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Drafting a Solution: Impact of the New Salary System on the First-Year Major League Baseball Amateur Draft

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Drafting a Solution: Impact of the New Salary System on the First-Year Major League Baseball Amateur Draft

by
NICHOLAS A. DEMING*

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I. Introduction

“Baseball has been the national pastime for over one hundred and fifty years and enjoys a unique place in American heritage.”¹ Baseball is so pervasive in the national culture that it suffices to say that “baseball is everybody’s business.”² Through wars and disasters alike, the game survives. It is amusement to cure the lull of a summer day, and salvation in times of sorrow.³

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1. Flood v. Kuhn, 407 U.S. 258, 266 (1972).

2. *Id.*

3. *Baseball Responds to September 11 Attacks: Silenced Stadiums*, NAT’L PASTTIME, <http://www.nationalpastime.com/stitches/september11.html> (last visited Apr. 3, 2012).

Major League Baseball (“MLB”) is an organization that has evolved over the years. What was once a game played by residents of small farm towns across the country is now a multi-billion dollar industry⁴ with international ties and ever-expanding exposure.⁵

With this transformation, the needs of the game have changed. Back in 1922, the United States Supreme Court declared baseball a game of exhibitions that was purely a state affair, not interstate commerce.⁶ Almost a century later, it is laughable to think that baseball does not consist of interstate commerce, yet its place in the judicial framework is still unsettled.

Currently, there is a growing discrepancy between small-market and large-market MLB teams. In part, the first-year amateur draft often fails to steer the most talented players to the worst teams because of financial concerns surrounding signing rookies.⁷ MLB had the opportunity to fix this problem with the newest Collective Bargaining Agreement (“CBA”). The purpose of the CBA is to create a working environment that strikes a balance between the interests of the players and owners.⁸ The changes to the new CBA attempted to curb the spending on rookies by assigning teams specified budgets for the first-year amateur draft.⁹ Although the new CBA has made steps in the right direction, MLB should implement a hard slotted salary structure in the future to fully transform the amateur draft and ultimately improve professional baseball.

This Note will first give a history of antitrust law, MLB, and MLB CBAs. It will then analyze how antitrust and labor law set the legal framework for the first-year amateur draft, the historical problems of

4. *Sports Industry Overview*, PLUNKETT RESEARCH, LTD., <http://www.plunkettresearch.com/sports-recreation-leisure-market-research/industry-statistics> (last visited Apr. 3, 2012) (MLB generated \$7.2 billion in revenue in 2011).

5. See generally Benjamin Goss, *Taking the Ballgame Out to the World: An Analysis of the World Baseball Classic as a Global Branding Promotional Strategy for Major League Baseball*, J. SPORTS ADMIN. AND SUPERVISION 75 (2009), available at www.jsasonline.org/home/v1n1/articles/v1i1_goss-article.pdf.

6. Fed. Baseball Club, Inc. v. Nat’l League of Prof’l Baseball Clubs, 259 U.S. 200, 209 (1922).

7. Peter Toms, *Last Week in Bizball: Will Mandatory Slotting Hurt Small Revenue Franchises*, BIZ OF BASEBALL (Feb. 28, 2011) <http://bizofbaseball.com> (search “mandatory slotting”).

8. Philip Bautista, *Congress Says, “Yooou’re Out!!!” to the Antitrust Exemption of Professional Baseball: A Discussion of the Current State of Player-Owner Collective Bargaining and the Impact of the Curt Flood Act of 1998*, 15 OHIO ST. J. ON DISP. RESOL. 445, 456 (2000).

9. *New Labor Deal Faces Major Draft Changes*, BASEBALL AMERICA (Nov. 22, 2011) <http://www.baseballamerica.com/today/draft/news/2011/2612639.html>.

the draft, the changes to the current CBA, and the potential consequences of the new CBA rules. It will then propose the implementation of a hard slotted salary as a better solution to MLB's current problems. Finally, this note will offer a conclusion as to the likelihood of a hard-slotted salary system being implemented.

II. Background

A. Antitrust Law and Major League Baseball's Exemption

With commerce in the United States expanding, Congress passed the Sherman Act in 1890 to oppose the combination of entities that could potentially harm competition.¹⁰ The purpose of the Sherman Act was not to protect businesses from the working of the market, but instead to protect the public from the failure of the market.¹¹ Congress sought to prevent restraints to free competition in business and commercial transactions that restrict production, raise prices, or otherwise control the market to the detriment of purchasers or consumers of goods and services.¹² The Sherman Act directs itself not against conduct that is competitive, but against conduct that unfairly tends to destroy competition itself.¹³

Although baseball has been nationally popular since its creation, the Court held that the formation of a baseball league did not constitute an attempt to monopolize as defined by the Sherman Act.¹⁴ In *Federal Baseball Club, Inc. v. National League of Professional Baseball Clubs*, the Court stated that baseball was a business of "giving exhibitions," which were "purely state affairs."¹⁵ At the time, the teams that composed the National League were in different cities spread across different states.¹⁶ The teams played each other in "public exhibitions" for money, with one of the teams often crossing a state line in order to play the game.¹⁷ The fact that individuals on the team crossed state lines in order to play many of their games was, in the Court's view, "mere incident" and did not change the character of

10. William Letwin, *Congress and the Sherman Antitrust Law: 1887-1890*, 23 U. CHI. L. REV. 221, 221 (1956).

11. *Spectrum Sports v. McQuillan*, 506 U.S. 447, 458 (1993).

12. *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 493 (1940).

13. *McQuillan*, 506 U.S. at 458.

14. *Fed. Baseball Club, Inc. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200, 209 (1922).

15. *Id.* at 208.

16. *Id.*

17. *Id.*

the business.¹⁸ The Court held that the National League was not an interference with commerce among the states, and thus professional baseball was not subject to the antitrust laws of the Sherman Act.¹⁹

Thirty years later, the Court reaffirmed the *Federal Baseball* holding and declined to overrule its prior decision.²⁰ In *Toolson v. New York Yankees*, the Court held that if there were any problems in baseball that warranted the application of antitrust laws, then it needed to be addressed by legislation.²¹ The Court believed that Congress had the *Federal Baseball* decision under consideration, but Congress' lack of legislation was evidence that it chose not to apply antitrust laws to professional baseball.²²

Although the Court affirmed the antitrust exemption, *Toolson* emphasized the transformation of baseball's landscape in America. In a dissent that highlighted this transformation, Justice Burton wrote that it was a "contradiction in terms" to say that baseball was not engaged in interstate commerce within the breadth of the Sherman Act.²³ He believed baseball was inherently "intercity, intersectional, and interstate."²⁴ He spotted gaps in professional baseball's exemption, such as the Court's failure in *Federal Baseball* to state that baseball's activities would still be exempt if the Court found it was interstate commerce.²⁵ Additionally, Congress had created neither an express nor implied exemption from the Sherman Act for professional baseball.²⁶ Although baseball was still exempt, the landscape was changing.

In *Flood v. Kuhn*, the Court again signaled the need for Congress to weigh in on professional baseball.²⁷ In analyzing *Federal Baseball* and *Toolson*, the Court agreed with the lower court that the distinction between baseball and other professional sports that were not subject to the exemption was "'unrealistic,' 'inconsistent,' and 'illogical.'"²⁸ Although the Court did not overrule the exemption, it held that baseball was a business that was engaged in interstate

18. *Id.* at 208–09.

19. *Id.* at 209.

20. *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 356 (1953).

21. *Id.*

22. *Id.*

23. *Id.* at 358.

24. *Id.*

25. *Id.* at 360.

26. *Id.* at 364.

27. *Flood v. Kahn*, 407 U.S. 258, 268 n.9 (1972).

28. *Id.*

commerce.²⁹ Additionally, the exemption was confined to baseball because of its “unique characteristics and needs,” and did not apply to other professional sports operating interstate.³⁰ While the Court did not overrule baseball’s exemption created in *Federal Baseball*, it highlighted the desire for Congress to act.³¹ The Court stated that the exemption could only be overturned by legislation, but Congress’ “positive inaction” allowed the decision to stand for so long.³²

B. Congress Acts – the Curt Flood Act of 1998

Nearly eight decades after *Federal Baseball*, Congress addressed baseball’s antitrust exemption with the Curt Flood Act of 1998.³³ The Curt Flood Act brought “the rule of antitrust law to baseball.”³⁴ Its purpose was to state that MLB players would have the same rights under antitrust laws as other professional athletes.³⁵

The Act is divided into four subsections that define what conduct is covered, what is excluded, and who can bring a suit under the Act.³⁶ The first subsection subjects “conduct, acts, practices, or agreements of persons in the business of organized major league baseball directly relating to or affecting employment of major league baseball players” to antitrust laws.³⁷ The second subsection limits the application to those actions defined in subsection (a), specifically excluding litigation involving franchise relocation, the minor leagues, and “any organized professional baseball amateur or first-year player draft.”³⁸ The third subsection further limits standing to sue under antitrust laws to current or former major league baseball players, but specifically excludes these players from bringing suit regarding a violation of the first-year player draft.³⁹ Overall, the Curt Flood Act was specifically targeted at major league baseball players and created an exemption for the first year amateur draft.

29. *Id.* at 282.

30. *Id.* at 282–83.

31. *Id.* at 283–84.

32. *Id.*

33. 15 U.S.C.S. § 26b (1998).

34. Nathaniel Grow, *Reevaluating the Curt Flood Act of 1998*, 87 NEB. L. REV. 747, 748 (2009) (citing Reynolds Holding, *Do Baseball Bigwigs Deserve Special Treatment? Why, exactly, should those who already have it easy be further protected by a monopoly?*, S.F. CHRON., Nov. 22, 1998, at SC-5).

35. 15 U.S.C.S. § 26b(a) (1998).

36. § 26b.

37. § 26b(a).

38. § 26b(b)(1).

39. § 26b(c).

C. The Collective Bargaining Agreement: Its Development and Present State in Professional Baseball

Baseball's antitrust exemption status created an imbalance of bargaining power between labor and management.⁴⁰ Lacking the ability to address issues under the antitrust laws, many commentators urged the use of "concerted activity and collective bargaining as a countervailing force to the power of the owners."⁴¹ In response to the threat of unionization in 1946, the owners created a representation plan that limited representation to providing a means for communicating players' suggestions and complaints.⁴² In 1954, the players formed the Major League Baseball Players' Association ("MLBPA"), which operated as a "conduit of information," but functioned as neither a union nor a collective bargaining unit.⁴³ The player representatives were given the opportunity to air their grievances, but were only able to wait and accept whatever action the club owners decided to take.⁴⁴

Gradually, the MLBPA transformed from "its earlier status as an information exchange group to a bona fide labor organization."⁴⁵ After Marvin Miller was named as the executive director of the Association in 1966, the owners feared and despised Miller because he "travelled from camp to camp spreading the gospel of economic progress through unity."⁴⁶ Concerted union activity occurred in 1969 when players boycotted spring training as a result of the inability of players and management to reach an agreement on the funding of the players' pension plan.⁴⁷

Later that year, the National Labor Relations Board ("NLRB") indirectly approved the organization's collective bargaining status.⁴⁸ The NLRB is an independent federal agency vested with the power to safeguard employees' rights to organize and to prevent unfair labor

40. Bautista, *supra* note 8, at 454 (citing Erwin Kranskow & Herman Levy, *Unionization and Professional Sports*, 51 GEO. L.J. 749, 758 (1963)).

41. Robert McCormick, *Baseball's Third Strike: The Triumph of Collective Bargaining in Professional Baseball*, 35 VAND. L. REV. 1131, 1150 (1982).

42. *Id.* at 1151.

43. *Id.*

44. *Id.*

45. *Id.* at 1152.

46. Jerry Crasnick, LICENSE TO DEAL: A SEASON ON THE RUN WITH A MAVERICK BASEBALL AGENT 132-33, (Rodale, 2005).

47. McCormick, *supra* note 41, at 1152.

48. *Id.*

practices committed by private sector employers and unions.⁴⁹ In *American League of Professional Baseball Clubs and Association of National Baseball League Umpires*,⁵⁰ the NLRB held that professional baseball was an industry “in or affecting interstate commerce” and thus subject to the protections and requirements of the National Labor Relations Act (“NLRA”).⁵¹ The NLRA provides that employees have a “right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.”⁵² Additionally, it requires labor and management to bargain in good faith over terms and conditions of employment.⁵³

In 1972, the Players’ Association confronted the owners in the first test of the organization’s strength and the owners’ resolve, and players undertook the first industry-wide strike.⁵⁴ In 1973, the players and owners entered into a new CBA that provided an arbitration system that allowed players to submit salary disputes for arbitration by an impartial judge.⁵⁵ This agreement crippled the reserve clause, which allowed owners to renew the expired contract of a player for one year in the event that a new contract would not be reached.⁵⁶

In order to curb the momentum the players gained with the CBA in 1973, the owners aggressively entered the 1976 negotiations and struck a deal which bound players to their respective teams for six years.⁵⁷ These negotiations resulted in a seventeen-day lockout, and foreshadowed the continuous conflict over player movement and rapidly escalating salaries.⁵⁸

Following the 1976 agreement, salaries rose sharply, and owners once again aggressively entered the 1981 negotiations with the intention of curbing salary growth.⁵⁹ The owners wanted a compensatory system with a minimum and maximum salary for

49. *What We Do*, NLRB, <http://www.nlr.gov/what-we-do> (last visited Mar. 28, 2012).

50. *Am. League of Prof. Baseball Clubs*, 180 N.L.R.B. 190 (1969).

51. *Id.*

52. 29 U.S.C. §157 (2006).

53. McCormick, *supra* note 41, at 1152–53.

54. *Id.* at 1153.

55. Bautista, *supra* note 8, at 457.

56. *Id.* at 458.

57. *Id.*

58. *Id.*

59. *Id.*

players with fewer than six years in the league, but the MLBPA viewed these provisions as a conspiracy against player freedom of movement.⁶⁰ Both the owners and players maintained hard-line stances, and it was not until one and one-half years and two player strikes later that they agreed on a new CBA.⁶¹ The agreement featured a free agent system that compensated teams that were losing players via free agency while allowing player mobility.⁶²

Player salaries continued to rise, so the owners entered the 1985 negotiations intending to slow the escalating rate of salary growth.⁶³ The owners proposed a salary cap,⁶⁴ but the players opposed it and went on strike for two days, forcing the owners to take the salary cap off the negotiating table.⁶⁵ Both sides eventually agreed to increase the minimum salary in exchange for limits on players' opportunities for salary arbitration.⁶⁶

Following this 1985 agreement, the owners became frustrated with their inability to curb the growth of escalating player salaries.⁶⁷ They took matters into their own hands and instituted an illegal policy concerning free agents—collusion—that involved the concerted action of the owners to prevent instances of free agency.⁶⁸ The owners agreed among themselves to offer no free agent contracts, which was evident in the fact that after the 1985 season, fifty-seven free agent players out of sixty-two resigned with their original teams for contracts less than their original teams had offered.⁶⁹ The players filed a grievance, and arbitrators found in their favor, stating that the owners violated the 1985 CBA and had to pay the players \$280 million in damages.⁷⁰ These collusive tactics punctuated the owners' desire for a salary cap and their willingness to negotiate in bad faith to achieve their goals.

60. *Id.* at 458–59.

61. *Id.* at 459.

62. *Id.* at 460.

63. *Id.*

64. Thomas Picher, *Baseball's Antitrust Exemption Repealed: An Analysis of the Effect on Salary Cap and Salary Taxation Provisions*, 7 SETON HALL J. SPORT L. 5, 37 (1997) (“Salary cap provisions in professional sports establish maximum team salaries based on a predetermined percentage of the defined gross revenues of the league.”).

65. Bautista, *supra* note 8, at 461.

66. *Id.*

67. *Id.* at 460.

68. Thomas Hopkins, *Arbitration: A Major league Effect on Players' Salaries*, 2 SETON HALL J. SPORT L. 301, 314 (1992).

69. Bautista, *supra* note 8, at 461.

70. *Id.* at 461–62.

In negotiating the 1990 CBA, the owners continued their efforts to stem the ever-increasing player salaries.⁷¹ The owners wanted to implement a new salary system⁷² based on a revenue-sharing plan,⁷³ but the players viewed this as a form of a salary cap and rejected it.⁷⁴ Following a month-long lockout, the owners removed the salary cap from the negotiating table, and the two sides agreed to the players' liberalized salary arbitration proposition, as well as the owners' terms regarding minimum salaries.⁷⁵

Although the 1990 agreement was not set to expire for four years, it contained a provision that allowed either side to reopen negotiations after only three years.⁷⁶ In December of 1992, the owners voted to reopen negotiations on the CBA with the players⁷⁷ to discuss the issues of free agency, salary arbitration, and a minimum salary.⁷⁸ After reaching an impasse following two years of negotiations, the players instituted a strike towards the end of the 1994 season, and the owners cancelled the remainder of the season.⁷⁹ The dispute centered on the owners' demand to create cost control by putting a limit on player payrolls.⁸⁰ The strike lasted over two hundred days and carried through most of spring training the following year.⁸¹ It ended just before the start of the 1995 season when the NLRB sought an injunction against the owners, allowing the 1995 and 1996 seasons to be played under the old CBA.⁸²

71. *Id.* at 462.

72. Murray Chass, *Chill of Labor Impasse Threatens Baseball's Spring*, N.Y. TIMES, Feb. 9, 1990, at A26.

73. David Jacobson, *MLB's Revenue Sharing Formula*, CBSNEWS.COM, July 14, 2008, <http://www.bnet.com/article/mlbs-revenue-sharing-formula/210897> (Revenue sharing takes money away from high-earning teams money and gives it to low-earning teams in an attempt to lessen the difference in the amount of money the richest teams can spend in comparison to the poorest teams.).

74. Murray Chass, *Negotiators Exchange Outlooks on Talks*, N.Y. TIMES, Feb. 16, 1990, at 2.

75. Murray Chass, *Baseball's Labor Dispute Settled with Compromise on Arbitration*, N.Y. TIMES, Mar. 19, 1990, at 2.

76. *Id.* at 1.

77. Murray Chass, *Baseball Owners Vote to Reopen Labor Talks*, N.Y. TIMES, Dec. 8, 1992, at 1.

78. Bautista, *supra* note 8, at 463.

79. Murray Chass, *No Runs, No Hits, No Errors: Baseball Goes on Strike*, N.Y. TIMES, Aug. 12, 1994, at B9.

80. *Id.*

81. Ryan Dryer, *Beyond the Box Score: A Look at Collective Bargaining Agreements in Professional Sports and their Effect on Competition*, 2008 J. DISP. RESOL. 267, 271 (2008).

82. *Id.*

In 1996, the players and owners reached an agreement with a few changes. The agreement included a luxury tax that required the teams with the five highest payrolls to pay a 35 percent tax on the amount by which their payrolls exceed the threshold amount.⁸³ It also implemented a revenue-sharing plan that transferred 22 percent of the thirteen wealthiest clubs' local revenues to the other clubs.⁸⁴ Finally, the players and owners agreed jointly to petition Congress to eliminate baseball's antitrust exemption,⁸⁵ which ultimately resulted in the Curt Flood Act.

In 2003, the CBA maintained many of the provisions of the 1997 agreement.⁸⁶ Under the agreement, a player could achieve free agency if he had "(1) fulfilled his current contract; (2) completed at least six years of major league service; and (3) not executed a contract for the next succeeding season."⁸⁷ In negotiating the agreements in both 1997 and 2003, there was no discussion of a salary cap, so the negotiations went smoothly.

The previous CBA went into effect in 2007.⁸⁸ The discussions were pragmatic, workmanlike, and conducted with a mutual attempt to reach an agreement.⁸⁹ Among other things, it contained a revamped draft for amateur players.⁹⁰ Specifically, it provided clubs that failed to sign their first or second round pick with the same pick in the subsequent year's draft as compensation.⁹¹ Clubs that were unable to sign their third round pick received a sandwich pick between the third and fourth rounds in the subsequent year's draft.⁹²

The current CBA was agreed to on November 22, 2011, and unanimously ratified by the owners on December 15, 2011.⁹³ It continued the peaceful trend of negotiations and ensured MLB of two

83. Daniel Glazer, *Can't Anybody Here Run this Game? The Past, Present, and Future of Major League Baseball*, 9 SETON HALL J. SPORT L. 339, 364 (1999).

84. *Id.* at 365.

85. *Id.*

86. Dryer, *supra* note 81, at 271.

87. *Id.*

88. Barry Bloom, *MLB, Union Announce New Labor Deal*, MLB (Oct. 25, 2006) http://mlb.mlb.com/news/article.jsp?ymd=20061024&content_id=1722211&fext=.jsp&c_id=mlb.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. Press Release, MLB, *Clubs Unanimously Ratify New Collective Bargaining Agreement* (Dec. 15, 2011, 5:44 PM) http://mlb.mlb.com/news/article.jsp?ymd=20111215&content_id=26175840&vkey=pr_mlb&c_id=mlb.

decades without a labor stoppage.⁹⁴ It is for a five-year term and will expire on December 1, 2016.⁹⁵

III. Analysis

MLB is an imperfect league. It faces continuous challenges that force it to recognize problems and implement solutions. The new CBA was a way for both the players and the owners to address their concerns and implement changes to the league.

A. The Antitrust Exemption and Labor Law

MLB is subject to NLRA labor laws because of its exemption from antitrust law. The NLRA sets a low standard of behavior by which the owners must abide. The labor laws under the NLRA are not nearly as restrictive as antitrust laws, and only require that “labor and management bargain in good faith over terms and conditions of employment.”⁹⁶ Under the NLRA, cases are brought before the NLRB, not a court of law.⁹⁷ Additionally, if players wish to protest unfair labor practices by the owners, they can only strike if it is lawful, with the issue determined by the NLRB.⁹⁸

Unlike the labor laws of the NLRA, the Sherman Act provides a remedy against “[e]very person who shall monopolize, or attempt to monopolize . . . any part of the trade or commerce among the several States.”⁹⁹ The Sherman Act prohibits all contracts, combinations, or conspiracies in restraint of trade, but the Supreme Court interprets the Sherman Act only to bar agreements that unreasonably restrain trade.¹⁰⁰ A plaintiff in an antitrust case must establish that a contract, combination, or conspiracy exists, and that it unreasonably restrains trade.¹⁰¹

94. Ben Nicholson-Smith, *CBA Details: Luxury Tax, Draft, HGH, Replay*, MLB TRADE RUMORS (Nov. 22, 2011 2:15 PM) <http://www.mlbraderumors.com/2011/11/cba-details-luxury-tax-draft-.html>.

95. Press Release, MLB, *MLBPA Reach New Five-Year Labor Agreement*, http://mlb.mlb.com/news/article.jsp?ymd=20111122&content_id=26025138&vkey=pr_mlb&c_id=mlb.

96. McCormick, *supra* note 41, at 1152–53.

97. *Employee Rights*, NLRB, <http://www.nlr.gov/rights-we-protect/employee-rights> (last visited Mar. 28, 2012).

98. *Id.*

99. 15 U.S.C. § 2 (2006).

100. Nat'l Collegiate Athletic Ass'n v. Bd. of Regents, 468 U.S. 85, 98 (1984).

101. James McKeown, *Antitrust Developments in Professional Sports: to the Single Entity and Beyond*, 19 MARQ. SPORTS L. REV. 363, 365 (2009).

Antitrust laws hold leagues to a higher standard than labor laws. Under labor laws, MLB must only negotiate in good faith. The antitrust exemption for the first-year amateur draft allows MLB owners to take actions that constitute trade restraints, so long as they are done in good faith. This severely limits the challenges that the MLBPA can bring in court, and limits the relief that the MLBPA can seek. Based on this unfair bargaining position, the owners have been able to take advantage of the first-year amateur draft and overpay rookies.

When the Court created baseball's antitrust exemption in *Federal Baseball*, it put professional baseball players at a severe negotiating disadvantage. Although subsequent Supreme Court cases questioned this exemption, it was not until the Curt Flood Act that Congress made a concerted effort to remove baseball's antitrust exemption.¹⁰² As noted above, the Curt Flood Act was full of numerous exemptions and applied only to MLB players.¹⁰³ Specifically, the Act does not remove the exemption from "any organized professional baseball amateur or first-year player draft."¹⁰⁴ To bring a suit challenging the legality of the amateur draft, a player would need to prove that the draft was a tool by which the owners did not bargain in good faith.¹⁰⁵ This has given the owners a bargaining advantage when it comes to changing the draft during CBA negotiations.

B. Historical Imbalances in Signing Draft Picks

Historically, one of MLB's biggest problems has been the structure of the first-year amateur draft.¹⁰⁶ It has not served the purpose of a well functioning "reverse order draft," which is supposed to allow the worst MLB franchises to acquire the best amateur talent.¹⁰⁷ Too often, the draft failed to steer the most talented amateur players to the clubs with the poorest on-field performance.¹⁰⁸

Before the implementation of the current CBA, prior to each draft, MLB would send a "suggested slotting" for each selection, but

102. 15 U.S.C. § 26b(a) (1998).

103. § 26b.

104. § 26b(b)(1).

105. McCormick, *supra* note 41, at 1152–53.

106. Toms, *supra* note 7.

107. *Id.*

108. Peter Toms, *Last Week in Bizball: Reforming the Amateur Draft Update*, THE BIZ OF BASEBALL (Oct. 19, 2009) http://bizofbaseball.com/index.php?option=com_content&view=article&id=3651:lwb-updates-on-reforming-the-amatuer-draft-and-revenue-sharing&catid=67:pete-toms&Itemid=155.

they were only suggestions.¹⁰⁹ The draft consisted of a “stupid informal slotting system that nobody pa[id] attention to anyway.”¹¹⁰ Some teams followed the suggestions, but others did not and sought permission from the Commissioner’s office to pay higher than the slot allotment.¹¹¹

The most notable exemptions to these suggestions were special players who would often drop because of “signability concerns and the threat that they’ll hold out for as long as it takes.”¹¹² Smaller teams routinely passed on superior talent and allowed the best players to slip to better teams because they lacked the money to sign these “premium” players.¹¹³ For example, in 2001, the sixty-fourth and sixty-fifth picks of the draft received \$625,000 and \$620,000 signing bonuses respectively, but the sixty-sixth pick received a \$2 million signing bonus.¹¹⁴ The sixty-sixth pick was a potential first-round pick, but fell almost thirty slots because teams were concerned with their ability to sign him at such a high asking price.¹¹⁵

A more recent example is Rick Porcello.¹¹⁶ Porcello was a highly rated pitcher, considered by some to be the best pitcher in the 2007 draft, but he was not drafted until the twenty-seventh pick overall.¹¹⁷ If not for being considered one of the toughest players to sign in the entire draft, he would have been drafted much higher, potentially second overall by Kansas City.¹¹⁸

Unlike other major professional sports athletes, a drafted baseball player has the option of either signing with the team that drafted him or returning to school. Even after being drafted, high school players may attend college if they do not sign with a MLB team.¹¹⁹ Often, the player forces the team to pay a high signing bonus at the threat of

109. Jonathan Mayo, *Slotting System Could Improve Draft*, MLB (Dec. 16, 2009) http://mlb.mlb.com/news/article.jsp?ymd=20091215&content_id=7815624&vkey=news_mlb&fext=.jsp&c_id=mlb.

110. Jayson Stark, *Sorry, But this Slot Machine is Broken*, ESPN (June 5, 2009) http://sports.espn.go.com/mlb/draft2009/columns/story?columnist=stark_jayson&id=4227655.

111. *Id.*

112. Crasnick, *supra* note 46, at 252.

113. *Id.* at 250.

114. *Id.* at 252.

115. *Id.*

116. Buster Olney, *Fixing the MLB Draft*, ESPN (Jan. 26, 2010) http://insider.espn.go.com/mlb/blog/_/name/olney_buster/id/4858885.

117. Danny Knobler, *Tigers Take Rick Porcello in Draft*, MLIVE (June 7, 2007) http://blog.mlive.com/tigersinsider/2007/06/tigers_take_rick_porcello_in_dr.html.

118. *Id.*

119. *First-Year Player Draft: Official Rules*, MLB, <http://mlb.mlb.com/mlb/draftday/rules.jsp> (last visited Apr. 3, 2012).

returning to school and the team wasting a draft pick. MLB features unique characteristics in its draft that differentiate it from other major professional sports. Largely, the MLB first-year amateur draft has up to fifty rounds.¹²⁰ This is in contrast to the National Football League (“NFL”), which has only seven rounds,¹²¹ and the National Basketball League (“NBA”), which consists of only two rounds.¹²² Not only do NFL and NBA teams have to invest money in fewer picks, it also means that the MLB draft creates a much larger pool from which stars can emerge. For example, Albert Pujols, a guaranteed first-ballot Hall of Famer, was drafted in the thirteenth round.¹²³ Similarly, Roy Oswalt, a three-time All-Star pitcher with a 159-93 win-loss career record,¹²⁴ was drafted in the twenty-third round.¹²⁵ The breadth of the MLB draft also gives each team more players to which it must devote time and resources. With such a high number of rounds and players drafted, many smaller market teams have passed on players with signability issues in an attempt to focus on players they could sign for a lower amount.

Additionally, there was a movement among veteran players to curtail the escalating compensation being awarded rookies and apportion those savings to veterans.¹²⁶ Veteran players were being met with diminished demand for their services in the free agent market in terms of both contract length and value, while competition amongst clubs in the first-year amateur draft sharply increased.¹²⁷ Veterans believed that the money should go to big league players, not to rookies “who are still hanging out at the student union after

120. *First Year Player Draft: FAQ*, MLB, <http://mlb.mlb.com/mlb/draftday/faq.jsp> (last visited Apr. 3, 2012).

121. *News: NFL draft's first round moves to Thursday night for 2010*, NAT'L FOOTBALL LEAGUE, <http://www.nfl.com/news/story?confirm=true&id=09000d5d8116faa2&template=without-video-with-comments> (last visited Apr. 3, 2012).

122. *Evolution of the Draft and Lottery*, NAT'L BASKETBALL ASSOC., http://www.nba.com/history/draft_evolution.html (last visited Apr. 3, 2012).

123. Jerry Crasnick, *Later Round Draft Picks Who've Developed Rather Nicely*, ESPN (June 4, 2008) http://sports.espn.go.com/mlb/columns/story?columnist=crasnick_jerry&id=3423890.

124. *Baseballreference.com Profile: Roy Oswalt*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/o/oswalro01.shtml>. (last visited Jan. 30, 2012).

125. Crasnick, *supra* note 112.

126. Pete Toms, *Last Week in Bizball: Time for the MLBPA to Embrace the Salary Cap?*, THE BIZ OF BASEBALL, (Feb. 1, 2010), http://bizofbaseball.com/index.php?option=com_content&view=article&id=4049:lwib-salary-cap-in-mlb-reforming-the-draft-biz-tidbits&catid=67:petetoms&Itemid=155.

127. *Id.*

games.”¹²⁸ A recent example is that of Steven Strasburg, the first overall pick in the 2010 amateur draft.¹²⁹ In addition to the buzz created by his reported demands pre-draft, he ended up with a contract worth \$15 million.¹³⁰ For many veteran players, “giving that much money to a player who had yet to log a single professional inning was objectionable.”¹³¹ Veteran players did not want such large amounts of money going to “kids” who have never played a MLB game.¹³²

C. Spending Limits in the Current CBA

MLB’s number one priority in negotiations over the new CBA was the first-year amateur draft.¹³³ Prior to the negotiations, MLB created a committee to “identify existing problems and find solutions for them.”¹³⁴ The premise that guided these committee meetings was that the first-year amateur draft was the best and easiest manner by which baseball could address the widening financial disparities.¹³⁵ The hope is that under the new system players will get drafted when they should, based on their talent rather than their signability.¹³⁶

The new CBA added heavy restrictions on draft spending.¹³⁷ Each club has a spending limit based on when it is scheduled to make its first ten selections.¹³⁸ The team with the first pick will have a limit of \$11.5 million, and the team selecting last will have a limit of \$4.5 million.¹³⁹ Bonuses after the tenth round don’t count against the limit, unless the bonus exceeds \$100,000.¹⁴⁰

There are strict penalties to enforce the spending limits and reduce draft spending. Teams that spend more than 5 percent over-

128. Stark, *supra* note 110.

129. Mayo, *supra* note 109.

130. *Id.*

131. *Id.*

132. Stark, *supra* note 110.

133. Jayson Stark, *How the New CBA Changes Baseball*, ESPN (Nov. 22, 2011), http://espn.go.com/mlb/story/_/id/7270203/baseball-new-labor-deal-truly-historic-one.

134. Mayo, *supra* note 109.

135. Olney, *supra* note 116.

136. Jonathan Mayo, *Signing-bonus Constraints to impact Draft*, MLB (Dec. 1, 2011, 1:49PM), http://mlb.mlb.com/news/article.jsp?ymd=20111201&content_id=26066708&vkey=news_mlb&c_id=mlb.

137. Nicholson-Smith, *supra* note 94.

138. *Id.*

139. *Id.*

140. *Id.*

slot on the draft will face a 75 percent tax.¹⁴¹ Teams that go over slot by five to ten percent face a 75 percent tax and the loss of a first round draft pick.¹⁴² Teams that go over slot by ten to fifteen percent face a 100 percent tax and the loss of a first and second round draft pick.¹⁴³ Teams that exceed slot by 15 percent or more face a 100 percent tax and the loss of first round draft picks in the next two drafts.¹⁴⁴ Proceeds from the tax will go to clubs that did not overspend, and forfeited draft picks will be distributed via a lottery.¹⁴⁵

Additionally, the CBA contains a competitive balance lottery to give low-revenue teams additional draft picks.¹⁴⁶ The ten clubs with the lowest revenues and the ten clubs in the smallest markets are eligible to win one of six draft choices that will be added after the first round, with the teams' chances of winning the lottery depending on their winning percentage in the previous season.¹⁴⁷ The teams that do not win additional picks and all other teams that qualify under the revenue sharing plan will be eligible for a second lottery for six more picks after the second round.¹⁴⁸ Unlike other draft picks, teams can trade these picks.¹⁴⁹ MLB hopes that these new rules will curb spending on the first-year draft and restore the competitive balance.

D. Consequences of the New CBA

Although there has not been a draft since the current CBA's implementation, there has been negative reaction to the new amateur spending limits.¹⁵⁰ Some believe the new rules will continue to keep small-market teams down and have an adverse effect on teams trying to build through the minor leagues.¹⁵¹ They believe that building through the draft will continue to be the most cost-effective way to

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. Phil Rogers, *Rebuilding Teams Put up Happy Front About CBA*, CHI. TRIB. (Nov. 26, 2011), http://articles.chicagotribune.com/2011-11-26/sports/sc-spt-1127-notes-rogers-baseball--20111127_1_cba-low-revenue-teams-draft.

151. *Id.*

construct a team, but smart teams will now have a harder time using their aggressiveness to their advantage.¹⁵²

There is also a belief that the new rules concerning the first-year player draft will have an impact on prep athletes.¹⁵³ Some believe that these restrictions are likely to negatively impact the number of high school players that ultimately choose pro baseball.¹⁵⁴ High school draftees will not be able to hold out for as much bonus money as in past years, so they will likely head to college rather than starting their professional careers.¹⁵⁵ One scouting director believes that it will take more money to sign the top talents, leaving less money for the later draft picks in the first ten rounds.¹⁵⁶ Little is known at this point, but there is not much optimism that the new rules will balance the spending power in MLB.

IV. Proposal: Implementing a Hard-Slotted Salary System

Although the limits of the new CBA are a step in the right direction, this note proposes that MLB go further in the next CBA and implement a hard-slotted system for the first-year amateur draft.¹⁵⁷ In drafting the new CBA, the league may have sought a system of hard-slotting, but eventually found traction on a compromise of an overall draft tax for exceeding the limits.¹⁵⁸ In the world of labor compromise, the union's willingness to limit draft expenditures might as well have been a trade-off for revamping the draft-pick compensation system for free agents.¹⁵⁹ The problem is that the new spending limits won't prohibit over-slot spending.¹⁶⁰

A hard-slotting system is required to level the playing field. Slotting refers to "the bonus a player gets, or should get, dependent

152. Joe Lemire, *New Rules on Draft Spending Will Harm Both Players and Teams*, SPORTS ILLUSTRATED (Nov. 22, 2011), sportsillustrated.cnn.com/2011/writers/joe_lemire/11/22/cba.draft.changes/index.html.

153. Jason Churchill, *New Draft Rules Could Impact Prep Prospects*, ESPN (Dec. 08, 2011), http://espn.go.com/blog/high-school/baseball/post/_id/887/new-draft-rules-could-impact-prep-prospects.

154. *Id.*

155. *Id.*

156. *Id.*

157. Sean Forman, *What Would be the Effect of Hard Slotting in the MLB Draft?*, BASEBALL-REFERENCE.COM (Aug. 17, 2010), <http://www.baseball-reference.com/blog/archives/7841>.

158. Churchill, *supra* note 153.

159. *Id.*

160. *Id.*

on when he's taken in the draft."¹⁶¹ A player receives a set amount based on the overall number of the pick where he is selected, similar to the hard slotting salary structure of the NBA.¹⁶² Under the NBA's CBA, each rookie scale contract between a team and first round pick covers a two-year period, with team options for both the third and fourth seasons.¹⁶³ Each rookie contract must be at least 80 percent of the applicable rookie scale amount in current base compensation, but the total of salary and bonuses cannot exceed 120 percent of the applicable rookie scale amount.¹⁶⁴

A hard slotted draft salary structure would completely remove the imbalance in drafting. Under the current CBA, the top picks can demand more money from the pool, leaving teams with little room to stay within the limits of the first ten rounds. A slotted salary structure would tell amateurs what to expect specifically based on where they are selected. Instead of giving a team limits based on the first ten rounds, it would place a limit on each individual pick. Placing a hard structure on each individual pick would moderate overspending on draft picks and curb the outrageous demands of young players who believe they deserve more than they are worth.¹⁶⁵ This would benefit the small-market teams who would no longer have to pass on top prospects demanding an exorbitant signing bonus.

With the new spending limits, there is concern that more prospects will attend college instead of signing with a MLB team. Ultimately, this would benefit MLB because more players would enter the draft with experience and maturity. It would give teams a better sense of the quality of a player and help justify drafting him with a top pick. Although some players might still decide to pursue other sports, in the end, the players who want to play, who have a passion to pursue a Major League career, will sign.¹⁶⁶ When they're 11 and 12, they do not say, 'I want to grow up to be a Major League Baseball player, but only for a large bonus.'¹⁶⁷

161. Mayo, *supra* note 109.

162. *Id.*

163. *National Basketball League Collective Bargaining Agreement*, NAT'L BASKETBALL ASS'N (2005), available at www.newballpark.org/wp-content/uploads/2011/11/NBA-CBA2005.pdf, at 218.

164. *Id.* at 220.

165. Mayo, *supra* note 109.

166. Mayo, *supra* note 136.

167. *Id.*

V. Conclusion

Disparities among salaries in baseball created a need for action. Over the years, attempts to implement a salary cap have failed, culminating in the worst work stoppage in baseball history in 1994. In December 2011, MLB implemented a new CBA with spending limits on the first-year amateur draft. The spending limits are a step in the right direction, but they do not fully solve MLB's problems. Nevertheless, it is unlikely that such a structure will be implemented in the next CBA. The new spending limits were a contentious point in negotiations and reportedly delayed the signing of the new CBA.¹⁶⁸ Constraints on a free market often come with resistance, and that is no different in the MLB's CBA negotiations. Although future CBAs may not adopt a hard slotted salary system any time soon, it would even the playing field in baseball, and give the small-market teams a competitive chance.

168. *Id.*