

5-1-1993

Senior Professional Baseball Association: A League of Our Own

Stuart M. Pepper

Follow this and additional works at: <http://repository.law.miami.edu/umeslr>



Part of the [Entertainment and Sports Law Commons](#)

Recommended Citation

Stuart M. Pepper, *Senior Professional Baseball Association: A League of Our Own*, 10 U. Miami Ent. & Sports L. Rev. 307 (1993)
Available at: <http://repository.law.miami.edu/umeslr/vol10/iss1/13>

This Practitioner's Note is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Entertainment & Sports Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

PRACTITIONER'S NOTE

SENIOR PROFESSIONAL BASEBALL ASSOCIATION: A LEAGUE OF OUR OWN

STUART M. PEPPER*

A brief biography of the author is necessary to frame the background for the events that follow. I became a lawyer in 1978, and was originally licensed in Iowa, where I practiced in personal injury and criminal law. I have been a baseball player (as in real hard ball) since age nine. I played for the City College of New York as a pitcher and infielder in the Metropolitan Baseball Conference. In the early seventies I played semi-pro amateur baseball in men's leagues in New York, in Kansas City while in law school, and in Iowa for twelve years. I always pitched well, possessing good control, a sneaky curve ball, and a moderately fast fast ball. I considered myself a baseball player who practiced law to make a living. Baseball always came first.

In 1989, James Morley, a former minor league player and then real estate developer, dreamed up the concept of the Senior Professional Baseball Association (SPBA) while vacationing in Australia. The scheme was a combination of love of baseball and a plan, whereby, as commissioner and owner of a franchise, he would eventually make between five and seven million dollars in franchise fees from other franchises as the league expanded.

The basic idea was to bring out of retirement ex-major league and some ex-minor league baseball players who were still yearning to return to the diamond. The fraternity of ex-major leaguers is a close-knit group of men who are very limited in number and who all know each other. Membership in the Major League Baseball Players Association is mandatory. Morley acquired a copy of the *Baseball Encyclopedia*¹ which contains the names of all men who ever played in the big leagues, if only for one pitch, one at bat, or

* J.D., University of Missouri Kansas City Law School, 1978.

1. JOSEPH L. REICHLER, *THE BASEBALL ENCYCLOPEDIA* (1988).

one game (it is surprising how many ex-major leaguers fit that category). From the *Baseball Encyclopedia* he was able to get the names and addresses of all ex-major leaguers who were born before a certain date so that the minimum age would be thirty-two for catchers and thirty-five for all non-catchers.

He sent letters to all of these ex-players and was surprised to receive a tremendous "Yes," "Heck yeah, we'll play again if given the chance." Names such as Ferguson Jenkins, Dave Kingman, Clete Boyer, Wayne Garrett, Vida Blue, Dan Driessen, Pete LaCock, Pat Dobson, Amos Otis, among others, agreed to play or coach. Next, Morley announced the formation of franchises to sell to investors. Due to the hospitable climate and winter population of Florida, it was chosen as the situs. Eventually, investors purchased franchises (with Morley getting his cut) in such Florida cities as Winter Haven, West Palm Beach, Orlando, Fort Myers, and Bradenton, with Morley's franchise located in St. Petersburg. Field rentals were negotiated, usually involving major league spring training fields.

Curt Flood was appointed titular commissioner, Senior Professional Baseball Association baseballs were made, names for the teams were created, uniforms crafted, yearbooks printed, and salaries negotiated. The season would run from November through February. The maximum salary was set at fifteen thousand dollars a month, plus expenses, with average salaries running between five or ten thousand dollars a month. As one might expect, the greater salaries were used to attract the big name ex-pros. A 1.2 million dollar budget per team was expected as a minimum. What started as a crazy idea came to reality in less than a year, and the first pitch was officially thrown in November 1989.²

The new league received national publicity. Men from around the country and Latin America left jobs, family and careers for a second shot at major league baseball. Many players who had not played in several year when fall training began realized they needed to get into shape. True talent always stays with you and these men still had it. All that they needed was to sharpen their skills to bring out their exceptional abilities. I have played hard ball with many teams in many cities, and with ball players of all ages and at all levels. There is a chasm of difference between a major league player and a great amateur, or even a minor league

2. More detailed information concerning that first season may be obtained in a very interesting, informative, and entertaining book entitled *Extra Innings* by David Whitford, published by Harper Collins.

player who never made it to the major league level. There is a confidence, natural grace, and seeming flawlessness only the major leaguers possess. These are exceptional athletes, with tough bodies and a competitive spirit that hates nothing more than losing. They truly enjoy the physical activities associated with playing baseball.

After the formation of the league, I decided to move my family and law practice to the Cape Coral/Fort Myers area in Southwest Florida (I was licensed in Florida in 1987). I had planned to move to Southwest Florida anyway, and by coincidence, my relocation to Florida was timed perfectly with the start of the 1990-1991 SPBA season.

The first season wasn't exactly a financial success, but the owners and investors expected a loss into the second and third seasons. There was no big television contract or prominent national sponsor throwing big bucks the league's way. It had to prove itself first. Many people were skeptical of the quality of play. Indeed, with a combination of frigid night temperatures and insufficient loyal interest, the attendance figures were dismal. The owners figured that to break even, a minimum average attendance was essential. It never materialized. Thus, at the start of the second season several owners backed out and franchises folded. The 1990 season started with four Florida sites: St. Petersburg, Daytona, Fort Myers, and the "traveling-only" Tropics (for whom I played). There were two western additions to the league: a team from San Bernardino, California, and another from Phoenix, Arizona. The league had hoped to eventually expand to the west coast. The Tropics were a traveling team with no home field because during the week before the start of the season, the West Palm franchise, which had been the Tropics, dropped out. To avoid a schedule imbalance, the league created the Tropics whose salaries were to be paid for jointly by the owners of the other five franchises: Mark Kaplan of the Sun City Rays, Phoenix; a group led by California attorney Jeffrey Raynes, for the San Bernardino Pride; Michael Graham, William Curry, and James Dean, who owned the Fort Myers Sun Sox; Jim Morley for the St. Petersburg Pelicans; and Norman Sirota for the Daytona Beach Explorers. At the start of the second season the salary cap for the five owned teams was set at ten thousand dollars per month for any one player. The maximum salary for a Tropic player was set at two thousand dollars a month plus expenses.

The league office was in Miami. The league had a uniform player contract; each player signed an agreement, but many were not provided with a copy of it. Many of these men had agents and

lawyers to take care of their contracts when they played in the big leagues, but their desire to play in the new league and a lack of money prevented review by legal counsel for many players. In fact, there was no negotiating. Players had to play by the league's contract or not play at all.

Before the start of fall training for the 1990-1991 season, some of the teams had try-outs so that they might pick up one or two players. As it was, each of the teams were overloaded with ex-major leaguers vying for spots on the team, and it would be virtually impossible for anyone aged thirty-five and over to just walk on at fall training and win a spot. Nonetheless, in October of 1990, men from all around the country responded to the Fort Myers Sun Sox national three day try-out for men over thirty-five. During the summer of 1990 I had played baseball in Des Moines, and I continued working out into the fall. I was in top physical shape and had pitched well during the summer, so I was ready to try out for a spot. I had also been working out with an ex-major league buddy who also happened to be a pitcher for the Sun Sox. Try-outs were held at Terry Park in Fort Myers. I joined the fifty or so men from places such as California, Texas, New York, and Florida for the coveted spot. I performed well in the try-outs and impressed the coaching staff enough that I was offered a job as batting practice pitcher for the Sun Sox where I was treated as if I was a roster player. I was able to work out on the playing field as well as exercise with the other players. I pitched batting practice each game to players such as Marty Castillo, Raphael Landestoy (Dodgers), Dan Driesson, Ron Johnson (Angels), Bobby Molinaro (Yankees), Jerry Martin (Royals), John Milner (Giants, and 1988 World Series), Mike Ramsey (Cardinals), and the amazing Amos Otis (Royals).

Finally, I had made it to the big leagues after almost eighteen consecutive seasons of organized hard ball. I was where I really belonged. The dream had come true. The most fulfilling part of the experience was that I was fully accepted as an authentic player by men who made big money playing at the highest level of baseball competition and who knew what a serious, good ball player was. I was finally playing at the level I had been deserving of for all those years. The past mattered not, for the smell of the fresh grass, swinging palms, full sun, "pool table flat" infield, and the crack of the bat with the ball flying over the wall totally consumed me. Being a lawyer made me an immediate novelty. The other players had never seen a ball player-lawyer, and they really respected me for being one. I was referred to as "the lawyer" when my identity was not known. I was often asked legal questions, usually about

family matters.

The fall training merged into the start of the 1990-1991 season. I continued throwing batting practice, shagging balls in the outfield, and staying in good shape. Then the Tropics came to town for a four-day trip. The Tropics were the league-owned team, and actually an amalgamation of players cut from the other team rosters, or leftovers from the demise of the West Palm Beach Tropics. No matter what you called them, or how they were formed, each player was still a major leaguer with the same major league skill, pride and determination to win. The roster included Ron LeFlore, Dave Cash (Pirates), Hector Cruz (Cubs), Reggie Cleveland (Red Sox - World Series pitcher), Rene Martin (Royals), Bobby Jones (Nolan Ryan's Angels roommate), Dan Norman (Reds and Mets), Rodney Scott (Expos), and manager Pete Machinin (Reds, present AAA manager, and a tremendous athlete).

The Tropics had experienced a tough road trip and their pitching was becoming a little depleted. Machinin, the manager, needed some relievers for the four-game series against the Sun Sox, so Tony Torcia (the Las Vegas Padres AAA manager and a dog racing enthusiast), the third base coach of the Sun Sox and the man who led the national try-out and ran the batting practices for the Sun Sox sent me over to pitch for the Tropics. I pitched three innings against the Sun Sox in relief and did well enough to make the Tropics as a roster player. Now I was truly official. My work appeared in the box scores, and my statistics were counted along with the rest of the league players. It was great! During the day, when I had time, I was at the office practicing law.

In early December, however, the league was facing a crisis. Attendance was terrible. It was freezing cold in San Bernardino during the night games. The owners were getting jittery, but everyone expected the league to continue into the next year when we hoped to pick up a television contract (this was told to the players to keep them playing). Our umpires were also on salary, paid jointly from a pool formed by the league owners. Christmas break was the turning point. The Tropics were supposed to be paid one thousand dollars every two weeks, plus per diem and travel expenses. The league was late in paying and the players were grumbling. I was having a ball, and I prayed everything would hold together so I could pitch after the break.

The last game before the break pitted the Tropics against the Daytona Beach Explorers. I drove up from Fort Myers expecting to see the guys on the field taking batting practice at 4:30 p.m.

Instead, they were in street clothes in the locker room, debating whether to play that night or not. They had not been paid as promised; the last check was two days late and the plane fares back home from Daytona were not paid. Rebellion was breaking loose. I walked into the locker room. "Hey, Stu, you're our lawyer. What do we do?" They all turned to me for the answer. To play or not to play, that was the question I had fifteen minutes to decide. My friends and fellow players were in a great dilemma, not sure of the legal implications of their actions. If they didn't play, the game would be forfeited, and the news media would immediately spread the story that the SPBA was running out of money and was close to folding. On the other hand, if the owners really did have the financial wherewithal to pay the Tropics and the traveling expenses as they had promised, and if they really did intend to have television revenues next season and a possible Japanese franchise, the Tropics players would look as though they were responsible for the league's collapse. The owners would use them as scapegoats, and the baseball world would blame the Tropics for jumping the gun and not giving the owners the chance to get their act together. "What should we do, Stu?" I was really on the spot. This was national stuff - the big time. Time for the big decision, the moment when all the years of legal reasoning and analyzing contracts will come together for one answer affecting countless people and my own professional baseball future.

It was getting late. If we didn't suit up quickly and get on the field by 6:00 p.m., a lot of suspicions would fly and word would leak out. It was about 5:30 p.m. Pete Machinin, our leader, took over the debate. He was against playing if we weren't paid or weren't guaranteed to be paid right then and there by some representative of the league. The owners were in a conference call at that moment trying to persuade Michael Graham, one-third owner of the Sun Sox, to put up and guarantee a \$175,000.00 letter of credit as his share of league operating expenses for the Sun Sox.³ A league representative came into the locker room and said, "Give us until six before you decide not to play." He left and the players asked, "Well, Stu, what do we do?" I replied, "I must see your contracts with the league. Who has one?" After answers like, "I don't," and "Not me," Dave Cash fortunately produced a blank copy from his locker. It was about nine pages single space with subparts, etc. "Your answer lies in here," I said. "This tells you

3. Graham didn't put up the letter of credit, which led to the collapse of the Sun Sox a day later, and the entire league the day after that.

your remedies and the owner's duties."

First, I had to see if the owners were in default, and if so, what the players' rights were. I quickly scanned over each page until I found the paragraphs dealing with default, duties and remedies. Sure enough, the contract gave the owners a three day grace period after non-payment on the due date before the players can refuse to play. Then the recourse was arbitration with the league president. December 20th was the due date. It was December 22. By contract the players had to play this game before the owners could be considered in default. If the players didn't play, the owners could say they had breached the contract, and could sue the Tropics' players individually for damages, which could have run into the millions: for lost profits, loss of reputation, and interruption of business opportunity, just to name a few.

On the other hand, if the owners weren't serious and had no intention of paying the December 20th check, the players were being used and humiliated. Half the guys believed the latter, but the more rational and cool-headed ones listened to me and agreed that by the terms of the contract, we had to play or we could look like the bad guys. Still others were getting very emotional, cursing the owners and refusing to play until they were paid, like lawyers who withdraw if not paid their fee. A straw vote was taken. By a narrow margin, the majority decided to strike. The "Yes Play" faction was shocked and made comments like, "Didn't you hear what Stu said and what the contract says? They could sue us. We have to play. The contract says so. Stu is right." The "No Play" side responded with, "I don't care about no contract or being sued. If we don't get paid, we don't play. Our plane fare isn't even paid. To hell with them!" Just then, an agent of Norman Sirota, the owner of the Daytona team who we were playing that evening (the only compassionate owner in the league), came in and guaranteed that the plane tickets were paid, and that the pay checks would be mailed to the players' homes over the break. He left. I again told them it was only one game, and the implications could be ruinous if they didn't play. Machinin changed his mind and told us, "I believe him," meaning Sirota's promise that the checks would be in the mail the following week. "I say we play." A quick re-vote was made, and the decision to play prevailed.

I coached first base that night, and we easily beat Daytona, even with Stan Bahnsen (Yankees) pitching against us, and Jose Cruz (Astros), who could still hit, in right field. In fact, all the batters on the team still possessed that magic of being excellent and fearless hitters. The Tropics were hot, playing good ball and win-

ning more games than we were supposed to. By now I was good friends with all the guys, especially Hector Cruz, Jose Cruz' brother.

After the game, we all exchanged addresses and left for our respective destinations, expecting to see each other after the first of the year to resume the season. I called Hector five days later in Chicago to see if the checks had come. They had not. The Sun Sox announced they were folding, and the next day the league followed, with no checks. The umpires were in the same boat. They weren't paid at all. Though they were given promises, they were betrayed. They got yelled at and booed by fans and players, and at no recompense. It was truly unfair.

It was time to sue, or at least try to get the remaining money for the Tropics players. They were owed collectively \$23,000.00, or approximately \$4,500 owed per owner. This was small change for Jimmy Dean, Mark Kaplan, Norman Sirota, Jeff Raynes, and Jim Morley. Hector Cruz authorized me to write a demand letter to the league owners to get our money. I thought it would only take a letter, and presto, the money would come flowing in. After all, these investors couldn't cheat their professional athletes. I was wrong!

Like children, the owners, with the exception of Norman Sirota of the Daytona Beach Explorers, pointed their fingers at each other and demanded that the other owners pay first. There were twenty-four paid players on the Tropics (including a general manager and trainer), each of whom was owed approximately \$1,200.00. This was not a substantial sum for these millionaire owners, who planned to lose several million dollars for two seasons anyway. Norman Sirota, like a true gentleman, admitted each owner owed a one-fifth share, and he paid up approximately \$4,500.00 without a qualm. Morley sent around to all the players a letter saying everyone would be paid. However, when it came time for him to pay his measly \$4,500.00 to the players whose lives he uprooted, he retreated behind the corporate veil, filing Chapter 11 bankruptcy, and has to date paid nothing.

When the shocking realization that James Dean, a multi-millionaire who owned a part of the Fort Myers Sun Sox, Mark Kaplan, another multi-millionaire who owned the Sun City Rays, and the rest of the owners weren't going to pay a dime to the players, a class action lawsuit captioned in the name of Hector Cruz as party representative was filed in Lee County Circuit Court in January 1991.

You would think that after being sued, these owners would be

willing to at least settle the cases and pay up, but the insult continued. Each owner hired an attorney to fight vigorously to prevent them from having to pay. The owners most certainly ended up paying attorneys more than what they owed the players. Hearings were held to determine class certification as required by the rule. The league, the teams, and each owner were named as defendants. Interrogatories, requests to produce, and depositions were started. The defendants vigorously resisted every motion filed by the plaintiffs. Lack of sympathy by the owners to the players' plights was amazing.

In the meantime, the umpires, headed by the late Linc Braude, contacted my office to file a class action suit on behalf of the umpires. They had been paid nothing, not even for their out-of-pocket travel expenses. In spite of promises by Morley and other league officials to pay the umpires, the umpires were completely stiffed. So I instituted a class action suit on behalf of the umpires, headed by Linc Braude. Still, the millionaire owners acted like children, making excuses as to why they shouldn't pay.

What began as a simple lawsuit to recover lost wages, now required an entire box to hold all of the pleadings and documents for these two class action suits. However, through persistence and determination we prevailed, making some of the defendants pay. Dean and Curry paid two-thirds of the Fort Myers Sun Sox bill; Kaplan paid the Phoenix share; Morley, as mentioned, filed Chapter 11 in each case, staying any further collection attempts; Graham filed Chapter 7 and cleaned off all of his dubious dealings and debts; Jeffrey Raynes, the lawyer, and his San Bernardino shareholders flatly refused to pay a dime and have not done so to date. Eventually, I was able to recover about fifty percent of the money for the players and umpires. I was glad they recouped something, and weren't completely embarrassed by a total shut-out.

We did as well as we could, considering the distance of the defendants and the complexities of the legal issues. Was the class certifiable? Yes. Was twenty-four and twenty-eight members too small? No. The cumulative amount of the class exceeded ten thousand dollars (then the jurisdictional amount for circuit court). Was it a circuit court case even though the class representative's claim (Hector Cruz) was only for twelve hundred dollars? Circuit Court Judge James Seals ruled no. The class must be certified in county court and then transferred to circuit court. Was personal jurisdiction obtainable against the owners individually? Could plaintiffs pierce the various corporate veils? Was Fort Myers a joint venture, a limited partnership, or a corporation? Could depositions be

taken prior to determining the motion to dismiss based on lack of personal jurisdiction? Was the uniform contract admissible and applicable to all in the plaintiff's class, since the individual signed copies weren't available? Could Jeffrey Raynes be held personally in contempt for not appearing at a deposition in aid of execution? Could we recover treble damages? Lee County Court Judge Radford Sturgis did a wonderful job sorting through all the mazes of discovery, motions, hearings, and telephone conferences.

The conclusion was a partial victory for the players and umpires. The challenge was worth it. As a member of the team who braved the freezing nights in San Bernardino, burned wood in our dug out to keep warm, with maybe eighty fans watching in gloves and winter coats, I experienced first hand the dedication, sincerity and love the players and umpires brought to each game. The treatment they received after the league folded was pitiful.

There will be more professional leagues organized in Florida. Perhaps in the future, if the money is put into escrow up front for the benefit of players and umpires before contracts are signed and play started, the travesty inflicted on the players and umpires of the Senior Professional Baseball Association might be avoided. The old adage "get it in writing" may still not be adequate protection. "Get it in cash up front" might be more appropriate when dealing with new league owners. Hopefully, future athletic endeavors will not become a repeat of the second season of the Senior Professional Baseball Association. Well, anyway it is spring again . . . "Play ball!" and don't set any hearings on game days.