵⁷ *Id.* at 391.

obligation of increasing compensation, harkening back to the reserve system era. The FOA system exists to accommodate the players who hold more positive self-perceptions of their skills and potential, and therefore, prefer one-year contracts so they may test their values on the open-market in the more immediate future. Nevertheless, settlement in FOA may be desirable for both parties, as many players value highly the job security provided by multi-year contracts, while team owners appreciate guarantees from players.⁵⁸

FOA can take several forms and variations thereof, which are designed to reach specific goals of the dispute resolution process.⁵⁹ In “issue-by-issue” FOA, the arbitrator has flexibility to balance an award across the issues presented by selecting a final offer on each issue independently.⁶⁰ However, “package Final Offer Arbitration” is more closely aligned with the goals and essence of FOA, pursuant to which the arbitrator chooses one party’s final offer on all issues in dispute.⁶¹ Salary arbitration in Major League Baseball is largely viewed as somewhat of a hybrid between these two common systems of FOA, considering salary is the only issue in dispute, yet it entails the high degree of risk commonly associated with the package system.⁶² As such, FOA in the context of baseball is categorized as neither a package nor issue-by issue system.

⁵⁸ *Id.*

⁵⁹ Meth, *Final Offer Arbitration: A model For Dispute Resolution In Domestic And International Disputes* at 394. FOA can take the form of issue-by-issue system or a package final offer system. *Id.* In addition, FOA procedure can be varied by concealing final offers, presentation of dual final offers, hiring independent fact finders, combining various forms of alternative dispute resolution, negotiation after submission of final offers, confidentiality, and allocation of costs. *See id.* at 394-402.

⁶⁰ *Id.* at 394. However, in issue-by-issue FOA, the ability to maintain the structure of FOA procedure breaks down as more issues are presented in the dispute, essentially becoming conventional arbitration. *Id.*

⁶¹ *Id.* Under the package system, the discretion bestowed upon arbiters in conventional and issue-by-issue arbitration is eliminated. *Id.* The lack of discretion increases the risk to the parties of having their entire offer rejected, thereby maximizing each party’s incentive to negotiate a settlement. *Id.*

⁶² Conti, *The Effect of Salary Arbitration on Major League Baseball* at 230.

This unique amalgamation of an otherwise sparsely used dispute resolution tool raises questions whether it accomplishes its stated purpose of narrowing salary disputes and encouraging settlement between the parties. Nevertheless, proponents of Final Offer Salary Arbitration in baseball argue FOA is a successful tool because it saves time and money over conventional arbitration by providing structure to negotiations and strict procedural requirements, while minimizing player-owner acrimony and the potential chilling effect.⁶³

IV. The Unique Procedural Aspects and Benefits of Final Offer Arbitration in MLB

Pursuant to the terms of the current Basic Agreement, any player with a “total of three or more years of Major League service, however accumulated, but with less than six years of Major League service” may file for salary arbitration.⁶⁴ Both players and organizations have the ability to file for salary arbitration without the consent of the other party.⁶⁵ However, players with at least two but less than three years of Major League service who have accumulated at least eighty-six days of service during the immediately preceding season are also eligible for arbitration if they rank in the top seventeen percent in total service in the class of players who have at least two but less than three years of Major League service in the preceding season.⁶⁶ In addition, players with at least six years of experience who are not eligible for free agency at the end of the preceding season may elect salary arbitration with the team’s consent.⁶⁷

⁶³ Meth, *Final Offer Arbitration: A Model For Dispute Resolution in Domestic and International Disputes* at 393.

⁶⁴ Basic Agreement, art. VI(F)(5) (1997).

⁶⁵ Conti, *The Effect of Salary Arbitration on Major League Baseball* at 228.

⁶⁶ *Id.*

⁶⁷ Carmouche, *Arbitration and Major League Baseball* at 100.

To invoke the arbitration clause, a grievance must be filed between January 5th and 15th, after which the player and the team have three days within which to submit final salary offers to a three-member panel of impartial arbitrators.⁶⁸ The hearings then take place between February 1st and February 20th, in which the arbitrators may consider particular criteria for resolving the dispute. Such criteria typically include the quality of the player's contributions to the team during the immediately preceding season (including the player's overall performance, qualities of leadership, and public appeal); the length and consistency of the player's career performance; the record of the player's past compensation; comparative baseball salaries throughout the league; the existence of any physical or mental defects on the part of the player; and the club's recent performance (including overall record and standing, as well as attendance as an indicia of public acceptance).⁶⁹ The Basic Agreement does not apportion weight among the above-mentioned factors, thus the arbitrator is free to decide how much weight is to be given each factor.⁷⁰

Once each side has presented all relevant evidence, the arbitrator is generally required to render a decision within twenty-four hours, in which "opinions, explanations, findings, or statements of reasons...regarding his opinion" are strictly forbidden.⁷¹ Arbitration decisions are

⁶⁸ Conti, *The Effect of Salary Arbitration on Major League Baseball* at 228. Arbitrators that sit for salary disputes in MLB are selected from a list of potential arbitrators provided by the American Arbitration Association. Meth, *Final Offer Arbitration: A model For Dispute Resolution In Domestic And International Disputes* at 401. "The Major League Baseball Players' Association (MLBPA), representing the players, and the Players' Relations Committee (PRC), representing the clubs, each strike a name from the list until the requisite number of arbitrators remain; then the MLBPA and the PRC jointly assign individual arbitrators to particular cases. *Id.*

⁶⁹ Carmouche, *Arbitration in Major League Baseball* at 101. See also, Conti, *The Effect of Salary Arbitration on Major League Baseball* at 229.

⁷⁰ Conti, at 229. The Basic Agreement does, however, proscribe consideration of financial position of the club and the player, comments made to the press and testimonials, offers made by either side prior to arbitration, the cost of the parties' representatives, or the salaries in other sports or occupations.

⁷¹ Carmouche, *Arbitration in Major League Baseball* at 102.

then announced throughout the arbitration season, which is criticized for the potential influence early decisions may have on those later in the season.⁷²

Despite having originally proposed the concept of salary arbitration and their successful record against esteemed Major League players in arbitration, owners are quick to point the blame for baseball's current economic imbalance at salary arbitration.⁷³ The arbitration system in place spares the parties and arbitrators from creating and considering voluminous briefs, which streamlines the process and facilitates adherence to the strict time restraints.⁷⁴ In addition, the confidential nature of the calculation and submission of final offers preserves the integrity of the player-owner relationship.⁷⁵ Time requirements for filing, submission of final offers, the hearing, and the arbitrator's decision allows for all salary disputes to be settled prior to the start of the upcoming season, whereas the parties would otherwise be subject to lengthy and costly litigation processes to settle these contract disputes.

Furthermore, the preclusion of written decisions eliminates additional costs associated with appeals and dissatisfaction with awards.⁷⁶ Because both parties are aware that the Collective Bargaining Agreement does not contemplate or provide further recourse following an award, the process does not continue.

In the context of its dispute resolution capacity, Final Offer Arbitration has proven to be a successful addition to Major League Baseball by establishing job-security for players, ensuring

⁷² Meth, *Final Offer Arbitration: A model For Dispute Resolution In Domestic And International Disputes* at 404.

⁷³ Stuart J. Riemer, *Albert Pujols: Major League Baseball Salary Arbitration From A Unique Perspective*, 22 *Cardozo Arts & Ent. L. J.* 219, 240-241 (2004).

⁷⁴ Meth, *supra* note 3, at 393.

⁷⁵ *Id.*

⁷⁶ *Id.*

clubs are fully stocked with players under contract, providing monetary incentives for high player performance, and saving an incalculable amount of time and money by isolating and controlling grievances.

V. The Comprehensive Impact on Major League Baseball

Over the past twenty-two years, baseball salaries have sky-rocketed in part due to continually record-breaking arbitration awards. The largest arbitration award in 1973 was granted to Reggie Jackson in his MVP season for a then staggering \$135,000.⁷⁷ The highest arbitration award in the 2005 arbitration season was to Roger Clemens of the Houston Astros for \$18,000,000, which was the largest single-season salary for a pitcher in baseball history.⁷⁸

Between 1976 and 1996 average arbitration awards rose from \$68,000 to \$2,300,000; a compound growth rate of 23%.⁷⁹ The average annual salary in baseball in 1973, when salary arbitration was first introduced, was a meager \$36,566 compared to \$2,630,000 in 2005.⁸⁰ Most fans, commentators, and owners blame the powerful combination of free agency and salary arbitration for the fact that baseball wage increases have outpaced the cost of living by approximately 5,000% during that time.⁸¹ However, the average annual salary actually dropped

⁷⁷ Dave Studeman, *All About Arbitration*, The Hardball Times, January 31, 2005 at <http://www.hardballtimes.com/main/printarticle/all-about-arbitration/>.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Associated Press, Average Player Arbitration Salary Declines – But Most Still Received 123 Percent Increase, at http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=mlb_20020204_arbitrationhistory_news&team_id=mlb

⁸¹ *Id.*

in 2004 for the first time since 1990 and the median salary of \$850,000 in 2005 is still well below its all time high of \$975,000 in 2001.⁸²

A. Team Owners' Perspective

When considering the reserve system immediately preceded the free agency and salary arbitration era of baseball, team owners understandably criticize the dramatic increase in player salaries over the past thirty years. Nevertheless, a statistical and economic analysis is warranted before dubbing salary arbitration as the bane of our national pastime.⁸³ Perhaps most noteworthy in this analysis is the fact that only about 25% of the employees in the bargaining unit of baseball players are covered by the salary arbitration clause.⁸⁴ Because of the eligibility requirements, relatively few players actually invoke the arbitration clause and far fewer every complete the hearing process, which suggests arbitration may not be the sole source of the salary inflation.⁸⁵ Furthermore, clubs are not required to renew a player's contract when a player elects to file for salary arbitration. The club has the option to either participate in the dispute resolution process in order to retain the player for an additional year or to refrain from offering a contract to that player, which is referred to as a nontender.⁸⁶

Owner's complaints are also questioned by the fact that owners have won 59% of their cases that actually complete the formal resolution process; prevailing at a rate of approximately

⁸² Ronald Blum, Associated Press, *Average Baseball Salary Hits Record \$2.6M*, available at <http://abcnews.go.com/Business/wireStory?id=649077&page=2>

⁸³ Conti, *The Effect of Salary Arbitration on Major League Baseball* at 234.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 237.

80% in 1995, 1997, 1999, and 2002.⁸⁷ Notwithstanding the historical success of the clubs in arbitration, the owners maintain their position that arbitration is a win-win proposition for players, consequently inflating salaries above players' market value.⁸⁸ Salary Arbitration is described as a win-win proposition for the players, because both settlement agreements and a team's final offer will both exceed a player's salary in the preceding season due to the team's fear of losing entirely.⁸⁹

While owners agree final offer salary arbitration encourages settlement, players also gain considerably from settlements that arise out of the arbitration setting.⁹⁰ To illustrate that point, ten of sixteen clubs prevailed in the 1994 season of arbitration hearings, yet the aggregate salaries of the sixteen players involved rose 95%.⁹¹ As large revenue disparities continue to grow in the sport and the cost of maintaining competitive teams drives up ticket and concession prices. The owners point the finger at salary arbitration and free agency.⁹²

Following the season-shortening strike of 1994 and growing economic strain on the sport, a Blue Ribbon Panel was commissioned in 1998 to report on the causes and potential solutions for the revenue disparities and competitive imbalances in Major League Baseball. In its July 2000 report, the panel did not cite salary arbitration as a source of salary inflation, nor did it

⁸⁷ Dave Studeman, *All About Arbitration*, The Hardball Times, January 31, 2005 at <http://www.hardballtimes.com/main/printarticle/all-about-arbitration/>

⁸⁸ Conti, *The Effect of Salary Arbitration on Major League Baseball* at 235.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Richard C. Levin, et al., *The Report of the Independent Members of the Commissioner's Blue Ribbon Panel on Baseball Economics* (2000).

suggest any structural reforms in the arbitration process that would ameliorate the league's troubles.⁹³

Yet, neither the players association nor the league can deny that only three Major League teams achieved profitability between 1995 and 1999.⁹⁴ Most importantly, owners do not find it coincidental that the only two professional sports that use arbitration as a method for establishing salaries, Major League Baseball and the National Hockey League, also have the most acrimonious labor relations of all professional sports.⁹⁵

B. Fan Perspective

In the aftermath of the 1994 players strike, baseball fans are skeptical of the detrimental effect of soaring player salaries on the overall appeal of the sport. What has evolved since the 1973 Collective Bargaining Agreement is a merit-based compensation system in a free market, where young players are now motivated to play at their best of their ability at all times in hopes of being rewarded in arbitration. However, this process has caused a drastic shift in bargaining power to the players and large-market clubs.⁹⁶

Many fans perceive the changes in modern day baseball, including high wage disparity, high revenue disparity, high ticket prices, high concession prices, and competitive imbalances

⁹³ See generally *id.* To the contrary, the panel suggested the following potential methods of improving baseball's current economic condition: sharing at least 40% of each club's local revenue; levying a 50% competitive balance tax on club payrolls above the threshold of \$84 million; encouraging all clubs to have a minimum payroll of \$40 million; instituting an unequal central fund distribution to assist low-revenue clubs; creating a competitive balance draft; and reforming the Rule 4 draft.

⁹⁴ *Id.* at i.

⁹⁵ *Companies, Their Insurers, And Coverage Baseball Arbitration Explained, Critiqued And Applied*, 22 *Alternatives to High Cost Litig.* 95, 97 (2004).

⁹⁶ Levin, *The Report of the Independent Members of the Commissioner's Blue Ribbon Panel on Baseball Economics* at 1.

among the divisions and teams to be a direct result of soaring salaries and arbitration awards.⁹⁷ The escalating cost to clubs of fielding competitive teams in smaller Major League markets has jeopardized baseball's traditional perception as "the affordable family spectator sport."⁹⁸ Fans are watching ticket prices climb along with player salaries, particularly in Philadelphia and Boston, where average ticket prices jumped 26% and 12% respectively from 2003 to 2004.⁹⁹ On average, a family of four spent \$155.52 for a day at a big-league ball park in 2004, causing a general decline in family attendance.¹⁰⁰

Fans have taken notice of clubs' attempts to keep up with the salary demands of players by raising the price of tickets, parking, food, and beverages as well as redecorating Major League Ballparks with corporate sponsorships.¹⁰¹ As the fans are forced to pay more to watch their favorite teams compete, they expect some solace in being provided a winning team in return.¹⁰² Unfortunately for many fans, that is not the case. In recent years a high correlation has developed between payroll and success on the field, and cost of attendance may not necessarily reflect the quality of the end product.¹⁰³ The disparity of success between teams in high and low

⁹⁷ *Id.* at 2. Local revenues, including gate receipts, local television, radio and cable rights fees, ballpark concessions, advertising and publications, parking, suit rentals, postseason and spring training are the largest single component of annual revenues for most Major League Clubs. *Id.* "The ratio between the highest and lowest club's local revenues more than double in five years from 5.5:1 in 1995 to 14.7:1 in 1999." *Id.* At the time of the Blue Ribbon Panel investigation, the combined payrolls of the two teams with highest payrolls exceeded the combined payrolls of *all* in the bottom quartile of payrolls by \$30 million. *Id.*

⁹⁸ *Id.* at i.

⁹⁹ Daniel B. Wood, The Baseball Stat You Don't Want to See, The Christian Science Monitor (2004), available at <http://www.csmonitor.com/2004/0415/p03s01-ussc.html>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Levin, *The Report of the Independent Members of the Commissioner's Blue Ribbon Panel on Baseball Economics* at 4.

revenue markets in the 1990's was staggering. No club whose payroll fell in the bottom half of the industry won a single postseason game out of the 158 MLB postseason games played between 1995 and 1999.¹⁰⁴ Only one such team even made it to the postseason during that span.¹⁰⁵ This imbalance in the sport forces fans to wonder how the Tampa Bay Devil Rays, with an annual payroll of \$29.9 million in 2005, have any chance of competing with the New York Yankees, whose payroll just slipped under the \$200 million mark in 2005.¹⁰⁶

The fans have no other answer for the rapid changes in the sport other than player salaries. So why does salary arbitration take the rap for all of the problems in modern day baseball? Fans and critics perceive salary arbitration with a negative connotation because players chose to file a dispute, thereby forcing their team to pay a higher salary, which directly impacts the team's ability to pay for other players that could make the team more competitive.

Despite the expanding global market for baseball and opportunities to make the game more popular, the combination of competitive imbalance and rising prices could eventually alienate MLB's core fan base, making the development of new generations of baseball fans problematic. "Competition for the sports entertainment dollar, and for the sport fan's attention, is increasingly intense."¹⁰⁷ In the early days of baseball, the sport held the attention of sports

¹⁰⁴ *Id.* at 12.

¹⁰⁵ *Id.* MLB is now essentially divided into three groups of unequal size: 1) clubs that expect to perform well in the postseason; 2) clubs that hope for an occasional "dream season" to reach the postseason; and 3) clubs that know going to spring training that they will not make the playoffs.

¹⁰⁶ Ronald Blum, *Average Baseball Salary Hits Record \$2.6M*, Associated Press (2005), available at <http://abcnews.go.com/Business/wirestory?id=649077&page=1>. In 2005, the New York Yankee's payroll of \$199.77 million far exceeded the \$187 million combined total of four low-revenue market teams: Tampa Bay (\$29.9 million), Kansas City (\$36.9 million), Milwaukee (\$40.2 million), and Cleveland (\$41.8 million).

¹⁰⁷ Levin, *The Report of the Independent Members of the Commissioner's Blue Ribbon Panel on Baseball Economics* at 4.

fans from opening day through October.¹⁰⁸ However, today, there are only six weeks between the final National Basketball Association (“NBA”) championship game and the first National Football League (“NFL”) preseason game.¹⁰⁹

Although there are a multitude of other factors that play into general fan sentiment and the popularity of baseball, salary arbitration is often targeted, arguably unfairly, as the culprit of the troubled economic structure of baseball.

C. Players’ Perspective

The traditional sentiment of Major League Baseball players is that they are underappreciated and underpaid. Not much has changed in that respect since the reserve system era, as modern day players remain under a system in which owners are able to compensate their younger players well below the full market value of their ability and performance. The most prominent example of this exploitation is Albert Pujols of the St. Louis Cardinals.

In 2002, Albert became the first player in baseball history to complete a season with at minimum batting average of .300, 30 home runs, 100 runs scored, and 100 RBIs in each of his first two major league seasons, a year in which Albert’s salary was a mere \$600,000.¹¹⁰ In 2002, the average Major League Baseball salary was \$2,272,620 with an overall median salary of \$911,250.¹¹¹ What’s more, at least 426 major league players 2002 were placed in higher salary

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Batting Statistics, Baseball-Reference.com, at <http://www.baseball-reference.com/p/pujola01.shtml>.

¹¹¹ USA Today, *Major League Salaries*, at <http://www.usatoday.com/sports/baseball/salary/01salaries.htm>.

brackets than Albert, yet none of those players had performed at Albert's unprecedented level and arguably no other player contributed as much to his team over a two year period.¹¹²

Nevertheless, because of the required three years of Major League experience to become eligible for salary arbitration and file a grievance, Pujols played through the 2003 season earning only \$950,000.¹¹³ However, upon completion of Albert's third Major League season, a panel determined his salary was an utter injustice considering his career contribution with the St. Louis Cardinals and the salaries of comparable players during that period.¹¹⁴

Today, players are entitled to test their values in the free agency market once they have completed six Major League seasons, however, those who perform at elite levels several years prior to their eligibility for free agency are grossly underpaid. Furthermore, players who fit into the latter category do not only contribute immensely to their teams' success, but they also increase their teams' marketability. Major League organizations sell team merchandise in their stadiums, in sporting good stores around the world, and on countless websites on the Internet. As these young, high-performing players improve the performance and marketability of their respective organizations, team owners are also able to increase revenues from merchandise, licensing of broadcasting rights to local television networks, and corporate sponsorships, all of which will never benefit those players.

¹¹² *Id.*

¹¹³ Batting Statistics, Baseball-Reference.com, at <http://www.baseball-reference.com/p/pujola101.shtml>.

¹¹⁴ Stuart J. Reimer, *Albert Pujols: Major League Baseball Salary Arbitration from a Unique Perspective*, 22 *Cardozo Arts & Ent. L.J.* 219 (2004). Pujols made \$950,000 in 2003 when he finished second behind Barry Bonds in voting for the NL MVP award. ESPN.com, *Contract reportedly for Seven Years*, at <http://sports.espn.go.com/mlb/news/story?id=1738364>. In 2004, Albert was able to negotiate a seven year, \$100,000,000 contract with St. Louis out the arbitration setting. Pujols' contract accounted for the largest salary increase arising out of arbitration in 2004 at 1,604 percent, with his salary rising from \$950,000 to an average of \$14.29 million. ESPN.com, *Pujols Deal Leads Arbitration-eligible Increase*, at <http://sports.espn.go.com/espn/print?id=1739355&type=story>, February 19, 2004.

Bearing in mind the transmutation of the reserve system into the free agency system, it is evident that arbitration serves as necessary tool to reconcile the inherent conflicts that arise out of a compromise of the two systems. Although, players are now able to demand exorbitant salaries in the free agency market today, the advantage of the owners in the first six years of every player's Major League career is too great for the players who simply deserve more.

D. Balanced Assessment

A balanced assessment, taking various studies and developments into consideration, is necessary to evaluate the current state of baseball and the role of final offer arbitration in the sport. Since the Blue Ribbon Panel addressed the growing concern of competitive imbalance in Major League Baseball in 2000, many mid to low revenue market teams have shown noteworthy improvement. Teams such as the A's, Indians, Marlins, Twins, Astros, Angels, and Whitesox, are teams that are not in the top quartile of Major League payrolls yet have achieved varying levels of success; either making the playoffs, winning their division or the World Series.¹¹⁵ The return to competitive balance in the past several years is probably made most obvious by the Yankee's five year streak without winning a World Series despite having the highest payroll in the league since 1999.¹¹⁶ Furthermore, the 2005 World Series included the Houston Astros and the Chicago White Sox, with only the 12th and 13th highest payrolls in the league, respectively.¹¹⁷

¹¹⁵ <http://sports.espn.go.com/mlb/teams/salaries?team=chw>

¹¹⁶ Ronald Blum, *Average Baseball Salary Hits Record \$2.6M*, Associated Press (2005), available at <http://abcnews.go.com/Business/wirestory?id=649077&page=1>.

¹¹⁷ <http://sports.espn.go.com/mlb/teams/salaries?team=chw>.

The 2005 World Series Champion White Sox managed to accomplish that feat with a payroll of \$75,228,000.¹¹⁸

The ability of low to mid revenue market teams to not only compete, but succeed in recent seasons, has restored the interest and hope of baseball fans across the country, and caused baseball analysts to question the preconceived notion that money buys success. Several recent studies have been conducted to test the validity of that concept, testing correlations between wage disparities among team members and productivity, as well as the correlation between overall player salary increases and salary arbitration awards.

The dramatic increase in baseball salaries attributed to arbitration has fueled concern that “intrateam wage disparity may cause a breakdown of team cohesiveness and performance.”¹¹⁹ This hypothesis has been confirmed with empirical evidence by the Department of Economics at the University of Texas at Arlington. Using team win percentage as a measure of team productivity and an intra-team Herfindahl-Hirschman index (HHI) to measure salary dispersion, the study sought to determine the impact of paying superstar players significantly higher salaries relative to his teammates.¹²⁰

The study concluded with a high level of confidence that compensating certain players greater percentages of each teams’ total salary expenditure, or wage disparity, actually decreases the overall performance of the team.¹²¹ Thus, small market teams are unlikely to derive a benefit from acquiring only one or two highly skilled players whose salaries are significantly higher than

¹¹⁸ *Id.*

¹¹⁹ Craig A. Depken II, *Wage disparity and team productivity: evidence from major league baseball*, Economic Letters 67, Department of Economics, University of Texas (2000). This concern parallels the argument that small market teams, with limited revenue, are unable to compete with large market teams.

¹²⁰ *Id.* Herfindahl-Hirschman Index (HHI) is a concentration measure that is calculated in this study by taking the summation of the square of each player’s share of the team’s total salary expenditure, $\sum_{i=1}^N (\text{SHARE}_i)^2$. *Id.* at 89.

¹²¹ *Id.*

the remainder of the team.¹²² This evidence supports the notion asserted by A's general manager, Billy Beane, that a major league club can be well balanced, productive, and successful through superior player evaluation, development, and strategy, and not simply money.¹²³

Furthermore, a study conducted by Andrew Tarman of the *The Park Place Economist* also suggests free agency, and not salary arbitration, is more accountable for escalating player salaries.¹²⁴ Empirical evidence has shown players with more than six years experience and able to offer their services on the open market are subject to salaries closest to their "productivity" or market value.¹²⁵ Productivity in this context is measured by "OPS," which sums a player's on base percentage and slugging percentage, and is regarded by baseball statisticians as the most accurate indicator of offensive performance.¹²⁶ These results of the study also indicate the monopsonistic behavior of owners that plagued the reserve system era of baseball lingers in the first six years of player contracts.¹²⁷ Players with less than six years of service who use arbitration to resolve salary disputes are still not receiving salaries commensurate with their level of productivity.¹²⁸ Therefore, it can be concluded that arbitration is a significantly smaller factor in the inflation of baseball salaries than the existence of the free agency system in Major League Baseball.

¹²² *Id.*

¹²³ See Michael Lewis, *Moneyball The Art of Winning an Unfair Game* (W.W. Norton & Company 2004).

¹²⁴ Andrew Tarman, *Does the Arbitration Process Solve Monopsonistic Behavior in Baseball?*, *The Park Place Economist*, Vol. XIII (2003).

¹²⁵ *Id.* at 22.

¹²⁶ *Id.* OPS adds a player's on base percentage and his slugging percentage, which is calculated as (hits + walks + hit by pitches) ÷ (at bats + walks + sacrifices + hit by pitches) + (total bases) ÷ (total at bats).

¹²⁷ *Id.*

¹²⁸ *Id.*

VI. The Future of Baseball Under the Current Arbitral System

The current state of baseball in the era of free agency and salary arbitration poses several questions, the answers to which will be vital to the long-term economic viability of Major League Baseball. These difficult questions include whether clubs will become insolvent and forced into bankruptcy, whether small market teams will be forced to relocate to larger markets, whether salary arbitration will play a central role in the future of MLB, the likelihood of another player strike, and what are the potential solutions.

In 2002, baseball commissioner Allan “Bud” Selig as owner of the Milwaukee Brewers, was one of 29 teams that bought the then Montreal Expos for \$120 million after legal challenges prevented MLB from driving the franchise into bankruptcy.¹²⁹ This symbol of MLB’s economic struggles is one reason baseball enthusiasts fear several other low-revenue organizations may face the same fate, only without the parachute used to catch the Expos. However, the recent proliferation of revenue sharing has allowed the low performing and low revenue teams to sufficiently compensate high draft selections and acquire more productive players in the free agency market. Furthermore, the new wave of managerial emphasis on player recruitment, development, and trades has made previously poor performing teams significantly more competitive, irrespective of financial allocations provided by MLB’s revenue sharing program. Accordingly, the financial uncertainty of small market clubs is in the process of stabilizing and bankruptcy is an option that remains a last resort for the teams and MLB.

One potential solution that has churned up some media attention of late is the relocation of several organizations to cities and markets that already support successful professional sports teams or are ripe for their first. In 2005 the former Montreal Expos were relocated to

¹²⁹ Steve Fainaru, WashingtonPost.com, Expos for Sale: Team Becomes Pawn of Selig, June 28, 2004, p. A01, available at <http://www.washingtonpost.com/ac2/wp-dyn/A10599-2004Jun27?language=printer>.

Washington D.C. and renamed the “Nationals” in an effort to revitalize the organization. Talks have also been initiated regarding the relocation of MLB teams to San Antonio, Texas and Portland, Oregon, two cities that currently support NBA teams but are without a professional baseball team. In March of 2006, billionaire B.J. “Red” McCombs announced his intention to purchase a minority interest in the Florida Marlins, a team that has struggled to draw attendance and maintain a competitive payroll, so that he may relocate the franchise to San Antonio, Texas.¹³⁰

The state of Oregon is so enthusiastic about bringing a MLB team to Portland, it has established a coalition in collaboration with city and state leaders to secure financing for a stadium and influence Major League Baseball to relocate an organization.¹³¹ In addition, Las Vegas City officials and investors tendered offers as a potential host city for the floundering Montreal Expos several years ago, and optimists are still lobbying for another franchise to give “Sin-City” a chance.¹³² On the whole, MLB officials recognize the need to make proactive change in order to avert potential financial crises in cities experiencing difficulty in sustaining revenues or competitive performance, such as Miami (Marlins), Tampa Bay (Devil Rays), Kansas City (Royals), Minnesota (Twins), Cleveland (Indians), and view contraction as a last resort.

Other potential solutions that may improve the financial position of MLB are contraction and implementation of a salary cap. Contraction is the proposed movement of eliminating certain franchises that are unable to generate revenues sufficient to field a competitive team or

¹³⁰ Tom Orsborn, *S.A. baseball push has major league supporter*, March 7, 2006, <http://www.mysanantonio.com/sports/stories/MYSA030706.01A.marlins.d5f7817.html>.

¹³¹ <http://www.oregonstadiumcampaign.com/>.

¹³² [Businessofbaseball.com, Proposed Stadium Development, http://www.businessofbaseball.com/vegas.htm](http://www.businessofbaseball.com/vegas.htm).

support the costs of the organization. The theory behind this proposed solution is that the league grew too large for its own good, and should now reduce the number of teams in the league in order to achieve more equally dispersed talent and a generally higher level of play. Proponents of contraction also believe this will lower the market demand for players, increasing competition for the remaining positions, and eventually driving down player salaries. However, barriers to contraction are the resistance of current owners, host city officials, and loyal fans, which will ultimately make this alternatively unlikely as a near term solution.

A “salary cap is a limit on the amount of money a team can spend on player salaries, either as a per-player limit or a total limit for the team's roster or both.”¹³³ Several professional sports leagues have incorporated mandatory salary caps, which prevents overall costs from soaring and balances the leagues so wealthier teams cannot become dominant simply by paying higher salaries for the most productive players. Currently, the NBA, NFL, and NHL all operate under a salary cap system.

The lone sport without a salary cap, MLB, has implemented a luxury-tax whereby teams with aggregate payrolls in excess of an annually revised dollar amount must contribute to a pool that is allocated among the less affluent teams.¹³⁴ One problem with the luxury tax system, however, is that owners are not required to spend the money received from the luxury pool directly on players, in fact, there are no restrictions imposed upon owners with respect to the manner in which that money is used. Further, Major League Baseball is also alone in the absence of a minimum required team payroll, rather the only minimum restriction for team payrolls are based on league minimum salaries which vary by levels of experience as required by

¹³³ http://en.wikipedia.org/wiki/Salary_cap

¹³⁴ http://en.wikipedia.org/wiki/Salary_cap#Luxury_Tax_in_Major_League_Baseball

the 2002 Collective Bargaining Agreement.¹³⁵ Implementation of the proposed salary cap would also address the problem of deficient payrolls as well, requiring clubs to maintain payrolls within a predetermined range.¹³⁶ Despite the belief commonly held among players that the salary cap concept poses an illegal restraint on the labor market, it would curtail the spending of certain wealthy teams, make spending more efficient, and could ultimately create a lower equilibrium of salaries in the free agency market.¹³⁷

Whether MLB stays the course with revenue sharing and luxury taxes or implements a league wide salary cap, the likelihood of a player strike is minimal as long as transitions are methodical and incremental. For the time being, growth in player salaries has been stymied by higher luxury taxes and local revenue allocations, which has also been accompanied by a return of competitive balance. The baseball economy appears to be stabilizing, and as long as player salaries are not drastically undercut, a player strike should be avoidable in the future.

With respect to the role of final offer arbitration in the future of MLB, there is no indication that it will become the target of team owner reform initiatives. The advent of salary arbitration in professional baseball was a tremendous victory for the Major League Baseball Players Association, and continues to quell acrimony between players and owners. The economic shortcoming of baseball's financial system is not in the Player's ability to demand fair market value for their services, but rather the salaries the fair market dictates and permits. Thus,

¹³⁵ http://en.wikipedia.org/wiki/Salary_cap#Luxury_Tax_in_Major_League_Baseball

¹³⁶ The Sporting News, *Implementation Implications – Baseball Salary Cap*, http://www.findarticles.com/p/articles/mi_m1208/is_n1_v219/ai_16045683.

¹³⁷ A salary cap would require the clubs to operate under virtually the same payroll, based upon an industry average of prior year gross revenues. The proposed system would allow a four-year transition period for each club to come within a certain range of the average, below 110% and above 84% of the average. *Id.*

as baseball strategists hone in on the source of the problem, efforts will centralize around reeling salaries back into a range commensurate with team revenues.

Although critics tend to lump salary Final Offer Arbitration into the list of all that is wrong with Major League Baseball, salary disputes may have completely destroyed the sport and forever tainted its image with fans had baseball not adopted this method of dispute resolution. Eliminating salary arbitration from the current system would essentially force young players back into the reserve system under which team owners would unfairly exploit and under compensate many young players. Reformation or elimination of salary arbitration is both unlikely and futile as such efforts would fail to address the root of baseball's economic problems.

VII. Conclusion

Salary arbitration has an undeniably positive effect on Major League Baseball, most noticeably by controlling the damage caused by player grievances that have mounted since the advent of free agency. However, along with its saving grace, its critics argue salary arbitration has contributed to the inflation of salaries, the disparity of talent among teams with varying resources, and arguably the appeal of the sport to its fans. Final offer arbitration is a unique aspect of baseball that has evoked a wide spectrum of skepticism and curiosity. It has taken nearly thirty years for members of the baseball community to determine how it has impacted the game and some are still uncertain as to its fate in the future of the sport. At first glance, salary arbitration appears to be a considerable source of inflation for already exorbitant baseball salaries.

However, upon closer examination, it is clear that final offer arbitration provides a unique method of dispute resolution that fosters player-owner relations, good faith negotiations, and a structured system of maintaining the baseball economy. Use of FOA in Major League Baseball

provides an excellent model for the resolution of disputes in contexts in which the parties are inevitably intertwined. The protocol and restrictions implicit in the FOA system eliminate risks and costs normally associated with disputes of such a magnitude, enabling the business of baseball to operate without interruption. Final offer salary arbitration has taken heat from baseball analysts, fans, and team owners, yet it is an effective tool that is likely to remain a part of baseball for some time to come.