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ARTICLES

SPORTS LABOR RELATIONS: THE ARBITRATOR'S TURN AT BAT

ROGER I. ABRAMS*

As we all know, there is something special about sports. A quick look at the 1972 Supreme Court opinion in *Flood v. Kuhn*¹ shows in dramatic fashion that we are not talking about just any business enterprise. Justice Blackmun's opinion begins with a hymn of praise for our national pastime: "It is a century and a quarter since the New York Nine defeated the Knickerbockers 23 to 1 on Hoboken's Elysian Fields June 19, 1846"² He then goes on to list "the many names . . . that have sparked the diamond and its environs . . . Ty Cobb, Babe Ruth, Tris Speaker"³ and on and on through the great, the near-great and the not-so-great. Finally, almost as an afterthought, he turns to the difficult legal issues at hand.⁴

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1. 407 U.S. 258 (1972).

2. *Id.* at 260-61.

3. *Id.* at 262.

4. The Court, in an embarrassing display of judicial rigidity, refused to overrule an absurd precedent which declared the antitrust laws inapplicable to the baseball industry

Justice Blackmun can be excused for his exuberance. Sports does that to people.⁵ It is said that Chief Justice Earl Warren once remarked that he always turned to the sports page first because the sports page recorded people's accomplishments, while the front page contained nothing but man's failures. Sporting events touch something deep inside us. They exhilarate our spirit. They celebrate the human condition: our successes and our failures. Professor Michael Novak has written: "Sports are mysteries of youth and aging, perfect action and decay, fortune and misfortune, strategy and contingency."⁶ Sports are America's secular religion.⁷

It is not surprising then that there is also something quite special about labor relations in professional sports. Sports figures were the idols of our youth and remain an object of interest throughout our adult lives. Being involved in sports labor relations brings us close to these demigods. We are invited to visit Olympus.

Although an objective perspective is difficult to maintain when dealing with starting pitchers, running backs or power forwards, there are good reasons why sports labor law is so interesting. The problems faced in sports labor relations are unique and quite complex.⁸ Labor relations in professional sports cover a broad spec-

because it *did not* involve interstate commerce. Fifty years earlier, Justice Holmes, writing for the Court, concluded that baseball was a purely local affair and that the travel between states was merely "incidental." *Federal Baseball Club v. National League*, 259 U.S. 200 (1922). Paradoxically, the *Flood* majority also ruled that state antitrust laws were preempted by federal legislation because baseball *was* a matter of interstate commerce! The decision can only be explained on the grounds that baseball is the national pastime, hardly an objective legal principle.

5. Even the Pennsylvania Law Review could not control its sports mania. *See Aside, The Common Law Origin of the Infield Fly Rule*, 123 U. PA. L. REV. 1474 (1975). Judges in non-sports cases cannot resist metaphors. *See, e.g., Berl v. County of Westchester*, 849 F.2d 712, 46 FEP Cases 1740, 1743 (2d Cir. 1988) ("A contrary holding would effectively permit the county to 'strike out' Berl and Anderson without ever allowing them in the batter's box.").

6. M. NOVAK, *THE JOY OF SPORTS* 24 (1976). In a similar vein, Melvin Mark and Jerald Greenberg have recently written a provocative article explaining how sports rules reflect American values. *Evening the Score*, *PSYCHOLOGY TODAY*, Jan. 1987, 44-50. *See also J. MICHENER, SPORTS IN AMERICA* (1977); P. WEISS, *SPORT: A PHILOSOPHIC INQUIRY* (1969).

7. National League President A. Bartlett Giamatti recently wrote: "Sports are the popular or people's religion in the country where Law is state church." 6 *SPORTS LAW*, 4, 6 (SUMMER 1988). *SPORTS ARE ALSO A SIGNIFICANT BUSINESS*. *Sports, Inc.*, a short-lived magazine that recently ceased publication, commissioned a study that found that the sports enterprise accounted for \$47 billion in 1986 and thus was the nation's 25th largest industry. *N.Y. Times*, December 2, 1987, at D33, col. 1.

8. Bob Berry, Bill Gould, and Paul Staudohar have recently explored the wide world of sports labor law issues in their excellent treatise *LABOR RELATIONS IN PROFESSIONAL SPORTS* (1986). It updates Weistart and Lowell's Prosserian treatment of all sports law issues in *THE LAW OF SPORTS* (1979). *See also R. BERRY & G. WONG, LAW AND BUSINESS OF THE SPORTS INDUSTRIES* (1986).

trum of activities.

Collective bargaining in professional sports is played out on the front pages and on the evening news, and affects the millions of Americans who draw daily sustenance from the games.⁹ The day-to-day administration of sports collective bargaining agreements is also quite interesting, although for the most part that process is hidden from public view. One very public aspect of labor relations in professional sports is the arbitration process. To borrow a sports media metaphor, let's look at labor arbitration in professional sports "up close and personal."

Labor arbitration is the greatest invention of the American labor movement.¹⁰ It is employed as the dispute-resolution mechanism of choice in every unionized industry and covers all classes of employees.¹¹ It is not surprising that arbitration would find its way into sports collective bargaining agreements.

Garden-variety grievances arising under the terms of these agreements primarily involve player status and compensation.¹² An arbitrator addressing those types of cases uses decisional techniques and standards common to all of arbitration.¹³ While the terms of the collective bargaining agreements might be unique to sports, the methods of analysis are not. With few exceptions, arbitration in professional sports is like arbitration in other industries.

Grievance resolution in professional sports occasionally involves fundamental issues that divide the clubs and the players. The most important and famous of these grievance cases was decided by Arbitrator Peter Seitz in 1975.¹⁴ In a case involving two pitchers, the Dodgers' Andy Messersmith and the Expos' Dave McNally, Seitz was asked by the Major League Baseball Players Association to interpret the terms of the standard player contract, in particular the provision which allowed a club to renew a player's contract "for a period of one year." Management argued the option clause itself was included in the agreement which would have been renewed by exercising the clause, an interpretation that would

9. Berry, Gould and Staudohar describe the very public collective bargaining negotiations that led up to the 1981 baseball strike and the 1982 football strike in their treatise, *LABOR RELATIONS IN PROFESSIONAL SPORTS* 62-77, 123-52 (1986).

10. R. FLEMING, *THE LABOR ARBITRATION PROCESS* (1965).

11. The Bureau of National Affairs survey of collective bargaining agreements found that 99% of their sample of contracts contained an arbitration provision. *BASIC PATTERNS IN UNION CONTRACTS* 37 (11th ed. 1986).

12. See R. BERRY, W. GOULD, & P. STAUDOHAR, *supra* note 8, at 241-46.

13. See Abrams, *The Nature of the Arbitral Process: Substantive Decision-Making in Labor Arbitration* 14 U.C. DAVIS L. REV. 551 (1981).

14. *In re Major League Baseball*, 66 Lab. Arb. (BNA) 101 (1975).

have allowed perpetual reservation of a player to a particular club. In a long and scholarly opinion, Arbitrator Seitz focused on the plain meaning of the terms employed in the contract and found that an option to extend for "one year" meant only one year and no more.¹⁵

By the stroke of an arbitrator's pen, the reserve system which had existed in baseball since the 1880s¹⁶ was dismantled. The award fundamentally changed the economics of the sport.¹⁷ Peter Seitz knew the import of his decision. In fact, as he explained in his opinion, he had encouraged the parties to resolve the matter through negotiations.¹⁸ Following his award and its affirmance on appeal,¹⁹ the parties negotiated a contract that maintained a substantial portion of the reserve system,²⁰ but the labor arbitration process had changed the course of professional baseball history.²¹

15. Arbitrator Seitz also addressed management's argument that even a player *not* under contract with a team could be "reserved" by that team under the Major League Baseball Rules. Interpreting those provisions, Seitz concluded that a player must be under contract in order to be "reserved." *Id.* at 116.

16. See *Metropolitan Exhibition Co. v. Ewing*, 42 F. 198, 202-04 (C.C.S.D.N.Y. 1890), cited in *Flood v. Kuhn*, 407 U.S. 258, 259 (1972). A commentator supplies details of the origins of the reserve system in a recent note, *Baseball Free Agency and Salary Arbitration*, 3 J. DISPUTE RESOLUTION 243, 245 (1987): "Orator Jim" O'Rourke of the Boston Beaneaters quit the team when it would not buy him a uniform and jumped to the Providence nine. In response, the National League owners met secretly to create a reserve system to keep players in their place.

17. The destruction of the reserve system triggered the end of the "good old days" of roster stability and team loyalty. The order of the controlled monopsonistic market was lost with the emergence of a free market in which talented athletes sell their services to the highest bidder as if they were any other worker. The fans, of course, eventually pay the bill: a high charge for seeing the same quality performances by the same performers.

One posited advantage of enhanced levels of compensation in a free marketplace is that it will encourage entry by sellers who otherwise would not participate. But this effect is not evident in professional sports. Boys (and to some extent girls) are encouraged to prepare for a career in professional sports at least in important part because of the non-monetary goals of fame and glory. These esoteric payoffs were present before the money explosion. It would be difficult to prove that better players seek athletic careers today because of the potential of higher salaries. The odds against a high-paying career in any professional sport are astronomical. For example, of the more than half million boys who play high school basketball each year, some fifty will play in the National Basketball Association.

18. *In re Major League Baseball*, 66 Lab. Arb. (BNA) at 117-18.

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

20. Under the 1976 collective bargaining agreement, players who contracted after August 9, 1976, could become free agents after six years of major league service. The agreement included a complicated reentry procedure with compensation through amateur draft selections for teams that lost free agents. The 1985 collective bargaining agreement abolished the reentry draft and streamlined the compensation system.

21. One immediate effect of the decision was to change Messersmith's income. While McNally returned home to Billings, Montana, where he and his brother Jim own two Ford dealerships, free agent Messersmith signed a five-year \$1.5 million contract with the Atlanta

The new free agency system became a golden goose, and the players harvested its golden eggs.²² Free agency combined with salary arbitration to increase average player salaries by almost 650% from 1976 to 1984. Management seemed incapable of resisting the temptation to buy just one more superstar who might lift the club to the pennant. Suddenly, the free agent market dried up as quickly as it appeared. Major free agent superstars found no bidders.²³ The union alleged that the clubs had agreed to a boycott of free agents in violation of a contract provision which prohibited such collusion.²⁴

The Major League Baseball Players Association's grievance alleging collusion was brought to arbitration before Thomas Roberts.²⁵ Again employing fairly familiar tools of factual analysis, Arbitrator Roberts concluded that the behavior of the clubs in abruptly ending ten years of furious bidding for free agents could only be explained as having been the product of prohibited collusive conduct.²⁶ Where there was smoke, there was fire — and a

Braves, becoming the second highest paid player in baseball (after Catfish Hunter). Prior to his arbitration, the Dodgers had paid Messersmith \$72,000 for the 1975 season during which he won 19 games. Messersmith compiled an 11-11 record for the last place Braves in 1976, while missing half the season after elbow surgery. The Braves sold his contract to the Yankees, for whom he pitched just 22 innings in 1978. He was waived by the Yankees, signed by the Dodgers and retired after a 2-4 season in 1979. He returned home to Soquel, California, and in 1984 became the baseball coach at Cabrillo College. MacNow, "Messersmith, McNally: They Had No Idea . . ." *The Sporting News* July 9, 1987, at 33. The other player in this scenario, Arbitrator Peter Seitz, was immediately fired by Commissioner Bowie Kuhn.

22. Even players without free agents rights reaped the benefits of the new regime. Clubs would sign long-term contracts with junior players, effectively buying out their free agency rights at a contract premium.

23. See Spitz, *Is Collusion the Name of the Game?*, N.Y. Times Magazine, July 12, 1987, at 22.

24. Paragraph H of Article XVIII of the current collective bargaining agreement between Major League Baseball and the Major League Baseball Players Association provides: The utilization or non-utilization of rights under [free agency] is an individual matter to be determined solely by each Player and each Club for his or its own benefit. Players shall not act in concert with other Players and Clubs shall not act in concert with other Clubs.

25. In the Matter of Arbitration between Major League Baseball Players Association and the Twenty-Six Major League Baseball Clubs, Grievance Co. 86-2 (Sept. 21, 1987). It is ironic that the no-collusion clause was first proposed by *management* to avoid free agent players from presenting "package deals" to owners, as Sandy Koufax and Don Drysdale did with the Los Angeles Dodgers. The Players Association agreed to the clause if the promise was made mutual.

26. The owners attempted to explain their disinterest in the 1986 crop of free agents as the result of: (1) a ten year trend; (2) a general economic decline in the industry; and (3) an unattractive group of prospects. Roberts responded that: (1) the owners behavior in 1986 was a dramatic change from prior competitive bidding and not the culmination of a trend; (2) economic decline cannot excuse a contract violation; and (3) in a noncollusive market

contract violation.²⁷ By way of an interim remedy, Arbitrator Roberts ruled that the grievants were free agents and could negotiate with any major league club.²⁸ The labor arbitrator had again taken his turn at bat.²⁹

While these *grievance* arbitration cases have been of crucial importance in the history of sports labor relations, in particular in the baseball industry, they are not really very different from arbitrations in other less public arenas. By comparison, baseball's *salary* arbitration system is absolutely unique. This method for settling disputes over the salary of individual workers by final-offer arbitration is employed in no other industry and in no other professional sport.³⁰

non-superstar players might garner more modest offers, but would still receive *some* offers. There was but one other possible explanation for the owners' action—concerted action. In addition to this circumstantial proof of collusive behavior, Roberts also relied upon the direct evidence of discussions at four meetings of baseball owners where they were encouraged to avoid "long-term contracts," a euphemism for not signing free agents.

27. The Roberts arbitration might be seen as the functional equivalent of the antitrust case the players were never able to bring against Major League Baseball because Justice Holmes had concluded 65 years earlier that baseball was not interstate commerce. See *supra* note 4. Although solidly based on the contract and not the Sherman Act, the Players Association's allegation, in essence, was that the owners were involved in a "combination or conspiracy in restraint of trade." Cf. *Mackey v. National Football League*, 407 F. Supp. 1000 (D. Minn. 1975), *modified*, 543 F.2d 606 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977). (As Players Association Executive Director Donald Fehr correctly noted in his response to this paper at the Labor and Employment Law Institute, there are some major differences between a grievance arbitration victory and a win in an antitrust suit. The prevailing party in arbitration receives no treble damages, no attorneys' fees, and no court order enforceable by contempt if violated.)

28. Chass, 7 in *Baseball Collusion Case Win Free Agency*, N.Y. Times, January 23, 1988, at A1, col. 4; A48, col. 1. Arbitrator Roberts also ordered back pay proceedings to determine how much each free agent lost as a result of the owners' contractual violation. Arbitrator George Nicolau has conducted hearings in a similar case involving the 1987 free agents and found there was evidence present of a pattern of information trading by the clubs. *Free-agent Conspiracy*, Miami Herald, July 5, 1988, at 2D. The Players Association has also filed a grievance on behalf of the 1988 free agents. The beat goes on.

29. It is too early to gauge the full impact of the Roberts award. His decision clearly reshapes the relationship between the parties and may be as important as the Seitz award twelve years earlier. Management will pay for its contract violation and the Players Association will enjoy its triumph. In the long run, however, the stability of an arbitration outcome depends upon the disparate economic power of the parties. The terms of the collective bargaining agreement, which was the source of Roberts's decision, reflect that power balance. When the contract expires in 1990, the parties will readjust the terms and conditions of employment through peaceful negotiations or, more likely, through use of economic weapons. When that smoke clears, we will have a better vision of the long-term impact of the Roberts award. For now, the decision gives the Players Association a bargaining chip, but the poker game can change with the next deal.

30. A variant of baseball's salary arbitration is used in the National Hockey League. The arbitrator is allowed to select an appropriate salary for the player and is not limited to the final offers of the parties. See R. BERRY, W. GOULD & P. STAUDOHAR, *LABOR RELATIONS*

In their 1973 collective bargaining agreement, the Major League Baseball Players Association and Major League Baseball agreed to a procedure to be used to resolve salary disputes between clubs and individual players. The procedure was applied only to a limited group of players, those with from two to six years of major league service, and it set forth detailed rules as to how the process was to operate. With some minor changes, the procedure operates much the same way under the current agreement.³¹

It might be argued that the salary arbitration procedure was designed never to be used. Let me explain that rather curious comment. Under salary arbitration, the arbitrator must select as the player's salary for the coming season either his final demand or the club's final offer. The arbitrator may not compromise or award any salary other than one of those two final positions. This "sudden death" process encourages parties in negotiations to move towards what we might call the "correct" salary level. This is the salary which accurately reflects the player's ability and performance. The final position which is closer to this "correct" salary figure should prevail. Obviously, each side wants to place its position closer to that figure than its opponent. It is this movement towards the middle that encourages voluntary settlements.

Consider this example. Assume that a player's correct salary based on ability and performance is a million dollars a year.³² Assume also that during early negotiations with the club the player seeks a million and a half dollars and the club offers one-half million. Sensing the demand might be too high, the player's agent would try to reposition its demand closer to the correct salary, perhaps at \$1.2 million. The club, aware its offer is too low and wanting to move its offer closer to the correct salary than the player's demand, would raise its offer to \$900,000. Not to be outdone, the player's agent then drops the demand to \$1.05 million; the team in turn raises its offer to \$975,000. At this point in the negotiations,

IN PROFESSIONAL SPORTS, *supra* note 8, at 209-10 (1986).

31. As a result of the 1985 negotiations, eligibility for salary arbitration was limited to players with from three to six years of major league service. This allowed clubs to pay players lower salaries for two full years prior to having to adjust to market realities — or face salary arbitration — in the third year. The result has been considerably lower second year salaries for baseball players. In 1986, the last year 2-year players were eligible for arbitration, players with 2-3 years of Major League service had an average salary of \$309,604. In 1987, that figure dropped to \$191,073. Chass, *Arbitration Time Gives Clubs Something to Fear*, N.Y. Times, Jan. 3, 1988, at § 5, p. 25, col. 2.

32. The "correct" salary would be determined primarily by comparing the performance statistics of the player with those of all other players, especially those with similar number of years of major league service.

the parties are only small change apart. They are more than likely to settle their dispute.³³ The dynamics of final offer salary arbitration drive the parties toward settlement.³⁴ That has been the actual experience, with over 90% of the cases settled prior to hearing. Some cases are not settled because the parties differ as to the real worth of the player's services. At times, the parties have personal differences which inhibit voluntary agreement, and, as a result, the outside neutral must set the salary. The arbitrator, of course, can always be blamed for an unhappy outcome. It is not only at the ball park that people want to shout: "Kill the ump."³⁵

What happens when a case actually does come to arbitration? Under the terms of the collective bargaining agreement, the arbitrator is limited to considering certain criteria in choosing between the final offer and the final demand. The player's performance in the prior season and over his career are considered, as well as his prior compensation. The player's physical or mental condition and the club's performance are also considered.³⁶ The criterion that stands out from the rest in practical importance is the so-called "comparables," that is, the salaries of other Major League baseball players with comparable statistics.³⁷ The parties submit joint ex-

33. There are important side benefits to voluntary agreements in lieu of an imposed salary. Both sides may be able to claim victory. An imposed salary through arbitration may diminish the morale of a player who loses or color the attitude of management towards a victorious player.

34. Settlements are common even after the final offer and demand are submitted through the salary arbitration process. Each side continues to reevaluate its position. Concerned that their position is further from the "correct" salary than their opponent, a settlement may be preferable to a greater loss through arbitration.

35. Baseball umpires — whether those on the field or in the hearing room — are subject to criticism and abuse. Christy Mathewson, Hall of Fame pitcher for the New York Giants, is reported to have said: "Many fans look upon an umpire as a sort of necessary evil to the luxury of baseball, like the odor that follows an automobile." Kaplan, *What's Killing the Umps*, N.Y. Times, Mar. 20, 1988, (Sunday Magazine), at 52.

36. It is predictable that in arbitration the player's performance the prior year will be a positive factor for the player, while the club will attempt to show that the prior year was a fluke. Problems with the player's physical and mental condition, referred to in the collective bargaining agreement as "defects," would probably be raised only by the club. It is difficult to know how the club's performance the prior year fits into this scheme, but it is one of the contract criteria.

The parties' 1985 collective bargaining agreement added a new enigmatic criterion to the contract. Effective in 1987, the arbitrator was required to:

give particular attention, for comparative salary purposes, to contracts of players with Major League Service not exceeding one annual service group above the Player's annual service group. Nothing herein shall limit the ability of a Player, because of special accomplishment, to argue the equal relevance of salaries of Players without regard to service, and the arbitrator shall give whatever weight to such argument as he (or she) deems appropriate.

37. The agreement's terms do not make the "comparables" more important, but the

hibits to the arbitrator containing salary and performance data for all Major League baseball players, although, as might be expected, they do not agree on what this information means.³⁸

The arbitrator attempts to determine the fair market value of the player based on the information presented at the hearing. In effect, the arbitrator acts as a substitute for the free market, because the club and the player have been unable to reach agreement. The arbitrator's job is to place the player at his appropriate place in the established Major League's salary structure.³⁹

Under the rules set forth in the collective bargaining agreement, the hearing is private.⁴⁰ The player and the club are present with their representatives. The Players Association's representative is also present, although he or she does not normally participate in the hearing. Each side is allotted one hour for its initial presentation and a half hour for rebuttal. By custom, the player's side proceeds first. Each party offers the arbitrator a written brief of arguments and statistics, of which certain portions are emphasized and explained during the oral presentations.

The arbitrator leaves the hearing with a standard player contract, signed by the player and the club's representative. There is one space open in paragraph 2 where the arbitrator is to fill in a single number: either the player's final demand or the club's final offer. The arbitrator has twenty-four hours in which to render his decision. He does so by telephone, then fills in the blank in the standard player contract and forwards it to the parties.⁴¹

actual practice of salary arbitration suggests that it is this criterion that is outcome determinative.

38. The parties cannot even agree on how much the players are paid. The Players Association's interpretation of salary figures inflates the current value of the contracts by adding the present value of deferred payments; management's interpretation diminishes salary levels by relying only on actual current earnings, leaving future earnings to future years.

39. It is not the arbitrator's role to predict the player's performance during the coming season. As any baseball scout will tell you, that is difficult enough for a professional baseball person. Salary arbitrators examine *past* performance and the outcomes "operate as a reward for past excellence." Note, *Baseball Free Agency and Salary Arbitration*, *supra* note 16, at 259.

Curiously, the parties do not inquire whether their salary arbitrators are familiar with the game of baseball before they select them to sit as neutrals. They choose well-established, generally acceptable arbitrators who regularly resolve disputes in a variety of industries. Over the years, a cadre of experienced *salary* arbitrators has been created. It was not always the case. A few years ago, an arbitrator hearing a salary arbitration dispute concerning a relief pitcher listened to almost two hours of presentations before he asked: "What is a save?"

40. The hearings are conducted in New York, Chicago, and Los Angeles during the first three weeks of February.

41. For his work the arbitrator receives the comparatively modest sum of \$450.00, plus

There can be little doubt the parties knew what they were doing when they created salary arbitration. They wanted a procedure that would fix the contested salaries of baseball players in a final and binding manner. They wanted to prevent players from withholding their services and they achieved that goal. There are no hold-outs after salary arbitration. Players who enter the salary arbitration process report to spring training as scheduled.⁴²

There also can be little doubt that the salary arbitration process has dramatically increased salaries, especially when combined with the inflating effect of free agency.⁴³ These two salary-determining processes have whipsawed each other to raise the current average major league salary to \$513,730.⁴⁴ Management might not be happy with the current salary level, but the results certainly were foreseeable.⁴⁵

Salary arbitration is a striking example of labor relations creativity. It is not easy work for an arbitrator, but it does have its unique aspects. I have resolved hundreds of grievances in the last

expenses, but no study time and no travel time.

42. One side effect of limiting eligibility to players with three years of Major League service was an increase in the number of spring training holdouts by players not yet eligible for salary arbitration and free agency during the past four years.

43. Ray Grebey strongly criticized salary arbitration in *Another Look at Baseball's Salary Arbitration*, 38 ARB. J. 24 (1983), complaining about its impact on salaries. Marvin Miller, who was involved in designing the process for the Major League Baseball Players Association, responded in *Arbitration of Baseball Salaries: Impartial Adjudication in Place of Management Fiat*, 38 ARB. J. 31 (1983), by comparing the current system of salary arbitration and free agency with the pre-1974 era of salary determination by management fiat.

44. The Sporting News, April 17, 1989, at 24 col. 3. This represents an increase of 14.2% over 1988. Many people are appalled by the income of professional athletes. Is a star pitcher worth over \$2,766,666.00 a year? Obviously, someone thinks so, because that is what the Dodgers pay World Series star Orel Hershiser. For a revealing discussion of how Hershiser's agent negotiated this record-breaking salary, see Nocera, *The Man With the Golden Arm*, NEWSWEEK, Apr. 10, 1989, at 42-48. We don't set salaries in this country by government fiat. The unfairness of high pay for entertainers as compared with woefully low salaries for school teachers, for example, cannot be redressed except by the laws of supply and demand. The antitrust laws (which apply to all interstate businesses except baseball) outlaw collusive action by employers pursuing lower wages for their workers. We let the market decide instead. If all the fans who rail against salaries boycotted the games they love until ticket prices were lowered, salaries would plummet. Do you think those who complain would relinquish their treasured season tickets?

45. Notwithstanding any unhappiness with the salary level, management wins more cases than it loses. From 1974 until 1987 there were 268 salary arbitration cases. Owners have won 150, or 56% of them. *Baseball Arbitration at a Glance*, USA Today, Jan. 20, 1988, at C11, col. 6. More recently, owners have increased their winning percentage. In 1987 and 1988 owners won over 60% of the cases actually resolved by the arbitrators. Not all "wins" are the same, however. In 1988, Andre Dawson lost his case and still received a salary increase of \$1.15 million. In 1989 owners suffered their first "salary arbitration season" loss since 1981, winning five cases while losing seven. Bodley, *Arbitration Adds \$35M to '89 Payroll*, USA Today, Feb. 20, 1989, at C1, col. 2.

decade and a half, but the only cases anyone ever asks me about are the two salary arbitration cases I heard a few years back.⁴⁶ After all, it was the only time I have been mentioned in the New York Times, Sports Illustrated, Sport Magazine, and The Sporting News. It was the closest I have come to experiencing "the thrill of victory and the agony of defeat." The media hardly ever reports my other decisions.

The practice of labor relations in professional sports is far from perfect. Professional sports have been afflicted with labor strife for a variety of reasons. There is a great deal of money involved and the ever-present question of how the pie should be cut remains hotly contested. Moreover, the personalities of the individuals involved often get in the way of peaceful dispute resolution. Some people can be very greedy. Player careers are short and filled with uncertainty; they can be ended in an instant due to physical injury. Owners are normally quite successful entrepreneurs in their own right before they purchase a franchise. Collective bargaining may be foreign to many of them, especially in the sports law context.⁴⁷ In some sports, players have developed a solidarity based on shared experiences that the owners have not always appreciated. All of these factors combine to make easy agreement in sports negotiations as likely as a .400 hitter.⁴⁸

The representatives of management and labor have created contract methods for resolving disputes which arise during the terms of their collective bargaining agreements. Here arbitration

46. In 1986, I decided the salary arbitration cases of the New York Mets' Ron Darling and the Cleveland Indians' Brett Butler, who is now with the San Francisco Giants.

47. Professor Gary R. Roberts makes this point forcefully in his recent article, *The Shame of Labor Relations in Professional Sports*, 6 SPORTS LAW. 4, 6 (Summer 1986).

48. The future does not appear any brighter for sports labor relations. At this writing, football players are not covered by a collective bargaining agreement, but the National Football League Players Association has brought an antitrust suit against the league and the clubs in federal court. *Powell v. National Football League*, 678 F. Supp. 777 (D. Minn. 1988) (holding teams protected by nonstatutory labor exemption, but reserving decision until resolution of whether "impasse" has been reached in mandatory bargaining subjects). The National Basketball Players Association at first followed the same strategy after their agreement expired, *Bridgeman v. National Basketball Association*, No. 87-4189 (D. N.J. 1987), but on April 26, 1988, reached agreement with the owners on a six year collective bargaining agreement dramatically expanding free agency rights and decreasing the number of rounds in the player draft. *USA Today*, April 27, 1988, at C3. Baseball's collective bargaining agreement expires in 1990 and Donald Fehr, Executive Director of the Major League Baseball Players Association, was recently quoted as saying: "I don't like the trend. Relations are not getting better. The litigation we're in is getting nastier . . . This industry doesn't seem to be able to develop a mature collective bargaining posture." *The Sporting News*, March 28, 1988, at 25. Fehr predicts the owners will conduct a lockout when the current agreement expires. *Id.*

plays a most important role. Negotiations over new contracts have proven more difficult exercises. Every football negotiation since 1968 has been accompanied by some form of a work stoppage, and the NFL Players Association debacle in 1987 is only the most recent example of how uncertain life can be in sports labor relations playing field. When peaceful methods of resolving differences fail and the games we love are interrupted, everyone gets upset. If it comes as any consolation — and I'm sure that it does not — no one misses the games more than a sports labor arbitrator.