

# FOR THE LOVE OF THE GAME

*Wilson Raines\**

Introduction .....	275
I. Part One .....	280
A. Baseball's Marked Labor History .....	281
B. The Current MLB Minor League Employment Structure .....	285
II. Part Two .....	288
A. Unlawful Wages Provided to Minor League Players.....	289
B. Unlawful Hours Imposed on Minor League Players.....	290
C. MLB Franchises' Insufficient Record Keeping .....	292
III. Part Three .....	293
A. The Aims of the NLRA .....	293
B. Baseball's Collective Bargaining Process.....	294
C. Products of the MLB's Collective Bargaining Process.....	295
D. Probable MLB Defenses to Allegations of Labor Law Violations .....	297
IV. Part Four .....	298

---

\* B.A. Political Science, Auburn University, 2013; 2016 J.D. Candidate, University of Mississippi School of Law. I want to thank the MISSISSIPPI SPORTS LAW REVIEW editorial staff and executive board for all of their work in helping me improve this article. I also would like to thank Lindsey Emerson for sharing her peaceful workspace and providing constant encouragement.

2015]	<i>For the Love of the Game</i>	275
	A. Congress Rescues the Needy .....	299
	B. What Would the Model Statute Include? .....	299
	Conclusion.....	300

## INTRODUCTION

Tom Hanks famously declared, “[t]here is no crying in baseball!”<sup>1</sup> However, someone should answer the desperate pleas for help coming from former and current minor league baseball players. For decades, Major League Baseball and its franchises have used a vast “farm system” to develop players into major league talent. These professional baseball players furnish their talents to Major League Baseball (“MLB”) and its franchises, and receive very little reward in exchange.

Though they do have the opportunity to make “The Show”<sup>2</sup> and receive a lucrative contract,<sup>3</sup> minor league baseball players receive miniscule compensation while pursuing their dream of playing major league baseball. Most minor league players earn between \$3,000 and \$7,500 for an entire year of work and training, including fifty-plus hour weeks during the five-month season of minor league baseball,<sup>4</sup> which is below the federal poverty level.<sup>5</sup> Additionally, the odds of a player making a MLB team’s roster and earning satisfactory compensation are slim, even for talented minor league players.<sup>6</sup>

---

<sup>1</sup> A LEAGUE OF THEIR OWN (Parkway Productions 1992).

<sup>2</sup> “The Show” refers to playing major league baseball. Playing professional baseball for a MLB franchise in the major leagues, typically after being called up from the minor leagues, is commonly referred to as making “The Show.” See BULL DURHAM (Orion Pictures 1988).

<sup>3</sup> See *MLBPA Info*, MLBPLAYERS.COM (Oct. 25, 2014), <http://mlb.mlb.com/pa/info/faq.jsp#minimum>.

<sup>4</sup> Second Amended Complaint at 2, *Senne v. MLB*, No. 3:14-cv-00608-JCS, 2014 WL 2619616 (N.D. Cal. Feb. 7, 2014).

<sup>5</sup> The federal poverty levels are \$11,670 for a one-person household and \$23,850 for a four-person household (relevant to players with families). *2014 Poverty Guidelines*, U.S. DEP’T OF HEALTH AND HUMAN SERVICES, <http://aspe.hhs.gov/poverty/14poverty.cfm> (last visited June 4, 2015).

<sup>6</sup> Patrick O’Kennedy, *What Are the Odds of Making It to The Major Leagues?*, SB NATION: BLESS YOU BOYS (Mar. 5, 2013, 6:00 AM),

What do all of these minor league baseball players have in common? The MLB and its franchises have exploited each of them in some way, shape, or form. But, how can the players be upset? Are they not the lucky ones with a chance to play professional baseball for a major league club? Do they not play out of love for the game and America's pastime?

Minor leaguers play ball, compete for roster spots, and develop their talents for compensation falling well below the federal poverty level,<sup>7</sup> and that represents a fraction of the revenue their employers, the MLB's franchises, collect for the players' performance. The MLB and its thirty franchises are expected to earn \$9 billion dollars of revenue from all baseball activities in 2014.<sup>8</sup> Despite this annual revenue figure, minor league baseball players have significantly lower salaries, shorter contract periods, fewer incentives, smaller signing bonuses, and no bargaining power when compared to major league baseball players.<sup>9</sup> This massive discrepancy in compensation and bargaining power exists because minor leaguers do not have a union to voice their labor concerns, like the MLBPA provides for major league players.<sup>10</sup> The MLB's antitrust law immunity and

---

<http://www.blessyouboys.com/2013/3/5/3977782/what-are-the-odds-of-making-it-to-the-major-leagues>.

<sup>7</sup> See Second Amended Complaint, *supra* note 4, at 1.

<sup>8</sup> *MLB International*, MLBPLAYERS.COM, [http://mlb.mlb.com/mlb/international/mlbi\\_index.jsp](http://mlb.mlb.com/mlb/international/mlbi_index.jsp) (last visited Dec. 16, 2014).

<sup>9</sup> Second Amended Complaint, *supra* note 4, at 31, 32. Minor league players are paid \$1,100 per month (maximum) under their first contract. *Frequently Asked Questions*, MILB.COM, <http://www.milb.com/mlb/info/faq.jsp?mc=business#11> (last visited Dec. 16, 2014). Major league baseball players are entitled to earn \$500,000, which is the league salary minimum. See *MLBPA Info*, *supra* note 3. MLB franchises would spend \$27,500 on a minor league roster of 25 first-year players; the same team would spend \$12.5 million dollars to compensate 25 major league rookies. Minor league players are essential to the talent-development framework of every MLB team, yet they are grossly undervalued and underpaid. See Ted Berg, *Most Minor League Ballplayers Earn Less than Half As Much Money As Fast-Food Workers*, USA TODAY (Mar. 6, 2014, 3:25 PM) <http://ftw.usatoday.com/2014/03/minor-leaguers-working-poor-lawsuit-mlb-bud-selig>.

<sup>10</sup> See Lily Rothman, *Emancipation of the Minors*, SLATE (Apr. 3, 2012, 11:08 AM), [http://www.slate.com/articles/sports/sports\\_nut/2012/04/minor\\_league\\_union\\_thousands\\_of\\_pro\\_baseball\\_players\\_make\\_just\\_1\\_100\\_per\\_month\\_where\\_is\\_their\\_c\\_sar\\_ch\\_vez\\_.html](http://www.slate.com/articles/sports/sports_nut/2012/04/minor_league_union_thousands_of_pro_baseball_players_make_just_1_100_per_month_where_is_their_c_sar_ch_vez_.html).

nonstatutory labor exemption allow the thirty franchises to collude in creating rules for employing the minor league players. More importantly, minor league players are not represented in discussing these rules, and they negotiate the manner of their employment as result of baseball's federal law immunity.<sup>11</sup>

Due to the antitrust and labor law exemptions given to the MLB by the courts,<sup>12</sup> these actions by the MLB's franchises are viewed as untouchable. Baseball's way of operating has not been challenged since the United States Supreme Court decided *Flood v. Kuhn* in 1972.<sup>13</sup> Courts disregard the effects that these rules have on players and watch on as the MLB and its franchises use an antitrust exemption to continually exploit minor league baseball players. However, several former minor league players recently filed a lawsuit, *Senne v. MLB*, under labor law claims that could force the court to confront baseball's exemption.<sup>14</sup>

This Article, like the *Senne* case, argues that the employment rules established by the MLB and its franchises governing minor league baseball employment violate the Fair Labor Standards Act ("FLSA").<sup>15</sup> The Collective Bargaining Agreement ("CBA") allows the MLB to unilaterally set unfair player salaries and working conditions for minor leaguers, without keeping the appropriate employment records, which directly conflicts with the FLSA.<sup>16</sup> Moreover, the MLB leverages its federal exemptions against minor leaguers to gain total bargaining power.<sup>17</sup> The MLB negotiates the rules of player employment, which govern all professional baseball players, with the Major League Baseball

---

<sup>11</sup> *Id.*

<sup>12</sup> See *Fed. Baseball Club, Inc. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200 (1922); *Toolson v. N.Y. Yankees*, 346 U.S. 356 (1953); *Flood v. Kuhn*, 407 U.S. 258 (1972).

<sup>13</sup> Peter Bendix, *The History of Baseball's Antitrust Exemption*, SB NATION: BEYOND THE BOX SCORE (Dec. 3, 2008, 5:00 AM), <http://www.beyondtheboxscore.com/2008/12/3/678134/the-history-of-baseball-s>.

<sup>14</sup> See Second Amended Complaint, *supra* note 4. See also Michael McCann, *Minor League Players File Wage Lawsuit Against Major League Baseball*, SPORTS ILLUSTRATED (Oct. 25, 2014 2:53 PM), <http://www.si.com/mlb/2014/02/12/minor-league-baseball-players-lawsuit>.

<sup>15</sup> Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (2015).

<sup>16</sup> See 29 U.S.C. §§ 206, 207, 211.

<sup>17</sup> See Second Amended Complaint, *supra* note 4 at 25, 31.

Players Association (“MLBPA”).<sup>18</sup> But, the MLBPA only represents the interests of its actual members in collective bargaining, major league players, not minor league players.<sup>19</sup> The current system injures minor leaguers’ employment rights and bars them from any participation in the collective bargaining process.<sup>20</sup> The current system does not represent the interests of all parties involved, which defies the purpose of labor law.<sup>21</sup> What permits the MLB to treat minor league players in such an unfair way? Federal judiciary and Congressional inaction are to blame.<sup>22</sup> New legislation enacted by Congress would ensure the employment rights of all professional baseball players, not just major league players, are protected.

In Part One, this Article reveals the consequences of allowing the MLB and its franchises to set baseball’s business rules without any oversight. This section briefly explains the history of baseball’s antitrust and labor exemptions and their impact on player (employee) rights. Further, the Article discusses how these federal exemptions allow the MLB to abuse its authority and exploit its employees’ labor – minor league baseball players – by establishing illegal practices and governance.<sup>23</sup> The Major League

---

<sup>18</sup> See Rothman, *supra* note 10.

<sup>19</sup> *Id.* The MLBPA openly admits that it does not represent the concerns and interests of minor league baseball players, and the organization feels no duty to do so. *Id.*

<sup>20</sup> The minor league players have no opportunity to bargain for compensation, working hours, drug testing, or the duration in which a team may hold their right to play professional baseball for a MLB franchise. See Second Amended Complaint, *supra* note 4, at 25-27, 31-35. Their performance on the field is the only leveraging tool they possess.

<sup>21</sup> Congress passes legislation, like the National Labor Relations Act, to protect employees’ rights and penalize abusive employers for unjust actions. See 29 U.S.C. § 151 (2015). But, current United States labor law does not protect minor league baseball players from injustice.

<sup>22</sup> Federal courts allow baseball and other professional sports wide discretion when conducting business, including setting the employment conditions of athletes. Sporting entities use the federal labor law and antitrust exemptions afforded to them to maximize the profitability of sport and minimize obligations to players. See Bendix, *supra* note 13. See also Philadelphia Ball Club, Ltd. v. Lajoie, 51 A. 973 (Pa. 1902); Silverman *ex rel.* NLRB v. MLB Player Relations Comm., 516 F. Supp. 588 (S.D.N.Y. 1981) (“Silverman I”); Brown v. Pro Football, Inc., 518 U.S. 231 (1996).

<sup>23</sup> See MLB, MAJOR LEAGUE RULES, available at <http://www.bizofbaseball.com/docs/MajorLeagueRules-2008.pdf>. These Rules govern Major League Baseball and the thirty franchises that make up the professional league in the United States.

Rules (“MLR”), created unilaterally by the MLB and its franchises, coupled with the CBA, enable MLB franchises to pay minor league players unlawful salaries, demand overtime work without compensating players, and adopt unjust working conditions and policies.<sup>24</sup>

Next, Part Two illustrates how the CBA and MLR adversely affect minor league baseball players’ employment rights and livelihood. Minor league players enjoy limited employment opportunities in the pursuit of their dream of playing baseball in the MLB.<sup>25</sup> Subsequently, the MLB uses this leverage to establish an employment system that exploits the talents of these players, which violates the FLSA.<sup>26</sup> All MLB franchises sign minor league players to the same Uniform Player Contract (“UPC”) that includes rigid compensation guidelines, exclusive rights to the minor leaguer for seven seasons, and no mobility for the player to shift employment to another MLB franchise or even to a club outside the United States, among other things.<sup>27</sup> The current employment system does not allow contractual negotiations between minor league players and MLB teams (for compensation, working hours, or record keeping) and violates federal law.<sup>28</sup>

Part Three analyzes the greatest injustice of the MLB’s employment system: the nonexistence of minor league representation in collective bargaining and the glaring discrepancy between major league and minor league players’ employment rights. Minor league players’ interests are not represented by the MLBPA.<sup>29</sup> Yet, the MLB deals exclusively with the MLBPA and does not afford minor league baseball players any alternative avenue for negotiating the terms of their

---

<sup>24</sup> See Second Amended Complaint, *supra* note 4. See also McCann, *supra* note 14.

<sup>25</sup> There are thousands of athletes competing for a handful roster spots on major league baseball teams. See Second Amended Complaint, *supra* note 4, at 25.

<sup>26</sup> See Fair Labor Standards Act, 29 U.S.C. §§ 206, 207, 211 (2015).

<sup>27</sup> See MAJOR LEAGUE RULES, *supra* note 23, at Rule 18; *id.* at Attachment 3 (Major League Uniform Player Contract (“UPC”)).

<sup>28</sup> See 29 U.S.C. § 206; 15 U.S.C. §§ 1-2 (2012). The MLB’s franchises do not pay minor league baseball players the required minimum wage set out in the FLSA. Moreover, the franchises violate the Sherman Act by conspired together to monopolize trade by limiting the compensation and contractual rights of minor leaguers through a unilateral agreement creating the MLR and UPC. See 29 U.S.C. § 206, 207, 211; 15 U.S.C. § 1 (2012).

<sup>29</sup> See Rothman, *supra* note 10.

employment.<sup>30</sup> Players joining these minor league clubs are MLB employees;<sup>31</sup> however, they do not enjoy the same employment rights as their counterparts in the major leagues. Major league baseball players may negotiate contractual terms and the compensation they will receive, but minor league players may not.<sup>32</sup> While the MLB's employment system may not directly violate the National Labor Relations Act ("NLRA"), it does not promote the legislation's purpose.<sup>33</sup> The federal exemptions given to baseball permit this failing, despite defying the integral purpose of federal labor law.

Finally, Part Four demonstrates how a federal law, carefully tailored by Congress, would correct the inequitable employment system currently used by the MLB. Statutory law would eliminate the need for judicial intervention into baseball's affairs. As courts historically have been lenient on America's pastime,<sup>34</sup> congressional action is necessary. The new legislation must apply exclusively to baseball, given its unique organizational and financial structure. An inventive federal law would remove the MLB's current illegal employment practices, address the concerns of minor league players, and demand that an acceptable structure be created. The legislation would ensure that the MLB's new employment structure would comply with relevant federal labor law and protect the employment rights of all professional baseball players.

## I. PART ONE

Baseball enjoys federal antitrust and labor exemptions that allow the MLB's employment system to operate under the law. Previously, courts or legislators have struck down some of baseball's unfair or illegal employment practices when players'

---

<sup>30</sup> *Id.*

<sup>31</sup> See MAJOR LEAGUE RULES, *supra* note 23, at Attachment 3. See also *id.* at Rule 3. Technically, both minor league and major league baseball players are employed by MLB franchises.

<sup>32</sup> See MLB, 2012-2016 BASIC AGREEMENT art. IV, *available at* [http://mlb.mlb.com/pa/pdf/cba\\_english.pdf](http://mlb.mlb.com/pa/pdf/cba_english.pdf) (last visited Oct. 28, 2014).

<sup>33</sup> See 29 U.S.C. § 151 (2015).

<sup>34</sup> See *Fed. Baseball Club of Balt., Inc. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200 (1922); *Toolson v. N.Y. Yankees*, 346 U.S. 356 (1953); *Flood v. Kuhn*, 407 U.S. 258 (1972).

employment rights were in jeopardy.<sup>35</sup> The MLB's employment structure operates in opposition of the law. The MLR and CBA produced this current system, which seriously injures minor league baseball players' labor rights as employees of the MLB and its franchises.

### *A. Baseball's Marked Labor History*

Baseball was labeled as America's pastime late in the nineteenth century.<sup>36</sup> Shortly after, the game matured into a professional sport where teams would compensate players in exchange for their performance on the field.<sup>37</sup> Baseball evolved into a lucrative business. Baseball franchises from the National and American Leagues united to create MLB in 1903.<sup>38</sup> With the creation of the MLB, some prospective owners looked to enter the business of baseball. This new market of professional baseball first came under fire in *Federal Baseball Club of Baltimore v. National League*.<sup>39</sup> Several former owners of a Federal League baseball team alleged that MLB franchises monopolized the game of baseball in forming the MLB and excluding other teams from competition.<sup>40</sup> In this landmark case, the United States Supreme Court ruled that baseball did not constitute interstate commerce, which meant baseball was not subject to antitrust law.<sup>41</sup> *Federal Baseball* established the precedent that baseball would govern itself with minimal governmental regulation.

---

<sup>35</sup> See *Kan. City Royals Baseball Corp. v. MLBPA*, 532 F.2d 615 (8th Cir. 1976) (to permit arbitration of player contracts and resulting free agency of the players); *Silverman ex rel. NLRB v. MLB Player Relations Comm.*, 67 F.3d 1054 (2d Cir. 1995) ("Silverman II") (mandating that salary arbitration, free agency, and reserve issues were mandatory collective bargaining subjects and protecting against owner collusion in the MLB).

<sup>36</sup> See *History of Major League Baseball: From Early Beginnings to Current*, THE PEOPLE HISTORY, <http://www.thepeoplehistory.com/baseballhistory.html> (last visited Oct. 29, 2014).

<sup>37</sup> *Id.* Beginning with the Cincinnati Red Stockings in 1869, who paid players salaries for playing the game.

<sup>38</sup> *Id.* The new league competed internally with only other MLB teams.

<sup>39</sup> *Fed. Baseball Club of Balt., Inc.*, 259 U.S. at 200.

<sup>40</sup> *Id.* at 207.

<sup>41</sup> *Id.* at 207-09. The Court reasoned that baseball games were not a trade or commerce controlled by the Sherman Act and were not subject to its laws. *Id.* at 209.

In the early twentieth century, MLB franchises began to buy minor league teams and promote promising players to the major league level for competition.<sup>42</sup> Tensions between MLB franchise owners and their major league baseball players increased, all while the baseball industry became more profitable. The MLBPA was formed in 1953, and it began to bargain with owners for better salaries, working conditions, and a pension fund for major league players.<sup>43</sup> With the creation of the MLBPA, major league baseball players had a third party representative capable of bargaining for their best interests. However, players were still concerned with MLB franchises' overwhelming control over their contracts – namely the reserve clause.<sup>44</sup>

In *Toolson v. New York Yankees, Inc.*, minor league baseball players sought to extinguish the reserve clause and MLB franchises' domineering control over player contracts alleging violations of antitrust law.<sup>45</sup> The United States Supreme Court declined to eliminate the reserve clause or subject baseball to antitrust law citing *Federal Baseball* and congressional inaction as support.<sup>46</sup> This completely cemented baseball's antitrust exemption. Both *Federal Baseball* and *Toolson* granted enormous discretion to the MLB, and its franchises, regarding labor disputes and business affairs.

Despite the first CBA being reached in 1968,<sup>47</sup> some players still felt constrained by the MLB's employment structure and the reserve clause. One player, Curtis Flood, challenged the reserve clause on antitrust grounds after being traded to a team he

---

<sup>42</sup> See *History of Major League Baseball: From Early Beginnings to Current*, *supra* note 36.

<sup>43</sup> *Id.*

<sup>44</sup> The reserve clause barred players from entering the modern "free agency." It stated that a player could not leave his team for another unless his team allowed him to do so, granting exclusive and absolute player rights to MLB franchises. The reserve clause gave each team ownership of players' contracts, which hurt players' ability to move to other teams or negotiate salary raises. *Baseball's Labor History*, SPORTS MOGUL, [http://www.sportsmogul.com/content/labor\\_history.html](http://www.sportsmogul.com/content/labor_history.html) (last visited Dec. 1, 2014).

<sup>45</sup> *Toolson v. N.Y. Yankees*, 346 U.S. 356 (1953).

<sup>46</sup> *Id.* at 357.

<sup>47</sup> See *History of the Major League Baseball Players Association*, MLBPLAYERS.COM, <http://mlb.mlb.com/pa/info/history.jsp> (last visited Oct. 25, 2014).

thought undesirable.<sup>48</sup> In *Flood v. Kuhn*, the United States Supreme Court refused to take judicial action and upheld the antitrust exemption of baseball's reserve system and the reserve clause.<sup>49</sup> The Court held Congress had the power and opportunity to subject baseball to antitrust law but chose not to do so.<sup>50</sup> As a result, the Court upheld the reserve clause by deferring to the precedent set in *Toolson*.<sup>51</sup> The *Flood* Court's ruling enhanced the MLB's restraint on trade and control over players' employment rights.

Shortly after *Flood*, the National Labor Relations Board ("NLRB") asserted jurisdiction over baseball, providing more protection for players' employment rights.<sup>52</sup> Following a player strike in 1972, the MLB and MLBPA agreed to arbitration hearings by a three-person panel for player salary disputes.<sup>53</sup> A few years later, two major league baseball players sought and gained free agent status through the arbitration process.<sup>54</sup> The MLB and its franchises alleged the arbitration panel had no jurisdiction over these grievances and challenged the panel's award.<sup>55</sup> In *Kansas City Royals*, the Eighth Circuit held that the CBA provided the arbitration panel with jurisdiction over player salary grievances and upheld the panel's awarding of free agency to the players.<sup>56</sup> This ruling created free agency in baseball, leading to increased player wages and bargaining power.<sup>57</sup>

Free agency in baseball was a huge victory for players, but this change was met with animosity from the MLB's franchises. The average salary for major league baseball players tripled over

---

<sup>48</sup> *Flood v. Kuhn*, 407 U.S. 258, 265 (1972).

<sup>49</sup> *Id.* at 284-85.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See William B. Gould IV, *Labor Issues in Professional Sports: Reflections on Baseball, Labor, and Antitrust Law*, 15 STAN. L. & POL'Y REV. 61, 66 (2004).

<sup>53</sup> See *History of Major League Baseball: From Early Beginnings to Current*, *supra* note 36.

<sup>54</sup> *Id.* Andy Messersmith and Dave McNally were awarded free agent status by an arbitration panel in 1976. The language of the CBA of 1973 allowed the possibility of free agency to become a reality. *Id.*

<sup>55</sup> *Kan. City Royals Baseball Corp. v. MLBPA*, 532 F.2d 615 (8th Cir. 1976).

<sup>56</sup> *Id.* at 632.

<sup>57</sup> See *History of Major League Baseball: From Early Beginnings to Current*, *supra* note 36.

the next five years as franchises pursued valuable players.<sup>58</sup> The struggle for control between franchises and players continued in the 1980s. Players went on strike in 1981 following MLB franchises' demand of compensation for players who left their teams for free agency.<sup>59</sup> In the late 1980s, the MLB franchises were accused several times of colluding in order to drive down the cost of free agents.<sup>60</sup> The owners of MLB franchises informally agreed not to compete with one another for the services of free agents and to reduce the length of player contracts.<sup>61</sup>

Consequently, most free agent players were either forced to re-sign with their current team with little or no salary raise from 1985 to 1987.<sup>62</sup> The MLBPA grew suspicious of the franchises' behavior when all-star talented players received little or no attention in free agency.<sup>63</sup> The MLBPA filed grievances against the MLB's franchises for colluding.<sup>64</sup> Between 1987 and 1989, the MLBPA was awarded damages totaling \$280 million dollars in three arbitration disputes, which was divided among the injured players.<sup>65</sup>

MLB franchises continued to fight for cuts in players' pay and benefits in the 1990s, which led to a player strike in 1994.<sup>66</sup> However, a federal court ordered players to resume competition under the old CBA in 1995.<sup>67</sup> The NLRB filed two lawsuits, in 1981 and 1996, seeking injunctive relief against the MLB and its

---

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* The franchises wanted either other players to be given to them in exchange for the free agent or monetary consideration.

<sup>60</sup> See *Collusion*, BASEBALL-REFERENCE.COM (Mar. 15, 2012), <http://www.baseball-reference.com/bullpen/Collusion>.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* Kirk Gibson, Tim Lincecum, Jack Morris, Andre Dawson, and Ron Guidry were some of the valuable free agents that MLB franchises did not pursue in accordance with their collusive agreement.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> MLB owners would not budge; they employed replacement players to compete during the strike. See *History of the Major League Baseball Players Association*, *supra* note 47. See also, *Collusion*, *supra* note 60.

<sup>67</sup> See *History of Major League Baseball: From Early Beginnings to Current*, *supra* note 36.

franchises.<sup>68</sup> In *Silverman I*, the NLRB sought MLB franchises' financial data and contended that withholding the information was unfair labor practice.<sup>69</sup> The district court found there was no unfair labor practice under the NLRA and denied the injunction.<sup>70</sup> In *Silverman II*, the NLRB sued the MLB for unilaterally changing the CBA and committing unfair labor practices.<sup>71</sup> The Second Circuit restored the 1990 CBA that had expired and held that the MLB could not unilaterally change the CBA without the MLBPA's consent.<sup>72</sup> *Silverman II* established greater player bargaining power in collective bargaining, and barred the MLB from making unilateral changes to employment conditions. Employment disputes between the MLB and its players persisted for more than 10 years until the 2006 CBA ensured labor peace for sixteen years.<sup>73</sup> Players used labor law to successfully upend overreaching policies of the MLB in contemporary disagreements.<sup>74</sup>

### B. The Current MLB Minor League Employment Structure

The Supreme Court would again tilt the scales of justice in favor of the MLB and its franchises. In *Brown v. Pro Football, Inc.*, developmental squad football players sued the National Football League ("NFL") under antitrust law following the NFL's unilateral adoption of the CBA regarding the employment and

---

<sup>68</sup> See *Silverman ex rel. NLRB v. MLB Player Relations Comm.*, 516 F.Supp. 588 (S.D.N.Y. 1981) ("Silverman I"); *Silverman ex rel. NLRB v. MLB Player Relations Comm.*, 67 F.3d 1054 (2nd Cir. 1995) ("Silverman II").

<sup>69</sup> *Silverman I*, 516 F.Supp. at 594-96. Also, players planned on using this data to show that MLB franchises were not losing money, and the franchises could afford to pay their players more than they claimed. *Id.* at 590-94. The court ruled that the players' primary motivation was a collective bargaining tactic and that this could be settled through negotiations instead of judicial action. *Id.* at 598.

<sup>70</sup> *Id.*

<sup>71</sup> *Silverman II*, 67 F.3d at 1059. In this case, MLB had created a new system combining free agency and reserve structures, and eliminated salary arbitration. *Id.* at 1057-59. All of this was done unilaterally without any bargaining between the MLB and the MLBPA. *Id.*

<sup>72</sup> *Id.* at 1060-62. The court concluded this was an unfair labor practice since the MLB changed player salary negotiation processes without bargaining for them with the MLBPA. *Id.*

<sup>73</sup> See *History of the Major League Baseball Players Association*, *supra* note 47.

<sup>74</sup> See *id.* See also *Silverman I*, 516 F.Supp. 588; *Silverman II*, 67 F.3d 1054; *Collusion*, *supra* note 60.

compensation of developmental squad players.<sup>75</sup> NFL teams would acquire these free agent developmental squad players as reserves and would use them in practice and official games, replacing injured players.<sup>76</sup> The NFL's unilaterally imposed program provided that the developmental squad players would be paid \$1,000 per week by their respective teams.<sup>77</sup> The U.S. Supreme Court affirmed the D.C. Circuit's decision: the nonstatutory labor exemption barred the developmental squad players from suing the NFL on antitrust grounds.<sup>78</sup> Additionally, the Court upheld the NFL's developmental squad program.<sup>79</sup> The *Brown* Court's decision provides that federal labor laws shield compensation agreements made by several employers, following a collective bargaining process and implemented in good faith, from antitrust review. The nonstatutory labor exemption applies to the other professional sports, including baseball, where collective bargaining governs employment agreements.<sup>80</sup>

The nonstatutory labor exemption further impedes baseball players, namely minor leaguers, from challenging injurious employment policies, and it strengthens the MLB's unilateral

---

<sup>75</sup> *Brown v. Pro Football, Inc.*, 116 U.S. 231 (1996). The NFL and the National Football Players Association ("NFLPA") previously negotiated the employment conditions and salaries of these developmental squad players but they could not reach an agreement. *Id.* at 234. After negotiations failed, the NFL unilaterally implemented the developmental squad program. *Id.*

<sup>76</sup> *Id.* These developmental football players are similarly situated to minor league baseball players in most instances. Both are employed and compensated by professional teams, but they are not on the professional team's competitive roster.

<sup>77</sup> *Id.* at 235. The affected players rejected the NFL's program. The developmental squad players wanted similar benefits provided to regular players and the individual ability to negotiate their own salaries. *Id.* 234-35. They claimed the NFL's program restrained trade and violated antitrust law (15 U.S.C. § 1) when all NFL teams agreed to adopt the program. *Id.* at 235.

<sup>78</sup> *Id.* at 250. The Court's ruled decisively in an eight-to-one decision, only Justice Stevens dissented. The nonstatutory labor exemption is implied under federal labor statutes favoring free and private collective bargaining. *Id.* at 235-37. This exemption is used to protect the collective bargaining process and peacefully resolve labor disputes; the exemption allows some restraints on competition imposed through the collective bargaining process to be shielded from antitrust sanctions. *Id.* at 237.

<sup>79</sup> *Id.* at 249-50. The Court supported its ruling by emphasizing the NFL's conduct occurred shortly after a lawful collective-bargaining process where the concerned parties were involved. *Id.* at 250.

<sup>80</sup> Samuel G. Mann, *In Name Only: How Major League Baseball's Reliance on Its Antitrust Exemption Is Hurting the Game*, 54 WM. & MARY L. REV. 587, 597-99 (2012).

policy-making powers.<sup>81</sup> MLB and its franchises observe a top-heavy system; major league franchises and players absorb the enormous revenues that the league generates, sharing little with players competing in the minor leagues.<sup>82</sup> The MLB and MLBPA recognize the CBA of 2012 – which does not represent the interests of minor league players – and the MLR governs the game of baseball.<sup>83</sup> These documents shape the employment of every baseball player under contract with an MLB franchise, including minor league players. The CBA states the MLR’s UPCs for major and minor league baseball players are the sole legitimate agreements that players may sign, and the UPCs establish player employment rights and conditions.<sup>84</sup> Among other things, the UPCs’ provisions designate a player’s compensation, benefits, assignment, contract renewal, and dispute procedure.<sup>85</sup>

Accordingly, professional players must sign one of the UPCs to play MLB-affiliated professional baseball. MLB franchises can acquire professional players in one of two ways: by selecting them in an amateur draft or through free agency.<sup>86</sup> A drafted player may only sign with the MLB franchise that selects him.<sup>87</sup> After acquiring players, the MLR states that an MLB franchise can only retain twenty-five “active roster” players, who are available to play in games for the major league club, and may only reserve a total of forty players (the “40-man roster”) who may have an opportunity to be promoted to play for the major league club during the season.<sup>88</sup> Consequently, a large number of professional baseball players are not selected to the MLB franchise’s major

---

<sup>81</sup> See *Toolson v. N.Y. Yankees*, 346 U.S. 356 (1953). Coupled with the antitrust exemption granted by *Toolson*, the MLB receives a distinct advantage over players in bargaining employment conditions and imposing un-bargained policies pursuant to its authority.

<sup>82</sup> See *supra* notes 4, 8 and accompanying text.

<sup>83</sup> See Second Amended Complaint, *supra* note 4, at 25. See also 2012-2016 BASIC AGREEMENT, *supra* note 32.

<sup>84</sup> 2012-2016 BASIC AGREEMENT, *supra* note 32, at 1-2.

<sup>85</sup> *Id.* See *id.* at 277-98 (titled Schedule A: Uniform Player’s Contract (“Major League UPC”)); MAJOR LEAGUE RULES, *supra* note 23 at Attachment 3 (titled Uniform Player Contract (“Minor League UPC”).

<sup>86</sup> Second Amended Complaint, *supra* note 4, at 26 (dividing that number by the number of MLB franchises, 32, means each MLB franchise employs about 188 minor league baseball players).

<sup>87</sup> *Id.* at 30.

<sup>88</sup> See MAJOR LEAGUE RULES, *supra* note 23, at Rules 2(b)(1)(A), 2(c)(2)(A).

league roster and seek employment with one of the franchise's minor league clubs.

There are around 6,000 minor league baseball players competing in the various classifications (Single A, Double A, and Triple A) for an MLB franchise's minor league club,<sup>89</sup> creating a far greater supply of players than MLB franchises demand. This gives MLB franchises an immense bargaining advantage over players. Since the MLR limits the size of MLB major league rosters, players must sign with a franchise's minor league club in order to continue pursuing their dream of making "The Show." All MLB franchises sign minor league players to the same Minor League UPC, which includes rigid payment guidelines and few incentives, the franchise's exclusive rights to the minor leaguer for seven seasons, and among other things, no mobility for the player to independently shift employment to another MLB franchise or club outside the United States.<sup>90</sup> The Minor League UPC is, essentially, a contract of adhesion that allows minimal flexibility, protection, and negotiating points in minor leaguers' employment. The MLBPA bargains for the terms and conditions in the Major League UPC to ensure the interests of major league players are protected, but minor league players do not have a representative in the bargaining process with the MLB.<sup>91</sup> Therefore, the MLB ultimately creates the terms and conditions of the Minor League UPC independent of external guidance or challenges.

## II. PART TWO

As in the past,<sup>92</sup> the MLB takes unlawful advantage of near total bargaining power and its federal law exemptions. The MLB and its franchises exercise their autonomy to devise a league-favorable Minor League UPC agreement and they use additional powers, pursuant to the MLR, to reap the rewards of minor league baseball players' performance without acknowledging their

---

<sup>89</sup> Second Amended Complaint, *supra* note 4, at 25.

<sup>90</sup> See MAJOR LEAGUE RULES, *supra* note 23, at Rule 18; *id.* at Attachment 3 (Uniform Player Contract).

<sup>91</sup> See Rothman, *supra* note 10. The MLBPA would be the only entity capable of bargaining for minor league players in the current system, but the MLBPA does not even recognize minor leaguers as members. *Id.*

<sup>92</sup> See 2012-2016 BASIC AGREEMENT, *supra* note 32, at 6-10.

employment rights.<sup>93</sup> Consequently, the minor league employment system independently implemented by the MLB and its franchises violates federal law. The MLB's current system approves unlawful wages, hours, working conditions, and record keeping in violation of the FLSA.<sup>94</sup> These illegal acts by MLB franchises entitle minor league baseball players to damages pursuant to the FLSA.<sup>95</sup>

#### *A. Unlawful Wages Provided to Minor League Players*

The MLR clearly states minor league players are employees of MLB franchises, rather than employees of the minor league clubs they represent.<sup>96</sup> Being an employer, the MLB franchises must comply with federal labor laws including the FLSA.<sup>97</sup> Presently, the MLR and its Minor League UPC allow MLB franchises to pay their minor league employees unlawful wages.<sup>98</sup> The MLB's salary guidelines are not available to the public, but it is believed that Rookie and Short-Season Class-A minor leaguers earn about \$1,100 per month only during a five-month season.<sup>99</sup> Class-AAA minor league players, who are one phone call or injury

---

<sup>93</sup> See MAJOR LEAGUE RULES, *supra* note 23, at Rule 56(g). MLB requires the MLB franchise to pay the salaries of its minor league players at all times and allows the MLB franchise to control assignments (promote, demote, or trade players).

<sup>94</sup> See Fair Labor Standards Act, 29 U.S.C. §§ 206, 207, 211 (2015).

<sup>95</sup> See 29 U.S.C. § 216(b).

<sup>96</sup> See MAJOR LEAGUE RULES, *supra* note 23, at Rule 56(g). MLB franchises may enter into Player Development Contracts with minor league club owners. The minor league club operates the minor league team and stadium, but the MLB franchise exclusively retains the contractual rights of all minor league players. *Id.* Minor league players are "employees" under the definition of the FLSA. See 29 U.S.C. § 203(e)(1).

<sup>97</sup> 29 U.S.C. §§ 201-219. MLB franchises fit inside the FLSA's definition of "employer" and an "enterprise engaged in commerce". See 29 U.S.C. §§ 203(d), 203(s)(1).

<sup>98</sup> Second Amended Complaint, *supra* note 4, at 31. The MLB establishes salary guidelines for each minor league classification that factors in the player's service record and talent level. Teams rarely deviate from these guidelines. See *supra* notes 4-5. Most minor leaguers earn between \$3,000 and \$7,500 per year, which falls below the federal poverty levels. See 29 U.S.C. § 206(a). These wages violate the FLSA's minimum wage requirement: Professional baseball players paid \$7,500 per year earn less than minimum wage pay would require despite working 50 hours a week for five months ( $[\$7.25 \times 40] + [\$10.875 \times 10] = \$398.75$ /minimum wage earnings per week, multiplied by 20 weeks in a five month season = \$7,975). Therefore, the minor league baseball players' average salaries do not meet the FLSA's minimum compensation measure provided in § 206(a) and is illegal.

<sup>99</sup> Second Amended Complaint, *supra* note 4, at 32.

away from becoming major league players, only earn \$2,150 per month over the same time period for their performance.<sup>100</sup>

Player salaries are negotiable after the first year, but failure to reach an agreement to new terms authorizes the MLB franchises to unilaterally determine the player's new salary figure.<sup>101</sup> The MLB unilaterally produces unlawful minor league player salary guideline figures. MLB franchises violate the FLSA by faithfully adhering to these unlawful standards and compensating their minor league employees with unlawful wages. MLB franchises provide these ludicrous wages to minor league players for five months but expect the players to "perform professional services on a calendar year basis, regardless of the fact that salary payments are to be made only during the actual playing championship season."<sup>102</sup> This contractual demand directly violates the FLSA's minimum wage requirement and other act provisions regulating employee working hours and overtime compensation.<sup>103</sup>

### *B. Unlawful Hours Imposed on Minor League Players*

The MLB's franchises force minor league baseball players to work unlawful hours without receiving additional compensation.<sup>104</sup> During the five-month championship season, minor league clubs play games six or seven days per week.<sup>105</sup> Minor league players have a full day off about once every two or three weeks.<sup>106</sup> Minor leaguers must attend pregame activities such as stretching, batting practice, and fielding practice before they compete in a game.<sup>107</sup> Accordingly, minor leaguers work around eight hours a day and over fifty hours a week during the

---

<sup>100</sup> *Id.*

<sup>101</sup> See MAJOR LEAGUE RULES, *supra* note 23, at Attachment 3 (Uniform Player Contract).

<sup>102</sup> See *id.* at Attachment 3 § VI(B). The following section provides details some of these "professional service" obligations minor league players have under the Minor League UPC.

<sup>103</sup> See 29 U.S.C. § 206(a). See also 29 U.S.C. § 207(a)(2)(C).

<sup>104</sup> See MAJOR LEAGUE RULES, *supra* note 23, at Attachment 3 (Uniform Player Contract).

<sup>105</sup> Second Amended Complaint, *supra* note 4, at 35.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

championship season.<sup>108</sup> Additionally, MLB franchises require minor leaguers to participate in spring training without pay.<sup>109</sup> When spring training concludes, MLB franchises may not designate a roster spot for some minor league players and may require them to remain at the franchise's spring training site in "extended spring training."<sup>110</sup> Following the championship season, minor leaguers may be selected by MLB franchises to participate in an instructional league to further develop their talents.<sup>111</sup> MLB franchises demand minor league players maintain "first-class" physical condition throughout the calendar year, frequently compelling player training and conditioning during the winter off-season.<sup>112</sup>

Fulfilling their contractual obligations under the Minor League UPC, minor league baseball players work arduously for their MLB franchise employers throughout the calendar year.<sup>113</sup> Minor leaguers typically work over fifty hours each week during the championship season and countless hours outside of the championship season.<sup>114</sup> The Minor League UPC mandates excessive working hours, which violates the FLSA's maximum hour and overtime compensation provisions.<sup>115</sup> Furthermore, the

---

<sup>108</sup> *Id.* These are common industry practices according to former minor league players involved in the *Senne* case. The championship season is the "regular season."

<sup>109</sup> See MAJOR LEAGUE RULES, *supra* note 23, at Attachment 3 (Uniform Player Contract). Spring training lasts about one month, and it falls outside of the championship season. Under the Minor League UPC, MLB franchises have no duty to compensate minor league players for performance during this time.

<sup>110</sup> *Id.* "Extended spring training" does not involve participating in a championship season. Again, MLB franchises have no contractual obligation to compensate the minor league players for performance during this period.

<sup>111</sup> *Id.* The instructional league falls outside of the championship season. As a result, minor league players are not compensated by MLB franchises for performance during this period.

<sup>112</sup> *Id.* All off-season training is outside the championship season observed in the Minor League UPC. Under the UPC, MLB franchises do not compensate minor leaguers for their work during these workouts. Minor league players may be fined for not maintaining "first-class" physical condition or missing training periods. *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> See Second Amended Complaint, *supra* note 4, at 35-36. See also MAJOR LEAGUE RULES, *supra* note 23, at Attachment 3 (Uniform Player Contract).

<sup>115</sup> See Fair Labor Standards Act, 29 U.S.C. § 207(a) (2015). The FLSA bars employers from working more than a forty-hour workweek unless the employer provides the employee with additional compensation at a minimal rate of "one and one-half times" the regular rate at which they are employed. *Id.*

Minor League UPC does not provide minor league players with overtime or additional payment for services rendered outside the championship season.<sup>116</sup> MLB franchises expect minor league baseball players to work extensive hours without providing them adequate salaries or additional compensation.<sup>117</sup>

The FLSA addresses employment pursuant to a bona fide collective bargaining agreement in its maximum hours provision.<sup>118</sup> Since the MLB did not permit minor league baseball players to bargain for employment rights in the CBA of 2012 and their employment relationship, minor league baseball players' salaries should not be subjected to the FLSA's collective bargaining provisions. Subsequently, the MLB's employment of minor league baseball players involves illegal practices under the FLSA.<sup>119</sup>

### *C. MLB Franchises' Insufficient Record Keeping*

The FLSA commands employers to "make, keep, and preserve" records regarding "the wages, hours, and other working conditions and practices of employment" of all employees.<sup>120</sup> MLB franchises do not keep accurate records of the hours worked each day or each workweek by minor league players.<sup>121</sup> MLB franchises constitute employers under the FLSA, and as such are required to preserve accurate employment records.<sup>122</sup> Therefore, the MLB franchises' failure to preserve any employment records directly violates the FLSA's record keeping provision.

The unlawful employment system and practices of MLB and its franchises concerning minor league baseball players violate the FLSA, and present the players with a right of action to pursue

---

<sup>116</sup> See MAJOR LEAGUE RULES, *supra* note 23, at Attachment 3 (Uniform Player Contract). This violates the FLSA maximum hours provision, 29 U.S.C. § 207(a), and minimum wage provision indirectly. See also 29 U.S.C. § 206(a) (2015).

<sup>117</sup> See MAJOR LEAGUE RULES, *supra* note 23, at Attachment 3 (Uniform Player Contract).

<sup>118</sup> See 29 U.S.C. § 207(b).

<sup>119</sup> *Id.*

<sup>120</sup> 29 U.S.C. § 211(c).

<sup>121</sup> The MLR do not require MLB franchises to maintain such employment records, allowing franchises to circumvent accurate record keeping practices. These hours would include training, workouts, games, and other baseball related activities.

<sup>122</sup> 29 U.S.C. §§ 203(a), 211(c).

legal damages.<sup>123</sup> The minor league players may pursue compensatory damages or injunctive relief under the FLSA.<sup>124</sup>

### III. PART THREE

The collective bargaining process in professional baseball is flawed. Minor league baseball players are not represented in collective bargaining negotiations, but they are bound by the CBA's conditions and the MLR.<sup>125</sup> MLB's collective bargaining procedure does not openly violate the NLRA, but the process allows illegal labor practices and defies the NLRA's purpose.<sup>126</sup> Notably, the current system does not allow minor league players an effective opportunity for combatting the MLB's overreaching employment policies.<sup>127</sup>

#### A. *The Aims of the NLRA*

Congress enacted the NLRA in 1935 to provide equal bargaining power between employers and their employees.<sup>128</sup> The NLRA encourages the use of collective bargaining practices for employees seeking "actual liberty of contract" and for employers to manage labor disputes.<sup>129</sup> Additionally, the NLRA grants employees the right to self-organize, form, join, or assist labor organizations to select representatives that will bargain collectively to protect their employment rights and interests.<sup>130</sup> The employees' collective bargaining representative is expected to negotiate an agreement with employers guaranteeing protection of fundamental employment rights.<sup>131</sup>

---

<sup>123</sup> See 29 U.S.C. §§ 206, 207, 211, 216.

<sup>124</sup> See 29 U.S.C. § 216.

<sup>125</sup> See Rothman, *supra* note 10.

<sup>126</sup> See *supra* note 21. The MLB's CBA allows franchises to openly violate the FLSA through collusion and prejudicial policies.

<sup>127</sup> Minor league players cannot attack the MLB's illegal employment policies without any representation at the collective bargaining discussions.

<sup>128</sup> See 29 U.S.C. § 151 (2015). The NLRA is supposed to protect all employees from employer abuse, including professional athletes and baseball players. Players have previously used the NLRA to combat MLB practices. See Silverman *ex rel.* NLRB v. MLB Player Relations Comm., 67 F.3d 1054 (2nd Cir. 1995) ("Silverman II").

<sup>129</sup> 29 U.S.C. § 151 (2015).

<sup>130</sup> 29 U.S.C. § 157.

<sup>131</sup> 29 U.S.C. §§ 157, 158.

The NLRA defines unfair labor practices by employers and provides legal remedies for employees subjected to unfair labor practices.<sup>132</sup> The NLRB presides over all labor disputes and is responsible for preventing unfair labor practices from affecting commerce.<sup>133</sup> Also, the NLRB is empowered to review complaints of unfair labor practices and seek judicial resolution of employment disputes involving collective bargaining.<sup>134</sup>

### *B. Baseball's Collective Bargaining Process*

Collective bargaining in professional baseball does not perpetuate the goals of the NLRA. MLB and the MLBPA only negotiate wages, hours, drug testing, and other employment conditions of major league baseball players.<sup>135</sup> Collective bargaining is supposed to protect the labor interests of every employee, not just certain employees.<sup>136</sup> Minor league baseball players are not considered members of the MLBPA and their employment interests are not represented in collective bargaining negotiations with MLB.<sup>137</sup> Minor league baseball players work for the same MLB employers, perform the same services in exchange for payment, and follow the same career progression as major league players.<sup>138</sup> Yet, major league baseball players continue to accept some MLB policies that directly disadvantage minor league players.<sup>139</sup> Minor league players do not enjoy the same rights as major league baseball players.<sup>140</sup>

The MLB's collective bargaining process does not directly violate the NLRA. The MLBPA is certified to represent the interests of major league baseball players and future major league

---

<sup>132</sup> 29 U.S.C. § 158, 160.

<sup>133</sup> 29 U.S.C. § 160.

<sup>134</sup> *Id.*

<sup>135</sup> *See MLBPA Info*, *supra* note 3.

<sup>136</sup> *See* 29 U.S.C. § 157.

<sup>137</sup> *See* Rothman, *supra* note 10.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* The MLBPA has agreed to changes that limit amateur draft bonuses and extend minor league contract periods before allowing the possibility of free agency.

<sup>140</sup> *Id.* *See also* MAJOR LEAGUE RULES, *supra* note 23, at Attachment 3 (Uniform Player Contract). Minor league players receive significantly less compensation, work equal or longer hours, and are prevented from individually negotiating contractual terms in free agency like major league players. *See* 2012-2016 BASIC AGREEMENT, *supra* note 32.

baseball players in collective bargaining.<sup>141</sup> Plus, MLB does not expressly forbid or prohibit minor league baseball players from organizing a labor union to represent their interests. However, minor league players do not want to offend the MLB franchises that could provide their ascent to “The Show”.<sup>142</sup>

Minor leaguers have never formed a labor union, and their inability to unite has deprived them of true collective bargaining representation.<sup>143</sup> The MLBPA has previously evaluated representing the interests of all professional baseball players (including minor league players), but the lack of resources and decentralization of minor leaguers stalled the expansion.<sup>144</sup> Additionally, minor league players are reluctant to challenge the MLB’s authority and upset the franchises that control their professional careers.<sup>145</sup> As a result, the current collective bargaining system entrusts the MLB with protecting the wellbeing of minor league baseball players and implementing fair employment practices. However, the MLB franchises use their authority to exploit these players and create an unjust system, which gives employers an unfair advantage over their employees.

### *C. Products of the MLB’s Collective Bargaining Process*

Baseball’s collective bargaining procedures may not violate federal labor law under the NLRA, but the MLB’s current employment structure does violate federal antitrust laws.<sup>146</sup> The collective bargaining process endows MLB and its franchises with

---

<sup>141</sup> See *MLBPA Info*, *supra* note 3. The MLBPA provides fair representation for its members, and cannot misrepresent the interests of non-members (minor league players) because they are not included in the collective bargaining unit.

<sup>142</sup> See Rothman, *supra* note 10.

<sup>143</sup> *Id.* Minor league players have made several efforts over the years, but to no avail.

<sup>144</sup> *Id.* The MLBPA struggled to bargain for major league baseball players for years. Universal representation for all professional baseball players became a dream.

<sup>145</sup> *Id.* The MLB franchises have absolute and exclusive ownership over a minor league player’s rights. If a player offended the franchise management, they would likely never be promoted to the major leagues or released by the franchise.

<sup>146</sup> See 15 U.S.C. § 1 (2015). The Sherman Act seeks to prevent collusion that unreasonably restrains trade. The MLB’s unilaterally implemented policies governing minor league players’ employment rights could be viewed as unlawful behavior. The MLB enjoys an antitrust exemption, but an activist court could choose to remove the exemption in light of the current collective bargaining process in baseball that severely neglects the rights and interest of minor league players.

total authority over the employment structure and policies concerning minor league baseball players.<sup>147</sup> Subsequently, the MLB unilaterally implements practices that impose unreasonable restraints on minor league players' employment rights and interests.<sup>148</sup>

The judiciary has created two tests to determine whether a practice violates the Sherman Act. A practice is an unreasonable restraint when it fails to pass the "per se illegality" test or the "rule of reason" test.<sup>149</sup> Under both tests, the impact on competition, determines the validity of a restraint on trade.<sup>150</sup> Either test could evaluate an action challenging the validity of the Minor League UPC restraints on minor league player contracts.

Under the "per se illegality" antitrust test, a court would evaluate the restraints imposed by the Minor League UPC on minor league player contracts by examining whether the restraints injured competitors at the same level of production. The Minor League UPC could indicate the MLB and its franchises conspired to horizontally fix minor league contract salaries, which is a per se offense under antitrust law.<sup>151</sup> Minor league players would have a legitimate argument that the Minor League UPC is a per se antitrust offense; however, courts have been reluctant to employ the "per se illegality" test in most cases encompassing sports.<sup>152</sup> The "rule of reason" standard of review is more likely to apply.

---

<sup>147</sup> See 2012-2016 BASIC AGREEMENT, *supra* note 32; MAJOR LEAGUE RULES, *supra* note 23, at Rule 56(g); *id.* at Attachment 3 (Uniform Player Contract).

<sup>148</sup> See MAJOR LEAGUE RULES, *supra* note 23, at Attachment 3 (Uniform Player Contract). The Minor League UPC is formulated by the MLB and its franchises without any external influences or pressures.

<sup>149</sup> See *NCAA v. Bd. of Regents*, 468 U.S. 85 (1984). The United States Supreme Court concluded the "per se" test is "invoked when surrounding circumstances make the likelihood of anticompetitive conduct so great as to render unjustified further examination of the challenged conduct." *Id.* at 103-04. The Court stated the "rule of reason" test applies when "restraints on competition are essential if the product is to be available at all." *Id.* at 101.

<sup>150</sup> *Id.* at 104.

<sup>151</sup> This restraint would be unreasonable based either on the nature or character of the contracts or on the surrounding circumstances giving rise to the inference or presumption that the MLB franchises intended to restrain trade and lower minor league players' contract prices. See *id.* at 103.

<sup>152</sup> See *id.*; *MLB Props., Inc. v. Salvino, Inc.*, 542 F.3d 290 (2d Cir. 2008).

The “rule of reason” requires comparison of the anticompetitive effects of a practice with its pro-competitive impact and business justifications. Minor league players would need to demonstrate the Minor League UPC imposes trading practices harming competition that caused the players specific harm.<sup>153</sup> Minor league players would have strong support in arguing that the Minor League UPC harms the competitive bargaining of contract prices and terms and that this restraint of trade harms all minor league baseball players. The MLB would have the opportunity to justify the use of the Minor League UPC and claim it had pro-competitive benefits.<sup>154</sup> Finally, minor league players could still prove that the Minor League UPC is an unreasonable restraint on trade by establishing that the pro-competitive purposes of the UPC could be accomplished by less restrictive measures.<sup>155</sup> The MLB and its franchises could likely engineer a more reasonable minor league employment structure without using the Minor League UPC.<sup>156</sup> Thus, the MLB’s minor league employment structure and Minor League UPC violate the Sherman Act and present unreasonable restraints on minor league players’ contract rights.

#### *D. Probable MLB Defenses to Allegations of Labor Law Violations*

The MLB and its franchises have two primary defenses they will likely use in any action by minor league baseball players challenging the MLB’s employment framework pursuant to federal labor laws:<sup>157</sup> the antitrust exemption and the nonstatutory labor exemption. First, the MLB would quickly point

---

<sup>153</sup> William Markham, *An Overview of Antitrust Law*, MARKHAMLAWFIRM.COM (2000), <http://www.markhamlawfirm.com/law-articles/antitrust-law-san-diego/> (Nov. 30, 2014).

<sup>154</sup> See *id.* The MLB has a decent opportunity to justify the Minor League UPC as it does allow for some competitive balance between MLB franchises.

<sup>155</sup> *Id.* Minor league players would only need to show there were reasonable alternative means for the MLB to restrict competition for minor league player salaries without totally devastating them as the Minor League UPC has done.

<sup>156</sup> The Minor League UPC creates an anti-competitive environment that does significantly injure minor league baseball players’ ability to negotiate fair contract prices and terms.

<sup>157</sup> Any claims brought under the FLSA, NLRA, or Sherman Act.

to its longstanding antitrust exemption established by *Toolson*.<sup>158</sup> The judiciary would likely uphold baseball's antitrust exemption and emphasize the precedent set in *Toolson* and *Flood*.<sup>159</sup> Congress has still not applied antitrust law to disputes concerning the employment of minor league baseball players.<sup>160</sup> Therefore, the antitrust exemption would bar any labor law action brought on behalf of minor league baseball players.

If the judiciary overturned *Toolson* and *Flood*, the nonstatutory labor exemption may still bar minor league players from challenging the MLB's employment structure.<sup>161</sup> In *Brown*, the United States Supreme Court concluded that Congress has determined that collectively bargained-for practices are generally beyond the scope of judicial antitrust review.<sup>162</sup> *Brown* involved developmental squad football players that are arguably similarly situated with minor league baseball players.<sup>163</sup> Courts have not specifically applied the nonstatutory labor exemption in a baseball labor dispute, but would likely use the exemption to shield baseball against avoidable antitrust litigation where it felt the claimant class collectively bargained for the labor practice in question.

#### IV. PART FOUR

MLB unilaterally imposes unlawful employment practices on minor league baseball players employed by its franchises.<sup>164</sup> The *Senne* court's decision must end the long-endured suffering of minor league baseball players at the hands of Major League Baseball. Nevertheless, federal courts are extremely reluctant to

---

<sup>158</sup> See *Toolson v. N.Y. Yankees*, 346 U.S. 356 (1953) (holding the business of baseball is not included within the scope of antitrust laws).

<sup>159</sup> See *id.*; *Flood v. Kuhn*, 407 U.S. 258 (1972).

<sup>160</sup> The Curtis Flood Act of 1998 does not allow minor league baseball players to pursue antitrust claims against MLB. See 15 U.S.C. § 26b(b)(1) (2015). The MLB still uses the exemption to unilaterally set salaries and working conditions for minor league players. See Michael McCann, *In Lawsuit Minor Leaguers Charge They are Members of the Working Poor*, SPORTS ILLUSTRATED (Oct. 25, 2014 2:53 PM), <http://www.si.com/mlb/2014/02/12/minor-league-baseball-players-lawsuit>.

<sup>161</sup> See *Brown v. Pro Football, Inc.*, 518 U.S. 231 (1996).

<sup>162</sup> *Id.* at 236-237.

<sup>163</sup> Both classes of athletes are classified differently than regular players competing at the highest levels of each sport.

<sup>164</sup> See *supra* notes 15, 21, 28, and accompanying text.

review labor disputes in baseball and grant the MLB with wide discretion in employment and business affairs.<sup>165</sup> To avoid the need for judicial intervention, enacting federal statutory law is the only option to correct the MLB's unlawful employment practices and protect the employment rights of minor league baseball players.

#### *A. Congress Rescues the Needy*

A new federal law delivered by Congress could grant minor league baseball players reprieve from the MLB's oppressive employment practices. Congress possesses the authority to prohibit unlawful labor practices and has "stepped up to the plate" to protect the employment rights of professional baseball players in the past.<sup>166</sup> Presently, Congress must address the MLB's unjust labor practices that govern all professional baseball players employed by MLB organizations not just major league baseball players. A clear and concise statutory law, subjecting the MLB's employment system to all relevant federal labor laws, would ensure prejudicial policies that injure any players' employment rights are abolished.

#### *B. What Would the Model Statute Include?*

The new statutory provision should explicitly subject baseball to all relevant federal labor laws.<sup>167</sup> Applying federal labor laws would ensure the employment and contractual rights of minor league baseball players are protected and prevent any future abuse by the MLB's employment system. Moreover, the MLB could not maintain any of the current oppressive employment practices imposed against minor leaguers.<sup>168</sup>

---

<sup>165</sup> See *supra* cases cited in note 12.

<sup>166</sup> See 15 U.S.C. § 26(b) (2015). This legislation applies antitrust laws to practices that effect employment of major league baseball players to play baseball at the major league level. See 29 U.S.C. § 151 (2015) Judicial opinions repeatedly emphasize the lack of legislative action in preventing unlawful labor practices in baseball as their basis for upholding baseball's antitrust exemption. See cases cited *supra* note 34.

<sup>167</sup> See Fair Labor Standards Act, 29 U.S.C. §§ 201-209 (2015); 29 U.S.C. §§ 151-69; 15 U.S.C. §§ 1-7.

<sup>168</sup> See *supra* notes 15, 20, 143, and accompanying text.

The federal statute could provide support for an amendment to the MLBPA's agreement with major league baseball players to include minor league players as members. Minor league player membership in the MLBPA would provide these players with a true collective bargaining representative that would negotiate with the MLB in their best interests. Moreover, minor league player membership would allow these players efficient methods for resolving labor disputes with the MLB and its franchises in the future.

The statute might authorize the inception of a new labor organization working exclusively for minor league players. A new Minor League Players Association would provide a unique angle in collective bargaining with MLB, and would negotiate solely on the behalf of current minor league baseball players. The statute must contain a provision giving minor league players the ability to participate in future CBAs and voice their labor concerns, by either forcing the MLBPA to adopt minor league players as members or designing a new collective bargaining representative for the players.

#### CONCLUSION

It is astounding federal courts and Congress have allowed the MLB and its franchises to unilaterally implement prejudicial employment practices and policies against minor league baseball players that violate federal labor laws.<sup>169</sup> The MLB's practices offend provisions and policies of the FLSA, NLRA, and Sherman Act. The MLB's current employment system is oppressive and exploits the players who have no way of challenging these overreaching policies without assistance.<sup>170</sup>

MLB and its franchises have a history of exploiting players for profit.<sup>171</sup> The revenues of MLB franchises and salary figures of major league baseball players are at an all-time high, but the minor league baseball players are being paid unlawful wages below the federal poverty level.<sup>172</sup> Someone must come to the aid of these injured players. Subjecting the minor league players to

---

<sup>169</sup> See *supra* notes 33, 44, 47, and accompanying text.

<sup>170</sup> See *supra* Part II.

<sup>171</sup> See *supra* notes 38, 44, 47, 54, and accompanying text.

<sup>172</sup> See *supra* Introduction.

the MLR and Minor League UPC legitimately permits the MLB to persecute them, and these practices negate all labor protections afforded to employees in the United States under federal labor law.<sup>173</sup>

Congress has the power to enact legislation similar to the Curtis Flood Act of 1998 to correct the MLB's abrasive actions, but it has not addressed them. Federal courts have the ability set aside outdated precedent that drastically favors MLB discretion and independent governance over player rights. New statutory legislation applying relevant federal labor laws to baseball would ensure all baseball players, including minor leaguers, are protected from unfair labor practices created through collusion by the MLB and its franchises.<sup>174</sup>

---

<sup>173</sup> See *supra* notes 15, 21, 143, and accompanying text.

<sup>174</sup> See *supra* Part IV